

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

CASE NO: 445/2019

DATE: 2020-02-03

FORMAL INQUEST

in terms of section 5 of the Inquest Act 58 of 1999

into the death of the late

DR NEIL HUDSON AGGETT

BEFORE THE HONOURABLE MR JUSTICE MAKUME

ON BEHALF OF THE STATE : ADV MLOTSHWA
: ADV SINGH

ON BEHALF OF THE FAMILY : ADV VARNEY
ADV SCOTT
ADV FAKIR

ON BEHALF OF SAPS : ADV COETZEE
[Previous SAPS]

ON BEHALF OF SAPS : ADV AMOJEE
[Current SAPS]

INTERPRETER : [Not applicable]



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PROCEEDINGS ON 2020-02-03

[09:53]

COURT: Thank you.

CLERK: In the case of the late Dr Neil Hudson. Case number 2019-445.

COURT: Thank you.

MS SINGH: As the Court pleases M'Lord. Mr Naidoo?

COURT: Yes. Right. Mr Naidoo last week you did take an oath or an affirmation. Today is the continuation of what we left last week. So you still confirm that the evidence you
10 will give will be the truth, and nothing but the truth?

MR NAIDOO: Thank you.

PARMANANTHAN NAIDOO (still under oath)

COURT: Thank you.

CROSS-EXAMINATION BY MS SINGH: Thank you M'Lord. Mr Naidoo good morning. I just have a few questions for you. Mr Naidoo when you testified on Friday you were asked a question by my learned friend that were you a member of the ANC, and you said you were a liberation fighter. You mentioned the names of Dr Dado, Dr Naicker.
20 Were you talking about Dr Monty Naicker?

MR NAIDOO: That is correct, Dr Monty Naicker.

MS SINGH: Alright. You testified, you said that this was an ideal where Coloured, Indian and Black people all stood together in the struggle. Am I correct?

MR NAIDOO: That is correct, yes.

MS SINGH: The Doctor's pact, would that be similar to the doctor's pact?

MR NAIDOO: That is correct. That is similar to the Doctor's pact.

MS SINGH: Right. And the Doctor's Pact comprised of which three Doctors, Mr Naidoo?

MR NAIDOO: Dr Dado, Dr Monty Naicker and Dr Cromer from the ANC.

MS SINGH: Thank you. Mr Naidoo you also testified about
10 Sons. Sons at a certain point. Are you talking about Seth Sons, Captain Sons?

MR NAIDOO: Yes, Captain Sons. A tall man.

MS SINGH: Yes?

MR NAIDOO: He is the man who ... him and a few other people, who came to my home on 27th November 1981.

MS SINGH: Right.

MR NAIDOO: And arrested me and drove me to John Vorster Square.

MS SINGH: Right. The reason why I am asking is,
20 because Captain Sons also testified at the Timol Inquest. He testified before Judge Mothle and said he does not know anything about assaults and torture that went on at John Vorster Square. Do you know anything about that?

MR NAIDOO: Well look he took me, if my memory serves me correct. He took me to the 10th floor.

MS SINGH: Right.

MR NAIDOO: And the incident that I explained to you, that Major Arwie took the back of my head and banged it onto the desk.

MS SINGH: Yes?

MR NAIDOO: He was present.

MS SINGH: Did he do anything to stop it?

MR NAIDOO: No he did not do anything to stop it; he never commented or anything like that.

10 MS SINGH: Okay. Mr Naidoo you testified on Friday that at the time of your arrest, your shoe laces and your belt was removed. When you were taken to Vereeniging Police Station you were given ... prior to being driven there, you were given back your shoe laces and belt, and when you were placed in the cells again those shoe laces and belt was removed.

MR NAIDOO: At Vereeniging Police Station in the charge office.

20 MS SINGH: Yes. So I surmise that the reason why it was removed was that you would not injure yourself. Am I correct?

MR NAIDOO: I suppose that is standard police procedure.

MS SINGH: Right.

MR NAIDOO: Where they put you in the cell or something, is to take anything away from you that could injure you.

MS SINGH: Would you say that it was also for the benefit of the police officers, so that you do not injure them? Perhaps in an attempted escape? You do not use these items to hurt them.

MR NAIDOO: I suppose so.

MS SINGH: Thank you. You said that during your interrogation you were asked as to which cell you belong to. Can you clarify this whole issue of cell, and how it worked?

MR NAIDOO: The ANC operated and the South African
10 Communist Party, they had cells in various parts of the country.

MS SINGH: Yes?

MR NAIDOO: The cell would comprise of about 3 – 4 people.

MS SINGH: Okay.

MR NAIDOO: One of them obviously would have a link to hide the communist party. They kept asking me which cell did I belong to and who.

MS SINGH: Okay.

20 MR NAIDOO: I must indicate to you that I really never belonged to a cell; but I was known by the ANC, I was known by the Communist Party Operatives. From time to time they used to come and ask me to do certain things for them.

MS SINGH: Okay. Mr Naidoo you also testified that during

the time of the assault when you were stung with the elastic band, there were police officers that came in, that went out; they were white police women that were brought in and that laughed at you. Then there was a time when it was told that they needed to step up the interrogation.

At any given time during all your interrogations, was there ever any police officer that stood up and said enough is enough?

MR NAIDOO: No. To my memory, nobody.

10 MS SINGH: Did any [intervene]

MR NAIDOO: Stop them. Nobody tried to restrain them from whatever they were doing.

MS SINGH: Did those police officers look scared when they were doing the things that they were doing to you?

MR NAIDOO: No they seemed to be enjoying themselves.

MS SINGH: Okay. Were they looking intimidated, scared for whatever reason? Did they tell their Commanders we cannot obey these, because these are unlawful instructions? Did they ever say that to you?

20 MR NAIDOO: No they never said that.

MS SINGH: Thank you. You stated in your evidence in chief that at a certain stage you were looking at your interrogators and there was a photograph where you identified Whitehead. Where did you see this photograph Mr Naidoo?

MR NAIDOO: This was a few years after the death.

MS SINGH: Yes?

MR NAIDOO: Of Neil Aggett, when I came out of prison.

MS SINGH: Right.

MR NAIDOO: As I said I did not know, he did not introduce himself; I did not know his name.

MS SINGH: Yes?

MR NAIDOO: But he was ... I identified him. I think it was one of the newspapers.

10 MS SINGH: Alright.

MR NAIDOO: Mail & Guardian or something that had a photograph. Because you know his name featured prominently in the trial of Barbara Hogan.

MS SINGH: Yes. Okay.

MR NAIDOO: That is how far I recall.

MS SINGH: Is that how you identified him, by a photograph in the newspaper?

MR NAIDOO: I recognised him from the photograph.

20 MS SINGH: Okay. You testified that there was a pink liquid that you were made to drink in addition to tablets that caused you to say things that the police were not aware of. Did you subsequently come to find out what that pink liquid was?

MR NAIDOO: No I never did. At Park they told me it was Sanatogen.

MS SINGH: Okay.

MR NAIDOO: Then I drank it. I was also obviously quite exhausted, because I was awake for a long period, and I was doing exercise and listening ... Then I fell off to sleep on my feet.

MS SINGH: Okay.

MR NAIDOO: I am not too sure; I can say for certain that whether that was a result of this liquid that I drank.

MS SINGH: Now the reason why I raise it is because in the
10 Timol Inquest, Dr Jettam also testified about ingesting a
tablet which was given to her, which caused her to
hallucinate. That is the reason why we are raising it with
you, okay? Who was Stan Lee? Oh sorry, Stephen Lee?

MR NAIDOO: Stephen Lee was part of an ANC
underground movement. Stephen Lee, Alexandra
Moumbaris and Timothy Jenkins were sentenced to lengthy
prison sentences under the Terrorism Act.

MS SINGH: Right.

MR NAIDOO: The three of them ... Timothy Jenkins made
20 a key out of wood; opened the cell doors and ran out of
prison.

MS SINGH: Right.

MR NAIDOO: Stephen Lee then, as I indicated, came to
Cherish Nanabhai.

MS SINGH: Yes?

MR NAIDOO: Cherish Nanabhai put him up, and yes.

MS SINGH: So he was a political prisoner?

MR NAIDOO: Yes.

MS SINGH: Alright. You also mentioned ... or let me put it to you this way. On Friday there were a number of statements which you made in 1982. Would you agree with me that those statements that were made in 1982 would have been made when those events were still fresh in your memory?

10 MR NAIDOO: That is correct. Yes.

MS SINGH: So you would obviously have had a better recollection then, as you do now?

MR NAIDOO: Yes, most certainly. But ultimately remember that I was interrogated by so many policemen.

MS SINGH: Yes?

MR NAIDOO: Even then, I mean, I did not remember who did what to me.

MS SINGH: Yes. But the names that you gave and the incidents and the timing, would have been as you would
20 have indicated in 1982?

MR NAIDOO: That is correct.

MS SINGH: Alright. You indicated that clothing was brought. Clothing for you was brought to the 10th Floor. Alright. Can you tell us who brought the clothing? Who was it given to? Whether the clothing was just simply

handed over to you? How did it work?

MR NAIDOO: When I was taken ... When I was at John Vorster Square I did not get any change of clothing.

MS SINGH: Okay.

MR NAIDOO: But my wife brought clothing for me. She was asked to bring it to John Vorster Square. I am not too sure exactly where in John Vorster Square she took it to.

MS SINGH: Okay.

MR NAIDOO: That clothing was brought to me in
10 Vereeniging, when I was there. There was some clothing
and some toiletries.

MS SINGH: Alright. When you went back to John Vorster Square, that clothing and toiletries, what happened to it?

MR NAIDOO: If my memory serves me correctly ... You see I only went back to John Vorster Square the day before I went on awaiting trial.

MS SINGH: Okay.

MR NAIDOO: I took it with me.

MS SINGH: Okay. Were you allowed to keep it in your
20 cell? Can you recall?

MR NAIDOO: For the night, yes.

MS SINGH: For the night.

MR NAIDOO: Because the next day I appeared in court.

MS SINGH: Right.

MR NAIDOO: When I appeared in court my family, my wife,

they all were in court. Yes.

MS SINGH: Okay. You testified that at a certain stage you ... If I am talking too fast [intervene]

MR NAIDOO: No, no.

MS SINGH: You need to tell Mr Naidoo. There was a certain time when you saw Dr Jacobson. When you raised the issue of your ear with Dr Jacobson, where were the Security Branch Officers at that time? Were they in the office with you?

10 MR NAIDOO: Okay. I just want to ... I was taken to Dr Jacobson when I was arrested.

MS SINGH: Right.

MR NAIDOO: Before any interrogation took place.

MS SINGH: Right.

MR NAIDOO: And he examined me.

MS SINGH: Right.

MR NAIDOO: The second time I was taken to a different District Surgeon in Vereeniging.

MS SINGH: I see. I see.

20 MR NAIDOO: This ...It was to him that I told him that my ear was buzzing.

MS SINGH: Right.

MR NAIDOO: He gave me some tablets.

MS SINGH: Which consequently did not work.

MR NAIDOO: It did not.

MS SINGH: But I am asking at any given time, where were the police officers when you made this statement to the doctor?

MR NAIDOO: Well if my memory serves me correct, in Vereeniging, the police ... security policemen who took me there, were present in a little cubicle.

MS SINGH: I see.

MR NAIDOO: Where he examined me.

MS SINGH: Okay. In your statement that was put to you,
10 the one that you had made in 1982, it was recorded on a police officer's statement that you were made to sleep on a camp bed. Do you recalling you said that never happened? You were made to sleep on paper, newspaper, as well as two chairs. Do you recall that?

MR NAIDOO: Yes. Well you know as I indicate the put some newspaper on the floor and of course I had to lie down there. Then they put chairs back to back.

MS SINGH: Yes?

MR NAIDOO: You know the back portion?

20 MS SINGH: To create a sort of a place to sleep.

MR NAIDOO: Then there were probably three ... I do not remember exactly how many.

MS SINGH: Right.

MR NAIDOO: I was allowed to lie down there.

MS SINGH: Now during the time that you were made to lie

down at John Vorster Square on the 10th floor, were you guarded? Were there people that were watching over you?

MR NAIDOO: Yes there were. There were police officers all the time.

MS SINGH: All the time.

MR NAIDOO: And this was not ... They did not allow me to rest for a long period, if my memory serves me correctly. It was for a short period.

MS SINGH: Now when one looks at the whole concept of
10 being in detention, the whole purpose of you being detained were you are not being interrogated, it to be placed in a cell. In the cell, a holding cell, is there any reason that you can think of why the police would leave you to sleep on the 10th floor?

MR NAIDOO: No.

MS SINGH: Okay. No that is fine. You testified that the inquest, subsequently an inquest that was held in particular Babla Saloojee and the others, was a white wash. Why do you say that?

20 MR NAIDOO: As I have indicated I had been involved in this kind of [indistinct]. I know a few people who died in detention.

MS SINGH: Yes.

MR NAIDOO: Talking to their families and all those kind of things, we knew that the way the system worked that ... I

mean ... the Presiding Officers of the court were biased. It was a total white wash. If my memory serves me, I mean I think there was something like 20 – 22 odd people who died in detention.

There was not one single instance where it was ruled that the Security Police were responsible for their deaths.

MS SINGH: We know that there was more than 76 detainees that died.

MR NAIDOO: That is correct, yes.

10 MS SINGH: Alright. Mr Naidoo at a stage you said that when you were in Vereeniging, you were told there at the police cells that we will kill you and your body will be warm, and it will not be able to be picked up at a post-mortem. Do you know what the policemen meant by that?

MR NAIDOO: I am not ... They were trying to intimidate me.

MS SINGH: Right.

MR NAIDOO: They were telling me ... You know they made me do a lot of exercises.

20 MS SINGH: Right.

MR NAIDOO: Obviously as a result of that, I perspired quite a bit. They said well we are doing this, because in the event we kill you, nobody will have to pick up anything.

MS SINGH: Right.

MR NAIDOO: Whether that is fact or not ... I mean medical

men will be able to tell you that.

MS SINGH: Right. You said pressure was made to put on you to sign a statement. Was this statement against your other fellow detainees? What kind of pressure are we talking about?

MR NAIDOO: As I have indicated, I mean you know, after a while I began to speak about things which I was not supposed to speak about.

MS SINGH: Right.

10 MR NAIDOO: Then they wanted to make a confession and a statement. They put pressure on me to make it to a Magistrate; they put pressure on me to make it to a policeman who is not a Security Policeman, which I refused. They put so much pressure, and I refused. I eventually agreed to make a statement to the Security Police, which I did.

MS SINGH: Okay. You also testified that at Vereeniging you had asked for Bhagavad Gita. You confirmed that that is the Hindi equivalent of the Bible?

20 MR NAIDOO: Yes.

MS SINGH: Okay. Just two more questions Mr Naidoo. After you were released ... after you were released from prison, did the Security Branch continue to harass you and your family?

MR NAIDOO: After I was released?

MS SINGH: After you were released, yes.

MR NAIDOO: Well we were always raided; we were given [indistinct]. Sometimes we were given a notice to come to [indistinct]. At that stage I was living in Lenasia.

MS SINGH: Right.

MR NAIDOO: To come and see the Security Police in Protea. That happened.

MS SINGH: Okay.

MR NAIDOO: Then you know I was detained coming back
10 from Cradock.

MS SINGH: Okay. Alright.

MR NAIDOO: There I was only held for 2 weeks and released. Then a few weeks later they raided my home again with a lot of policemen.

MS SINGH: So the harassment continued?

MR NAIDOO: Yes. My son in his matric year, was also detained and taken and held in detention.

MS SINGH: Your son?

MR NAIDOO: Yes. He wrote one matric paper in
20 detention. Today he is Deputy Governor of the Reserve Bank.

MS SINGH: Well done. Mr Naidoo just one last question. Significantly when you closed your evidence in chief on Friday, you said 'Look the whole idea between truth and reconciliation, the TRC, was truth and then there was

reconciliation.

Significantly you said if there was no truth and reconciliation, and if there was no amnesty granted for anyone, there should be prosecutions.

MR NAIDOO: Yes I did say that.

MS SINGH: Right. To your knowledge the TRC was the only amnesty commission that sat. Am I correct?

MR NAIDOO: That is correct.

MS SINGH: Nothing further for this witness M'Lord.

10 COURT: Advocate Coetzee?

CROSS-EXAMINATION BY MR COETZEE: Thank you very much M'Lord. Mr Naidoo I understand that it is difficult for you to testify about this terrible ordeal that you have gone through. I appear on behalf of Warrant Officer Deetlefs and Lieutenant Rolf Venter, who were both members of the Security Branch. I do not think you have anything ... there was any dealings with Deetlefs.

20 But my instructions from Lieutenant Venter ... Rolf Venter is that he is not a tall man and he does not have red hair, first of all just to clear that. You were referring to the Captain Venter that was a tall man, and you were otherwise referring to a ginger person, obviously referring to red hair. However my instructions from Rolf Venter is that he was in fact involved in your interrogation, amongst other people; he also interrogated other people.

My instruction further is that he was involved in assaults during these interrogation of yourself and other people; he has further instructed me that he did partake in insulting yourself and some of the other detainees.

COURT: Sorry, just one moment.

MR COETZEE: He further instructions me [intervene]

COURT: Can you repeat that?

MR COETZEE: He was involved in insults.

COURT: Insults?

10 MR COETZEE: And insulting detainees.

COURT: Is that Venter?

MR COETZEE: Yes.

COURT: Yes?

MR COETZEE: It is further my instruction that he also spoke to you and other detainees in a derogative manner, belittling you and so forth. Mr Venter says that he cannot remember full details of all his actions, but he knows that he did it. He went to the Truth and Reconciliation process; he did apply for amnesty for what he has done to you and
20 certain other detainees.

In fact he was granted amnesty by the TRC in relation to the acts that he has done towards yourself and some of the other detainees. Do you have any comment on that sir?

MR NAIDOO: Well I was not aware, I mean, that he did apply.

MR COETZEE: Yes?

MR NAIDOO: For amnesty. Obviously if he did apply and he was granted ... I mean as I indicated earlier on, that I accepted the TRC process.

MR COETZEE: Thank you M'Lord. I have got no further questions for this witness.

COURT: Re-examination? Oh.

UNKNOWN: I have none M'Lord.

COURT: No. Re-examination?

10 MR VARNEY: Nothing from my side, M'Lord.

QUESTIONS BY THE COURT: Okay. There is a question I wanted to ask. Mr Naidoo you were detained and later on charged?

MR NAIDOO: That is correct M'Lord.

COURT: When was that when they charged you?

MR NAIDOO: I appeared in court in 1983. I think it was March 1983.

COURT: March 1983.

MR NAIDOO: I was sentenced on 1st April 1983.

20 COURT: For how many years?

MR NAIDOO: I was sentenced for 3 years, of which 2 years was suspended. I served 1 year.

COURT: So by 1984 you were back?

MR NAIDOO: No let me get ... sorry. I was sentenced in 1982.

COURT: Oh.

MR NAIDOO: I was released on 1st April 1983.

COURT: Having served a sentence?

MR NAIDOO: I served my sentence partly at the Fort Prison, and partly at Johannesburg Prison.

COURT: So you were held at John Vorster Square?

MR NAIDOO: Yes. When I was initially arrested in 1981, I was taken to John Vorster Square. It was on a Friday.

COURT: Yes?

10 MR NAIDOO: After they processed me and took me to the 10th floor, and I have indicated there where Mr Aubrie banged my head, and they took me to the cell in John Vorster Square, where I was there for the weekend. On Monday morning I was taken for interrogation.

COURT: Where? To the 10th floor?

MR NAIDOO: To the 10th floor yes.

COURT: So when were you transferred to Vereeniging?

MR NAIDOO: On Monday I was interrogated at John Vorster Square; they took me back late evening. Tuesday I
20 was interrogated at John Vorster Square; they took me back to my cell in the evening. On Wednesday they took me to John Vorster Square and I was being interrogated there. Then late in the afternoon they drove me to Vereeniging.

COURT: Okay.

MR NAIDOO: They took me to a cell and then, which

seemed like just a few hours later, it was dark. They woke me up and took me to interrogation in Vereeniging Police Station.

COURT: So when you were there in November, prior to you being taken to Vereeniging, you did not come across Neil?

MR NAIDOO: Sorry I did not get that.

COURT: You did not see Neil during that occasion?

MR NAIDOO: No, I personally did not see Neil Aggett at
10 any point. The only two people I saw during my detention was Firoz Cachalia and Jabu Ngwenya. They were the only two people.

COURT: At John Vorster Square? At John Vorster Square?

MR NAIDOO: Jabu Ngwenya I saw at John Vorster Square; Firoz Cachalia I saw at the charge office in Vereeniging.

COURT: Oh I see. So you were returned after the death? You only came back to John Vorster Square after Neil had died?

20 MR NAIDOO: No M'Lord. Neil I think died on 5th February.

COURT: Yes.

MR NAIDOO: By that stage I was already at Vereeniging.

COURT: Yes. That is what I am trying to get at is that, on the day he passed away, you were not stationed at ... You were not at John Vorster Square?

MR NAIDOO: No M'Lord, I was not.

COURT: Okay. You only heard that he is there, but you never saw him?

MR NAIDOO: No, I never him and I never saw him.

COURT: Oh, you never knew him?

MR NAIDOO: No.

COURT: Okay. The security officer Steven Whitehead, did you know him?

MR NAIDOO: At the time I did not know him. You know
10 there were so many security police who were coming in and
out, and bring all kinds of things. One of those people that
came in, I subsequently recognised him from a newspaper
photograph, as being Steven Whitehead.

COURT: Did he take part in any of your interrogations?

MR NAIDOO: By interrogation you mean he asked me
questions?

COURT: Yes.

MR NAIDOO: No he did not really; but he did hit me.

COURT: Yes. Okay. Thank you. Any questions arising
20 out of that?

MS SINGH: None M'Lord.

MR COETZEE: No questions M'Lord.

MR VARNEY: None M'Lord.

COURT: None. Mr Naidoo thank you very much. You may
now go.

MR NAIDOO: Thank you.

NO FURTHER QUESTIONS

COURT: Yes?

MR VARNEY: As the Court pleases M'Lady.

COURT: Yes?

MR VARNEY: M'Lord our next witness is one Ismail Momoniat. M'Lord he has been waiting outside. One of my attorneys has just gone to bring him outside. Once he is here we can proceed.

10 COURT: Yes. I am just going to get my bundle of exhibits. His affidavit is also filed?

MR VARNEY: M'Lord we are about to hand up his affidavit.

COURT: Okay.

MR VARNEY: Perhaps we can do that in the interim?

COURT: Alright, yes.

MR VARNEY: With leave of the court M'Lord we would like to hand up two affidavits. The first affidavit M'Lord is his recent affidavit, and he signed this affidavit on 2nd February. We wish to mark that affidavit G17.

20 COURT: Yes?

MR VARNEY: The second affidavit is a statement that we have recovered from the record of the first Inquest. M'Lord this affidavit should have had an exhibit number before the first Inquest, but we are unable to locate any exhibit number for it. Notwithstanding the fact that it is part of the first

Inquest record.

So with leave of the court we would like to give it an exhibit number, G18.

COURT: G18.

MR VARNEY: M'Lord we have distributed copies of these statements to our colleagues.

COURT: It is a 1982 exhibit G18?

MR VARNEY: Indeed M'Lord.

COURT: Yes?

10 MR VARNEY: M'Lord that affidavit was signed on 10th June 1982.

COURT: Yes?

MR VARNEY: It is styled as a statement. Actually on the last page, it does not appear as if it was attested by a Commissioner of Oaths, although there are several signatures. So perhaps it was.

COURT: Yes.

MR VARNEY: M'Lord Mr Ismail Momoniat has arrived. With leave of the court I would like to call him to the stand.

20 COURT: Yes. Thank you. Morning Mr Momoniat.

MR MOMONIAT: Morning.

COURT: Swear him in.

CLERK: Please state your full names and surname for the record.

MR MOMONIAT: It is Ismail Momoniat.

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

MR MOMONIAT: No.

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

MR MOMONIAT: I swear.

CLERK: Please raise your right hand and say so help me God.

MR MOMONIAT: So help me God.

CLERK: Sworn in.

10 ISMAIL MOMONIAT (duly solemnly swears)

COURT: Thank you.

EXAMINATION BY MR VARNEY: As the Court pleases M'Lord. Mr Momoniat firstly thank you for taking the time out of your busy schedule. I know that life at the Treasury is quite hectic and busy these days. Can you state for the court your current occupation?

MR MOMONIAT: I am the Deputy Director General at the National Treasury responsible for Tax and Financial Sector Policy.

20 MR VARNEY: Mr Momoniat, do you have copies of the affidavit that you signed on 2nd February 1982? At least 2020. 2nd February 2020?

MR MOMONIAT: Yes I do.

MR VARNEY: Do you confirm that it is your affidavit?

MR MOMONIAT: Yes it is my affidavit.

MR VARNEY: You confirm the contents therein?

MR MOMONIAT: I confirm the contents to the best of my knowledge, given it is 38 years ago.

MR VARNEY: Yes indeed. And indeed the fact that the events in question took place 38 years ago, is an issue for all the witnesses. We certainly understand that it is not always easy to recall detail. Before we proceed, do you also have with you a copy of your affidavit or rather statement that you made out on 10th June 1982?

10 MR MOMONIAT: Is that my affidavit at the first Inquest?

MR VARNEY: At the first Inquest.

MR MOMONIAT: Yes I do.

MR VARNEY: Alright. You confirm that that is your statement and you also confirm the contents thereof?

MR MOMONIAT: Yes.

MR VARNEY: Thank you. Mr Momoniat can you give the court a brief overview of what you were doing? Your occupation in 1982?

20 MR MOMONIAT: I was a junior lecturer in the Department of Mathematics at Wits University.

MR VARNEY: Your statement indicates that you were involved in political activism. Can you perhaps give the court some highlights of that activism, leading up to your arrest and detention?

MR MOMONIAT: Yes. I was politically active from quite

young, I guess my school days. At University I was involved with the Black Students Society, when I started University at Wits. Towards 1981 we had a major campaign against the South African Indian Council.

The South African Indian Council was an Apartheid body that the Apartheid Government imposed on the Indian community. Up until then it had been a nominated council and the Government then decided to have elections to get the Indian community to vote. That took place on 4th
10 November 1981. So it was just around the time that, and just after Barbara Hogan was detained, and before many of my colleagues like Prima Naidoo and Firoz Cachalia were detained.

Sorry, shortly after that election day. It was a very successful boycott that we organised with, sort of, at least 90% of all registered voters in the Indian Community saying no, we are not going to vote. There was a total boycott. In fact in some places like Fordsburg, 98% of registered voters did not vote. So the Government was quite angry that we
20 had quite a massive victory against the Apartheid Government at the time. And bear in mind we lived in a very repressive state.

So it was the only time where we could go out to try and show that the elections were fair, we had the political space to go town by town and campaign. We had people

like ... leaders like Mama Sisulu coming to address our campaign; she just happened to be unbanned for a few weeks or so, so we were lucky. We got her and we had a massive rally in Lenasia which she addressed.

We popularised at that time the Freedom Charter, because although the ANC was banned, the Freedom Charter itself was not banned. But people were scared to have copies, because anything ... If you had copies linked to the ANC of which the Apartheid Government saw as ANC,
10 you could get detained. Whether you got charged is another issue. So we were able to publish copies, distribute it door to door.

So it was quite a massive campaign, involving not just the Indian community, but many of our comrades in the African and Coloured communities as well, were involved with us because we ran on a non racial democratic South Africa ticket.

MR VARNEY: And presumably the overwhelmingly successful boycott of the elections, in essence the
20 Apartheid Government at that time?

MR MOMONIAT: Absolutely. When we campaigned and we went door to door, you know we expected to be detained; we were harassed all the time. The Security Police were around; they were outside our meetings; they probably had their spies in the meetings. But we were clear these were

open legal activities. Even although they do not like it, we knew that they could ... they would find it hard to convict us.

Even though we knew that they could detain us, beat us up, interrogate us, torture us and so on, because those were the methods that they used to intimidate people not to campaign against Apartheid.

MR VARNEY: It appears from your affidavit that you played a role and occupied position at the Black Students
10 Society at Wits, as well as the Transvaal Anti SAIC Committee and then the Transvaal Indian Congress. What positions did you hold in those organisations?

MR MOMONIAT: So I was an Executive of the BSS in the early days, I forget which year. But I was the Secretary of the Transvaal Anti SAIC Committee, which then moved into the Transvaal Indian Congress in 1983. The Transvaal Indian Congress I was secretary there too, but that was only after the detentions in 1983, as we prepared to then oppose the Tricameral of parliament where there was another vote
20 and which led to the formation of the UDF.

MR VARNEY: Perhaps now we can turn to your arrest and detention. Can you describe your arrest on 20th January 1982?

MR MOMONIAT: Yes.

COURT: Was it 20th or 27th?

MR VARNEY: 20th.

COURT: 20th.

MR MOMONIAT: What happened was I was staying at my parent's home in Lenasia. They got a call to ask if I was there. As soon as I think my mother answered and confirmed I was there, the doorbell rang and he told her to open up because they were coming to arrest me. So they came into the house; they searched the house; they confiscated things.

10 I have got the schedule of documents and so on that they confiscated as well. I was told that I was arrested under, I think Section 22 of the Internal Security Act.

MR VARNEY: From the house you were taken to John Vorster Square? Can you indicate who you saw there and what happened?

MR MOMONIAT: Okay. So there was a whole team of Security Branch in the cars. They put me in one of the cars; took me to John Vorster Square to the 10th floor. At some point as soon as I was there, I was taken into the
20 office of Major Cronwright who was in charge of the case, and I remember present there was Captain Swanepoel.

Because at some point he was put in charge of my interrogation, assisted by Lieutenant Venter. Then I mean basically ... I mean there was a lot of news around the arrests of Barbara Hogan, and the subsequent arrest of

many detainees, I think on 21st or 22nd November, including I think Neil Aggett was detained on that day. And the parents of many of the detainees had organised quite a high profile campaign, leading to an organisation called the DPSA, or the Detainees Parents Support Committee.

And just being political activists, we kind of always tried to guess that if one of our comrades were detained, what have they been detained for. I think I remember that we understood at some point that Barbara had been
10 detained, and that some of our names were on the list. Now as it is normally we would be ready to be detained at any time. But certainly once these detentions happened, we were ready to be detained.

In fact we were surprised some of us, when we were not detained in November. So that was good news for some of us. Then on 20th January they came for me. I think they had gone for Cherish Nanabhai, 1 – 2 weeks before I was detained. So we appeared to be the last lot of detainees linked to the Barbara Hogan case.

20 MR VARNEY: And in fact you suggest in your affidavit that Major Cronwright confirmed these linkages when he spoke to you in his office?

MR MOMONIAT: In fact he said you know what this case is all about. You have read about it. I know you will have read about it in the press. Basically the key was Barbara

Hogan and they had got us. They were going to ... they wanted to know everything about my relationship with Barbara Hogan.

Of course the way the Security Branch talked, it is like they know everything, i.e., if you do not talk the truth, we will know you are not talking the truth; everyone else has spoken. So we want to know everything. He also knew about obviously the Transvaal Anti SAIC Committee campaign, and he said to me it was an ANC front and I
10 needed to tell them everything.

MR VARNEY: You were then taken to the District Surgeon, even before you were locked up in a cell?

MR MOMONIAT: Yes. It seems the procedure then ... So he spoke to me and then I think I waited around. Either before or after I was taken to the District Surgeon; I guess just to prove that I had no injuries or whatever. The District Surgeon was a Dr Jacobson, who I kind of ... had been to his surgery before; it was out on Harrison Street.

Because I had a previous detention in 1980 and I was
20 held in the same cells at John Vorster Square. So it was the same procedure. I had been taken to him a few times to be examined by him.

MR VARNEY: After that examination you were taken to your cell on the 2nd floor on John Vorster Square, which happened to be cell 204. You also indicate that your cell

was located quite close to those of a few others. You set that out in paragraph 16.

MR MOMONIAT: Yes.

MR VARNEY: Who were these others?

MR MOMONIAT: So if I face myself on my left it was Eric Matongo who was at that time with South African Allied Workers Union (SAAWU); on my right was Samuel John Thabo Lebomore, who was ... I was young then as well 25, but I thought he was young, he was I think 18 or 19. One or
10 two cells next to him was Neil Aggett's cell.

As I noted later Frank Chikane who, at that stage I did not know personally, had a cell near or opposite Neil's cell. Firoz Cachalia was on my left after I think Eric. But there were two types of cells, okay. The cell that I went to in 204 was a very large room cell; it had windows. If I remember it did not have Perspex at the time.

Every cell has obviously a big cell door which kind of seals you, but also had an L-shape grill steel door. I had been in my previous detention in a cell next to, 1 – 2 cells
20 away; so I kind of knew the territory in a sense. Now in 1980 I think the outside windows used to open out, and I remember we were able to talk to family who would come at night.

This time you could not talk to people outside, because if I remember correctly, the windows were now

sealed. You could not open the windows, so you could not talk through the windows to people outside.

MR VARNEY: At paragraph 24 of your statement you suggest that your cell, at least at that time, was quite bare. Can you elaborate? Sorry paragraph 18 rather. Can you elaborate what you had with you at that time, and why it was so bare?

MR MOMONIAT: Look generally when you got detained under Security Legislation, you really literally had nothing.
10 They gave you possibly a Bible which will be in the cell; or they would bring a Bible to leave there. There was a hard cement bunk on which you could sit; then you were given a mat, a blanket and I think you had a pillow or something which you could then sleep on. So that was it.

There is absolutely nothing... aside from the Bible, nothing else to read, totally bare. Of course at John Vorster Square they would have a toilet in the cell, but no ... I mean that had a chain and so on so you could flush it, but no taps and so on. So we would get these polystyrene
20 sort of big cup and you would have 1 – 2 of those; you would fill water.

So you would have that, and perhaps you would have a cup. A polystyrene cup. Those were the only things that you had in your cell. If I remember your towels, belts, watches, shoe laces, all of that was taken away and put into

a separate room. Even your clothes would be kept there. If I remember you would have to go and fetch ... When you wanted a change of clothing, you would have to go and fetch your clothing.

If memory serves me well, I do not think we were allowed to even keep clothes in our cell. There was nothing else.

MR VARNEY: Where would you go to collect extra clothing and other items?

10 MR MOMONIAT: So on the 2nd floor there was an office close to where I think ... Like the police in charge there was Warrant Officer McPherson. Either it was his office or next to his office, but a small room where everyone's clothes and towels and whatever else they allowed you was kept there.

MR VARNEY: Some have referred to that room as the property room.

MR MOMONIAT: Yes.

MR VARNEY: For what it is worth.

MR MOMONIAT: Property and medicine I think.

20 MR VARNEY: Yes. So why did they hold your shoelaces, belts, towels and what have you?

MR MOMONIAT: Presumably ... I mean I do not know why. But presumably they said so that you do not hang yourself.

MR VARNEY: Right. Presumably you heard the evidence that the late Dr Neil Aggett allegedly hanged himself with a

long scarf known as a kikoi. You never had such an item in your cell?

MR MOMONIAT: No.

MR VARNEY: Did your parents come through with parcels from time to time?

MR MOMONIAT: Yes. I received parcels and I do not eat meat, and the police did not know how to handle that; so perhaps they allowed me more food parcels than others. So I started getting parcels quite early on of food. But again
10 those would be just in small packs; you do not ... nothing much else.

MR VARNEY: At a certain stage did they ease up and perhaps allow you an extra book or two, or other items?

MR MOMONIAT: Look you were generally not allowed any books in detention. But after Neil died ... after Dr Aggett died, they loosened up and I was allowed novels and so on. They also allowed me, which I also found odd, they gave me my maths textbooks. I think I say it on 29th January which was sort of about 9 days after my detention.

20 I mean generally whilst you are going through your interrogation you have nothing; and they make sure you have nothing. They made sure you had nothing. But at some point when I had completed my first statement they gave me, I think, 2 – 3 textbooks; but no paper and pen. Just textbooks. But it is only after Dr Aggett passed away

that ... and I think we knew that they were under pressure.

So suddenly I got a visit from my parents; suddenly you got books. Those were not the norm. Certainly in my previous detention of 2 weeks, I had absolutely nothing like that. In fact later they even gave us radios, and people would listen to Radio Freedom in the cell. So it was quite something.

MR VARNEY: Yes. Thank you. Let us now turn to your interrogation that you say began on the morning of 21st
10 January 1982.

MR MOMONIAT: Yes.

MR VARNEY: You indicate from paragraph 25 of your affidavit that you were interrogated at least ten times. You describe this as your primary interrogation. Can you give an indication as to why you refer to it as your primary interrogation?

MR MOMONIAT: So okay ... So it is your first set of interrogations and they were pretty intense. Because it was literally every day. I was lucky that I was called on the first
20 Saturday as well; but Sundays were free. But so they could ... but ... As I indicate I noticed that Neil was out the entire weekend, the last weekend that he lived.

So my primary interrogation ... So I get detained on 20th; then every day thereafter I get called and taken to the 10th floor, on at least ten occasions. So it was Thursday,

Friday. I was detained on Wednesday, 20th. Thursday, Friday and Saturday I was taken up; Sunday I was free. Then Monday, Tuesday, Wednesday, Thursday, Friday ... week 2 I call it.

Then the following week Monday, Tuesday, Wednesday, Thursday. Thursday I think at night or in the morning of the 1st was when Neil passed ... well was killed in my view. Yes. So that is my primary interrogation. Generally interrogation involved giving you paper and you
10 had to write a statement. Okay?

Now if you are very strong you refused to even do that, and they could really beat you and torture you up. Because I mean this is a game of power. So I think many of us when we went into detention, we were clear the key thing is not to think that you are so strong and then you break, and then you talk like a canary to the cops and tell them everything.

Remember we are not talking about illegal activities; we are talking about ... We did not want the Security Branch
20 to know how we were organising; who was organising. We tried to minimise the number of names that they would ever be aware of. So some of us played a high profile role; others played a low profile role. So generally you have a statement, and because we were involved in open campaigns ... In fact in my case I filled it up by saying all

the Anti SAIC campaign meetings we had in every dorpie, frankly of the old Transvaal, we went.

To just say what we said. Do not vote for Apartheid; do not vote for the SAIC. Of course they got fed up because they wanted to know what your links to the ANC. is what did you do with Barbara Hogan? They want you to implicate both yourself and your comrades or others. So you made sure that those things you do not do. You just tell them what we know they know.

10 So once you do your statement kind of, then ... In fact the statement you are sitting, you are completing your statement; they come in; they read it; they beat you up; they say you are lying. Even if it is just a tactic. Or you are not telling them everything. To outline things that they would do. In fact even before this statement started, on my first day of interrogation on 22nd, I was taken to a room; there were 10 or more big white men.

Very intimidating and basically smacking I and treating me like a ball. Like one hits you and then you go to
20 the other; that guy hits you [intervene]

MR VARNEY: So this started in fact even before they put a question to you?

MR MOMONIAT: Yes.

MR VARNEY: I think we do need to hear from you what happened at that particular time. What they were saying to

you, as you suggested shouting to you. If you recall who was involved in that altercation?

MR MOMONIAT: So look I know Cronwright himself was not there on that one. But it was Captain Struwig, Visser; then my two primary interrogators were Captain Swanepoel, Lieutenant Venter and all the other guys. I mean you do not obviously notice who they are and it is my first day, so I do not sort of know them yet.

But all you know is that there is this big, very
10 intimidating, cruel people whose only job is to beat you up. Of course going in you expect the worse that you are going to be tortured; you are going to be kept for days as other detainees would be. But that was, I saw, just as softening me up. The thing they did not do with me was ... with many other detainees I know it took them 1, 2 or 3 weeks.

They get detained, they were in isolation before they get interrogated. With me they were clearly in a hurry. I got a sense they wanted to confirm certain things, and that is why they got me there from whatever information that they
20 would have had.

So they get me in this room; that is how they try and soften me up.

MR VARNEY: Did they use any derogatory language at you?

MR MOMONIAT: That was used all the time. Okay. So

calling me a coolie; reminding one of Ahmed Timol and that you will meet the same fate. They might have talked of others, whether it is Steve Biko or others. I do not remember exactly, but it was clear to a detainee that you were totally in their hands; totally under their control. They could do to you what they like.

You did not have access to your lawyer; you did not have access to your family. There was nothing you could do. Nothing. They could torture you; they could keep you
10 up for days; they could do what they liked. They could kill you in detention. So that a fact that you knew; there is nobody there to help you. We were not living in a democracy.

It is a repressive ... extremely repressive and brutal state. Once they did that they then put me on a chair to say, right okay, give me pen and paper. Frankly in my own mind I thought at least they did not half kill me. Okay, just klaps and few bruises here or there. I considered myself
20 lucky for now, for then, because you live for the moment when you are in detention. It is how do you survive those few minutes, that day?

How are you going to survive without breaking, without telling the Security Branch anything material?

MR VARNEY: So at that time you did not know the names of the officers involved in this, what effectively is an

assault, treating you like a bouncing ball? But later you came to learn of their names. How did you come to learn of their names?

MR MOMONIAT: So you come to learn of their names. Sometimes they would tell you their names; sometimes just as they refer to each other; certainly with the Aggett Inquest, their full names came out, so you would know exactly who it was. Because I remembered all of them, or most of them; especially those who beat me up or
10 interrogated me.

Those I knew; I knew who they were. So yes. And obviously Swanepoel and Venter I knew probably from the first day of my interrogation, because then you will be put in an office with a desk, standard government paper, lined, a light. They sit there or they stand there, and ask you to write. It is a game of cat and mouse. They tell you to write and you say what about.

They might smack you and say you know what. Or they might say we want to know about Barbara Hogan, or
20 this or that. Or you are an ANC front; who are your contacts? So in a sense they want you to say, and obviously if it is something that they do not know about, they would then ... It is manna from heaven for them then, and they pursue that line.

But in my case, because our activities were open and

legal, telling them about the Anti SAIC campaign was found. It was reported in the media; we would have media coming to our meetings. We wanted publicity during the campaign. So it was not a secret to tell them Dr Jassat was the Chair of our committee; he would address the meeting. Dr Ram Saloojee spoke.

All the messages were do not vote. Do not vote for Apartheid, so we would tell them that. Of course then they would get cross, because they would say you are only
10 telling us the obvious stuff. They would want to know more. So that is just the nature of the interrogations.

MR VARNEY: Yes. But you can confirm that the incident on your first day of interrogation where you being treated as a bouncing ball, and even though it was a light episode of assault, you can confirm that Captain Swanepoel and Lieutenant Venter ... Lieutenant Ruloff Venter was present?

MR MOMONIAT: Yes, they would have been.

MR VARNEY: Now in paragraph 32 you give more detail about the interrogations and tactics that they would employ.
20 You confirm that Captain Swanepoel and Lieutenant Venter were your primary investigators. Just for the benefit of the court who were they reporting to?

MR MOMONIAT: They were all reporting to, as they would say, the Major. I cannot pronounce it. But Major Cronwright. You could see often when they had something,

they would go straight to him.

MR VARNEY: What role was Captain Struwig playing?

MR MOMONIAT: So Struwig ... Look Struwig ... I mean he was like seemingly the same as Captain Swanepoel. He seemed to be more senior than him; I do not know why. But he would come in and he was a brutal man. Big, really cruel. But he would come, read the statement, and hit me. He somehow knew that ... and I was young, I had a minor sort of heart issue ... my heart was just beating fast or
10 something.

So obviously when I had gone to the Security Police you also play up that you have got a heart problem. So he says oh you got a heart problem, and sort of slapped me on my heart. Smacked me and whatever. He did that several times. He would come and say that. Including by the way, I think in the first day when I was treated as a bouncing ball.

So he would not directly interrogate me; he would just come or he might ask a question or he may look at the statement. That is what he would do. There was another
20 Captain Visser who did the same, and also smacked me and so on, just on the statement. All the time it is threats. In fact Struwig even came and said to me I am a coolie and he is a boer, proudly.

Which is fine ... I mean ... But it was asserting that they were in power and they were going to squash anyone

who tries to oppose that. That was always the approach that the Security Police took. They were right no matter what; they were right because they were in power. We had no rights. I think clearly I do say later that compared to my Black African Comrades ... I mean they would regard them as nothing; they are not human beings.

That is how the Security Police behaved, and that is why I think that they would get generally the worst treatment of all. I have no doubt about that, okay. Now I
10 am an Indian detainee; I am kind of ... they might talk a bit more. But that is it. But when they wanted something, it did not matter whether you are black or white; they would go for you.

So they would for Dr Aggett; I saw he was going under great stress, and I deal with that in my statement. It does not matter who you are. Once they have a case and they are going for you, they will go for you.

MR VARNEY: Yes. We are going to get to your interactions with Dr Aggett shortly.

20 MR MOMONIAT: Yes.

MR VARNEY: Before we do how would you describe the character and role of the man in charge of your interrogation, Captain Swanepoel?

MR MOMONIAT: [indistinct] he had a bit of a soft side. You have to watch when you under detention [indistinct],

good cop bad cop. One is brutal, the other one who comes is nice to you. You must not ... I think we had educated ourselves not to fall for such cheap tactics. But he generally looked okay.

Yes he may have smacked me and told me to stand, like on two occasions. Two or three I think, or more. I do not know but a few occasions. I had to stand; take off my jersey and top; and stand sort of naked waist up. They kept me, I do not know, standing for 1 hour. Not too long; it
10 would be about 1 hour. You do not have a watch, so it is hard to know.

But you would stand. At one occasion Lieutenant Venter ... and this would be related to the statement. I have not said everything; so I must stand until I come right. Then they tell you to sit; you start the statement again. So on one occasion they were fed up with me and Lieutenant Venter said he is going to give me electric shocks. He went out as if he was going to do so.

Fortunately he never came back with the equipment
20 and they did not give me electric shocks. But ... so that is how they would treat me. A few smacks. Venter was smarter than Swanepoel; but a much harder man. He really wanted hard information, so he would be much smarter in your statement to know that actually they want more than that and so on.

So it was that kind of treatment. Then they would constantly report to the Major or have others come; they beat you up and so on.

MR VARNEY: Yes. So if they were employing the good cop bad cop strategy, I think you are suggesting that Captain Swanepoel was the good cop? If that is the case would Lieutenant Venter have been the bad cop in your view?

MR MOMONIAT: Yes. But much worse would be Struwig,
10 Visser, Des Carr, Prince. They were like mad men. When they came it was like they just wanted to beat you up.

MR VARNEY: Well let us talk about these other more vicious assaults, and you do make reference from paragraphs 33 and 34 onwards about the role of Captain Visser as well as Warrant Officer Prince and Des Carr. Feel free to start with any one of them. What particularly stands out in relation to these abuse you say they metered out?

MR MOMONIAT: So Des Carr was, if I remember, quite a
20 stocky man; ginger hair. I mean he even looked cruel, if you can look cruel. Okay. He would basically come; maybe he would read a statement. But when he came he was very aggressive from the start and would just beat you up and then read the statement whilst you are sitting.

But in his case he would even come from behind to

scare me. Before I know it, pick me up and manhandle me. They would boast about what they would do to other detainees. So the other guy who was there was a man was Warrant Officer Prince, was also like ... said he was anti communist and he would again be similar to Des Carr. Look at the statement; smack you ... this sort of thing.

In fact he boasted that he had beaten up Firoz Cachalia. Now he would say those things firstly because they would be boasting; they were proud of what they did.
10 Secondly because they wanted to intimidate you. Because the implicit message was, and we are going to beat you up too, as we have beaten up your friend Firoz.

MR VARNEY: Yes?

MR MOMONIAT: So I mean those were routine. But look as I say I think this was still relatively ... it was hard, and yes you never know what is going to happen. The following day could be worse. But looking back it was relatively light compared to, I think, what my friend Prima Naidoo went through; what Neil Aggett went through; what Frank Chikane
20 and others went through.

That is why I say it was a game of cat and mouse; and depending on what they wanted ... In a sense I was lucky that I was coming at the end of the investigation, and they seemed in a hurry to want to complete the investigation.

So it does seem like they wanted to confirm things; they were not really asking me original questions about Barbara Hogan for example. They asked but they could have asked in a harder way.

MR VARNEY: So in paragraph 37 you set out I suppose a litany of abuse or ill treatment. You do so as well in paragraph 10 of your 1982 statement.

MR MOMONIAT: Yes.

MR VARNEY: Can you set out for the benefit of the court
10 the kinds of abuse that you sustained at the hands of these police officers?

MR MOMONIAT: Okay. Look generally a lot of smacks or klaps, with an open palm. A lot of shaking; a lot of punches. I mean when I was thrown punches, kicks, whatever. Getting me to stand waist up a few times, just to stand. Being threatened all the time. First being humiliated all the time; being called a coolie; being called ... I do not know ... whatever they had in their heads they would call you.

20 Being threatened that I am going to go to jail, if I do not cooperate. 5 years. I mean there was this thing that this was mini Rivonia trial, okay. I do not think you can really compare it to Rivonia, but that is what ... They had a lot of people in detention, and they were going to convict people. And threats of electric shocks; more torture.

But they did not actually torture me severely, or give me electric shocks in the end. But a lot of threats to that effect. Or that they would keep you up for the whole night and the whole day, and so on. Those threats were there all the time.

MR VARNEY: You were forced to undress?

MR MOMONIAT: When I had to stand up, yes. I had to ... If I remember at least take off I think my jersey and top. So I was naked waist up; I think they let me leave my trousers
10 on.

MR VARNEY: At that point in time both Captain Swanepoel and Lieutenant Venter were present?

MR MOMONIAT: Yes, definitely. They were present.

MR VARNEY: You say in your statement that you were threatened with a pan knife blade. What happened there?

MR MOMONIAT: Oh yes. That was Des Carr and this was much later. Because I wanted to put for the record that they had assaulted me. The first time I had the opportunity to do that, was actually on the very day that Dr Aggett died,
20 when I was taken to Dr Jacobson on 5th February. I can come to that. I did not know when I visited him that Dr Aggett was dead, okay.

So I got taken there, and I reported the assault. Look he was quite friendly, the Doctor. Maybe because he knew me from a previous detention. I told him that I was

assaulted, but I did not want him to write it down. He said no if I ever need it, I should record it. So I gave him more details. But I was careful just to record the assault, but not actually name names.

Because if you name a particular cop you know they are going to come for you; you would be beaten up. But if you kept it just general, that you got slaps and you got this and you got that, it is kind of easier. So Des Carr came and ... I mean that really upset them. I think it is important to
10 note that, because once Dr Aggett died we felt that we had a bit more space to push the cops.

That they were under pressure and they could not have a second body. So in a way we became a bit braver or a bit more ... we went for them a bit more. A bit more aggressive I would say, not braver. Aggressive. But mildly aggressive; you cannot be too aggressive, you are still in detention. So they called me ... He called me I think to ask me to be a state witness.

Obviously I said no; I was very clear I would never be
20 a state witness against any of my comrades. And he put his pan knife, opened it up and did ... put it on my neck and then pretended like this is how he would slit my throat. I think this he did much later, 1 month later or so in March, I remember.

MR VARNEY: Yes. You say 4th March 1982.

MR MOMONIAT: Yes. Can I say that is what surprised me, is the extent that they went to try and get me to retract my statement of assault? So as soon as I say to Dr Jacobson ... Now I am not saying ... You know we were very clear that whatever you told anyone in the system, the Security Police would know about it.

So I expected that what I said to Dr Jacobson would be known to the Security Branch that very day. Yes then a few days later I saw a Magistrate; I think his name was Mr
10 Motaung. I told him as well. Immediately thereafter there was a Lieutenant Olivier who called me, to ask me about the assault. He said to me things like Security Branch are also human; sometimes they lose it.

At some point I asked him for a pen and paper. I said I have got my maths textbooks but I do not have pen and paper. He said yes I want a pen and paper because I want to write to Helen Suzman. He told me I can write the letter, and I must give him the letter, and he will put it in an envelope and send it to Helen Suzman.

20 Then even much later ... because they would want you to retract. Like I told him, look I do not intend to charge anybody. Obviously while you are in Section 6 you are not going to tell them you are going to charge them. I said I just wanted it recorded. I mean he did not ... He said if I ever charge police, he would be a witness that I had

said I would not want to charge them.

I realise that is neither here nor there. But even later I had Captain Swanepoel and Venter coming and asking me to withdraw and write a statement, and so on and so on.

MR VARNEY: Alright. Mr Momoniat we are going to return to your complaint and what happened shortly. M'Lord it is 1:15. Would this be an opportune time for the tea adjournment?

COURT: Yes. Thank you. Mr Momoniat we will adjourn
10 for tea for 15 minutes.

COURT ADJOURNS

[11:12]

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INQUEST HEARING RESUMES ON 2020-02-03: [11:32]

COURT: You are still under oath. Yes, you may proceed.

ISMAIL MOMONIAT: [still under oath]

MR MOMONIAT: Yes, Your Honour, thank you.

EXAMINATION BY MR VARNEY (Continued): As the Court pleases, Mr Momoniat, just before the tea break you had explained that you had visited the district surgeon Dr Jacobson. That was your second visit and it was on 5 February 1982 and that you have in fact complained of
10 assault by certain Security Branch officers and you also indicated that sometime later and according to paragraph 49 of your affidavit that was 11 March 1982, you were summoned to the 10th floor by Lieutenant Venter and Captain Swanepoel and they made certain request. Can you just elaborate what those request, or demands were?

MR MOMONIAT: They accused me of lying to the district surgeon and suggested that I make a statement denying the assault. Of course when the Security Branch knew there are suggesting they are telling you, okay. Now, okay, I was
20 surprised, but not surprised that they knew what the doctor had clearly told them, or someone and you know they kind of also tried to play down and they said: 'No, it was just a pat on the or something', but they wanted me to withdraw.

I do not think that meeting went anywhere. I just said: 'You know, I was assaulted.' I have not given names and left

it at that and I think I was then called even the following day, because so there was quite a follow up you know that there were concern and of course with Dr Aggett having died, I knew that as I said earlier that they were under pressure not to have any more open assaults and so on.

So we had a bit more space to push and to say no to their attempts, but they were very persistent and the threat of assault was still there as long as it does not leave marks, you know. They could still do it. They could still keep you
10 up for a few days. So the prospect of torture is always there.

MR VARNEY: And according to your 1982 statement, you did in fact, you were in fact taken to Sergeant Blom. It appeared that that happened on 19 February and she indicated that she was independent and investigating charges of detainees on behalf of the minister. Do you recall that?

MR MOMONIAT: Yes.

MR VARNEY: Can you elaborate on your interaction with
20 Sergeant Blom?

MR MOMONIAT: Okay, firstly it is laughable when they come and they say they are there representing the minister and they are an independent channel, okay. I mean the Minister of Justice was probably a minister in an Apartheid government, the people behind the repressive state. So I

certainly did not by any confidence by telling her the minister would come on our side. If anything they were ultimately the people responsible for the repression.

So both her and I think I had also a visit from Mr Mouton inspector of detainees who said a similar thing that he represents the minister. You know, but in any case I thought it is important to tell them that I was assaulted, so I kept to my basic points that I had been assaulted, smacks, this, that, etcetera and just I did not want to name, names.

10 And I told Sergeant Blom that I will not lay charges under section 6, because I think she asked and I should add, I remember that as soon as I finished, I saw her go to the major's office. So that is how independent she was, okay.

MR VARNEY: Which major?

MR MOMONIAT: Major Cronwright.

MR VARNEY: Alright and just for the record Mr Momoniat, it appears that your complaint was in fact referred to the attorney general who declined to prosecute and M'Lord that appears from page 810 of the record where Adv de Vries who
20 was the evidence leader for the state indicated to the first inquest court that the attorney general have declined to prosecute Mr Momoniat and Mr Nanabhai, Cachalia and Chikane. Now, Mr Momoniat, I want to refer to an exhibit from the first inquest that is the statement of one Roelof Jacobus Venter. I do not know if you have that copy before

you.

MR MOMONIAT: Yes, I do.

MR VARNEY: It is marked as EXHIBIT B5.1.2. M'Lord, just for your ease of reference I do have a copy if you wish to...

COURT: Thank you.

MR VARNEY: ...see it. I want to draw your attention to two paragraphs and M'Lord this would be the third and fourth last paragraphs on this one page affidavit, or rather the third paragraph from the bottom of the affidavit, M'Lord.

10 COURT: Yes.

MR VARNEY: And perhaps I will just read it into the record. It is in Afrikaans:

COURT: Ja.

MR VARNEY: And Mr Momoniat, just indicate whether you understand, or whether you would need us to translate it for you:

“Vandag 20 Januarie 1982...”

I will do the dates in English:

20 “...to 16 February 1982 was ek tesame met Kaptein D Swanepoel gemoeid met die ondervraging van I Momoniat. Hierdie ondervraging het geskied in 'n kantoor skuins oorkant die teekamer.”

Do you follow that sentence?

MR MOMONIAT: So you are saying that they were given to

ask to interrogate me and that the interrogation took place in an office opposite the tearoom or?

MR VARNEY: Yes, so between 20 January and 16 February Lieutenant Venter together with Captain Swanepoel were tasked with your interrogation and it took place in an office next to the tearoom.

MR VARNEY: Okay and then the other paragraph I want to read into the record is the next paragraph:

10 “Gedurende genoemde tydperke van ondervraging
aan die genoemde aangehoudenes was nie een
van die aangehoudenes in my teenwoordig
aangerand, gedreig of beledig nie en nie een van
hulle teenoor my gekla in hierdie verband nie.”

Do you follow that paragraph?

MR MOMONIAT: Can you, I probably do, but I think if you can just go through?

MR VARNEY: Okay, I will give it a rough translation and if I err in any way, I am sure the Court or one of my colleagues will correct me. So Lieutenant Venter is declaring in that
20 paragraph that during the aforesaid time period of interrogation dealing with yourself there was no instance of assault in his presence and neither were you threatened or intimidated in any way and furthermore you did not complain in connection with any such matters, at least to Lieutenant Venter.

MR MOMONIAT: Okay, he is lying that there was no assault. In fact he was one of the people who did assault me and threatened to give me electric shocks and that appeared to me just to be routine in the way he dealt with detainees. So he is lying and he would know that he is lying in my view, okay. Obviously you cannot complain to the person who beats you up. I mean we complain as you saw through the doctor, to the magistrate, to whoever else came, but it was not specifically one of the security police team and as I you
10 asked me earlier, he and Captain Swanepoel call me, because they knew about Dr Jacob's statement and they wanted me to withdraw it. So he was aware of it at some point that I did complain.

MR VARNEY: Mr Momoniat, I wish to refer you to a second document and, M'Lord, I provided that document with the first document. This is an amnesty decision with the reference number AC99/0029. M'Lord, this is in fact an annex that was attached to the affidavit of the investigating officer who handed up a list of annexes on the very first day
20 of this reopened inquest. M'Lord, it is marked FGK17(1).

COURT: H'm [non-verbal response].

MR VARNEY: Mr Momoniat, do you have a copy of this before you?

MR MOMONIAT: No.

MR VARNEY: I do have another copy. Perhaps you can just

pass one on. So this as a decision of the Truth and Reconciliation Commission's amnesty committee dealing with an application in terms of section 18 of the Truth and Reconciliation Commission Enabling Act 34 of 1995 and it deals with the application of one Roelof Jacobus Venter and his reference is AM2774/96 and if I can ask you to turn to page 2, because he made multiple applications for amnesty, but we only wish to deal with the second one reflected in this decision and if you drop down the page to the fifth paragraph
10 and I will read portions of the decision to you.

The application deals with and this is now at the fifth paragraph on that page. Assault, *Crimen injuria* and intimidation on a number of detainees during the investigation known as the Barbara Hogan investigation at John Vorster Square Johannesburg 1 December 1981 to 17 June 1982. It then goes on in the next paragraph:

20 "The applicant at the time a member of the Security Branch of the South African Police was part of a team which interrogated a number of detainees. In the course of the interrogation these detainees were assaulted and also insulted.

The victims include the following people:

- Prema Naidoo,
- Jabu Ngwenya,
- Shirish Nanabhai,

- Ismail Momoniat,
- Monty Nassau,
- Samson Ndau.”

I am not going to read all the detail. Just perhaps the last sentence of the next paragraph:

“The purpose of the interrogation was to extract information for the purpose of combating the political activities of such trade unions.”

And the next paragraph:

10 “The assault was in our view associated with a political objective. The applicant has also met the other requirements for amnesty. Amnesty is therefore granted in respect of the offences of...”

And then he lists the very same crimes mentioned above namely assault, crimen injuria and intimidation of the detainees including yourself. Now, Mr Momoniat, I just want to seek your reaction to the fact that Mr Roelof Venter applied for amnesty for the assault, crimen injuria and intimidation perpetrated against yourself and others during
20 your detection in early 1982, in the light of the fact that Mr Venter went under oath before the first inquest and said that you were not touched in his presence.

MR MOMONIAT: So it seems to me he is clearly admitting that he did assault us and therefore he applied for amnesty and that appears to be in contradiction to what he said and

as I said he was lying in his first affidavit at the time of the inquest when he denied assaulting me.

MR VARNEY: Yes, indeed it does not appear. It, the application and the decision reflects that Mr Venter admits that you were assaulted, also insulted and intimidated.

MR MOMONIAT: H'm [non-verbal response].

MR VARNEY: And he sought amnesty from the Truth and Commission's amnesty committee in that regard. Was indeed granted amnesty. So it does reflect that he was lying.

10 He was committing perjury before the first inquest.

MR MOMONIAT: I was not aware of this, but thanks for letting me know.

COURT: Sorry, do you know whether the amnesty application was ever confronted with that affidavit, the 1982 one? You do not know, it was never introduced for him to respond.

MR VARNEY: M'Lord, it is not clear from the decision whether he was confronted with the earlier affidavit.

COURT: H'm [non-verbal response].

20 MR VARNEY: Or I supposed perhaps in the evidence it might have transpired. We can look into that.

COURT: Okay.

MR VARNEY: Mr Momoniat, I now want to take you to your interaction with the late Dr Neil Aggett while in Security Branch detention and you have very helpfully set out some

detail, in fact a great deal of detail both in your 1982 affidavit as well as in the affidavit that you have recently made out. And this part of the evidence will be of particular interest to this Court. Did you know Dr Neil Aggett before you were detained?

MR MOMONIAT: No, I did not know him before I was detained, but I had, obviously have followed the news very closely and in November 1981 when he and many others were detained, I think it was the night of 21, or 22 November
10 that I noted all the names of the people who were detained. So I had heard of him, but I did not know him.

MR VARNEY: You indicate that you attempted to keep a rudimentary calendar to track time and the duration of your detention. I would like you to explain to the Court what kind of system you used for this purpose and, M'Lord, to assist you I want to hand up a copy of a document that is already an exhibit before this Court as it was put up in the first inquest. It is marked B3.5.6

MR MOMONIAT: Yes, so when I got a pen and paper, so it
20 would have been after 19 February, just given the request I had made to Lieutenant Olivier. I made a record of just what I did every day and just whilst my memory was fresh to try and remember what happened every day of my detection. The point is when you are detained and I had learnt this even as an important to do is, you are in a cell, it is solitary

confinement.

You do not see anyone except for the police. You only see people who are hostile to you. You cannot talk to your fellow detainees. Yes, we might have found one or two surreptitious ways later of communicating, but generally you are not allowed to talk to them. Not even greet them, okay. Also, so it is very easy to lose a sense of time and it was very clear that you needed to keep, you needed your brain to be active.

10 You needed to know what day it was etcetera and so I did this and bear in mind in doing this, I know that if the security police, because they would search cells and in fact I have no doubt that Warrant Officer MacPherson would do that when we were taken out of the cells and they would check everything. We also assumed the cells were bugged and so on, generally.

 So even, so you had to be careful. So I made it a very simple thing of just saying on this day I marked it with E if I exercised and then I marked it with a cross without saying
20 what the cross was, but the cross was all the days I was taken out to the 10th floor. That is why I could remember the dates that I was on. I just noted the day they gave me text books. Days that I read certain novels.

 At some point in fact I had to remind myself from these notes that I had some minor injury on my ankle which I think

was in a cell. It was not due to the interrogation or anything, but it was much later. So I would just note those things, so I had a sense of the time and what I was doing when. So if you look at this and not that I registered, I did not register anything about Dr Aggett, but if you look at this, you will see that in my first week, so I am detained on a Wednesday 20th, I am interrogated as I said earlier three times.

The Thursday, the Friday, the Saturday. I am taken to the 10th floor from the cells at John Vorster. The following
10 week I was, of 25 January, I was interrogated for five days. Monday, Tuesday, Wednesday, Thursday and I noted from the record you see Neil Aggett was not in... The first few days when I went like all the other detainees, they had already done their spell of interrogation, so in other words they had done their first round, or their primary interrogation as I call it and they would only get called up if they wanted to confirm something and for a short while perhaps.

And I will come to how he was, I did not know him, but my first interaction with him was I put it to the Sunday 24th,
20 because that is the only day I was in the cells. I had a shower and I will come to that and I will come to that in a moment where I had a brief opportunity to have a short chat with him. But every other day, the 25th, 26th, so the Monday to the Friday of that week, he, they started interrogating him and he was taken.

And I had confirmed from the records at the time of the inquest that he and I therefore were about the only people then being interrogated. So they would come and fetch you, Your Honour, from the cells and you had to do the, what they call the exercise and your shower first. So before, they might be feeding others, but before they open the other cells, generally they open the cells of the people to be interrogated. They get taken to the shower. Not together. Separately.

10 Everything separate, okay and that is where I saw a lot of him and was in close proximity to him, because when either we would be passing each other because I would be in the shower. He would be walking up the corridor say, or vice versa okay, because at some point he was not walking which I will come to. But I would, you would see him from a few metres. You could not talk, because the Security Branch policemen were always there and they generally were mainly the black policemen, okay.

20 Because that is all they got used for is to escort you up and down and to check that you are in a cell and so on and that you have your shower. Only white policemen interrogated you okay and then the following that weekend of I think it was the 30th and 31st of January, I was not interrogated that weekend. In fact they had even given me those text books as I said on the Friday and what happened

was that Neil was not there.

MR VARNEY: Mr Mamoniatt, before we...

MR MOMONIAT: Okay.

MR VARNEY: ...get to the 30th of January, if we can just go back a little bit.

MR MOMONIAT: Okay, but can I just say this?

MR VARNEY: Oh okay.

MR MOMONIAT: What I was going to say was for five days in my second week of detention and for the four days of the following weeks, Neil and I were taken up on the same days. Not necessarily at the same time, but it would have been early in morning. So I had nine days where he and I were taken to the 10th floor at the same time, on the same day.

MR VARNEY: Indeed and you in fact indicate that you had several occasions to glimpse sight of Dr Aggett at that time. M'Lord, for the record the rudimentary calendar that the witness refers to, is attached to that document titled 'Notes and Consultation.'

COURT: Ja, okay.

20 MR VARNEY: With Mr Momoniatt on 7 September 1982 and it is quite a good contemplated record of his experiences in detention. You do indicate that you only got your pen and paper at a later stage once your interrogation had ended. Was it on 29 February 1982?

MR MOMONIAT: No, my interrogation ended on 4 February.

MR VARNEY: Okay.

MR MOMONIAT: My first round of interrogation.

MR VARNEY: Alright, but you indicate in paragraph 53 that you did not have pen and paper in your cell before Dr Aggett died and you can only start working on this rudimentary calendar after his death.

MR MOMONIAT: Yes.

MR VARNEY: So then how did you go about reconstructing the calendar to reflect the earlier days?

10 MR MOMONIAT: Well I still sort of remembered, okay, because I was interrogated every day except for the two Sundays and the second Saturday. I knew that I was interrogated every day, so I could get the days right of my interrogation. I knew when it stopped. I knew when I had been to the doctor, because obviously the date of 5 February, I mean I will never forget in my life, okay.

Because that is the day we learned that someone amongst us had died and so that became a kind of benchmark of you know the events before Neil died and the
20 events after Neil died. So I could obviously remember those things and I therefore just went back and just recorded, but because you will see the only thing I said was 'X' when I have been interrogated, 'E' when I was exercising.

And I wanted to note when you exercise, because you know when you are in a cell all by yourself and you have

nothing, you feel every second of the day. Every second it is hell, okay. It is torture by itself. There is nothing to do. You have your hard bunk, or you can sleep. Very easy to get depressed if you allow yourself. You have got to find things to do.

So I learned from my first detention, you need to firstly when they give you food, you take one hour to eat it. You make sure you exercise in the morning even if you are lazy to exercise, but you take your time; one hour in the morning.
10 One hour in the afternoon. You ask them for a little bucket so you can clean your cell. So you clean your cell as much as possible, okay. So that every second you must have something to do. Walking around, sitting and not lose control of time.

So that is why I was able to note the days I could exercise and I am not talking about the exercise I did in the corridor. I am talking of the exercise that I would do in my cell, okay. The exercise in the corridor was before they took you for a shower, they will let you walk. So it is the corridor
20 and the Security Branch cop would stand, it could be MacPherson. It could be someone. They would stand at the end and be watching you.

They might have someone in the shower as well, but they are watching and you cannot and even the steel, there was a steel gate that would lock the shower, okay. Normally

and so they would see you go up and down and you had to be in their sight, okay. So that was one form of exercise that is where you either ran or you walked up and down.

MR VARNEY: Thank you, Mr Momoniat, I think you have given us a good insight as to how you came up with your calendar. Now I am going to take you to your evidence in your affidavit where you said that you actually managed to have a discreet interaction with Dr Aggett which appear to take place during the second week of your detention. Can
10 you describe that for us?

MR MOMONIAT: Yes, just by way of contacts, so when you get taken up, you try and look for every opportunity to find out what do the security police know about our activities. So for example, I think it may even have on my first day or two. It must have been the first day when I returned from Dr Jacobson, they took me to the shower and I found they did not lock the gate.

And the Security Branch policeman was not there and I was able to go the Firoz Cachalia's cell, because the outer
20 gate was on and have literally a one minute's discussion where basically I got a sense that they did not really know much about us, okay. Beyond the open legal meetings and so on. The same thing happened with Neil Aggett the following Sunday.

I was, so the date would be I suspect, I mean I do not

know the exact date, but I suspect it was, because it was early on. So it was the day that on 24 January that the first day I am not taken now for interrogation after my detention. And I went to the shower. I must have taken my clothes with, dried myself off obviously I suspect and put on my clothes and as I was going to my cell, I forgot my towel.

So I went back and then I noticed the Security Branch policeman was gone. So I saw Neil's outer cell door was open. I went up to his cell. I remember him walking up and
10 down. I think he was much taller than me. He appeared tall. He, I think he was smoking and as soon as he saw me he came to the steel grill and I introduced myself. I should add that every detainee knows every other detainee, because there is a meal book that goes around with your names and you notice the movements.

When you are in detention in solitary, you look for every bit of information that there is, whether it is the meal book, the complaint's book; *et cetera*. And I obviously knew this was Neil Aggett, because there were three white
20 detainees. I knew Auret van Heerden was there. I knew Keith Coleman. So obviously from the meal book and so on, I knew this was Neil Aggett.

We had a brief chat. I introduced him. I asked him what did he think was happening? What would happen and he indicated that he did not think he would be charged. He

thinks that they want to use him and all of us, most of us as state witnesses, but he himself as a state witness against Barbara Hogan, Cedric de Beer and Cedric Mason.

And the way he said it, it was clear to me that he had no intention to give evidence, okay. That this is what they have us here for and then it was Constable Chauke who was watching us. He saw us talk. He obviously saw me. I am not supposed to be in front of that cell. He saw us talking, reprimanded me. MacPherson came and reprimanded us and
10 so on. Now normally they would go and tell their white security bosses what had happened.

But sometimes when there is a lapse like this when it reflects on them, I suspect they were too scared to tell their bosses, but they made sure that they reprimanded us. So that was the only time that I was able to talk to Neil. He looked reasonably healthy. Mentally he was well and you know he was fine and when you are in detention, you always want to talk to someone who is like me, an anti-Apartheid activist even though I did not know him.

20 So it is what you look out for and what you know was a good discussion and that is why I do not forget those instances. Especially in the two, three week where I am being detained and I am looking for information. What do they know about us? What do we tell, what do we know that they already know so that when you tell them, you are telling

them nothing, okay? That sort of thing comes at play.

MR VARNEY: And while you were chatting, that is at the cell door, did you manage to get a glimpse into his cell and if so, do you recall how it looked?

MR MOMONIAT: Look, his cell looked pretty bare. I mean I did not particularly notice anything that struck that a detainee should not have. You would probably he would have had his polystyrene cups, you know. A bit of food which they allowed sometimes. You know, cool drinks and so from
10 your family. So it was bare. If there were things in the cell, I would have been actually surprised, but it was like my cell, bare. There was nothing much there.

MR VARNEY: Did you see perhaps like a coil in the cell, or on him?

MR MOMONIAT: No. I did not notice that particularly. It was very brief the amount of time we spent. I mean we got caught.

MR VARNEY: Yes, indeed. If we can then move to the initial contact that you had with Dr Aggett in the second week
20 and you indicate in your affidavit that he did not look unduly stressed. That he seemed to be relax. This is from paragraph 62.

MR MOMONIAT: Yes.

MR VARNEY: And perhaps while you are dealing with that, you can then resume your evidence on what you noticed in

relation to Dr Aggett's on the weekend of 30 January.

MR MOMONIAT: Okay, so I just want to say, Sir, when I spoke to him on 24 January, he was also, he appeared relaxed. He had been through his hard time and he was not being interrogation and of course I was going through the stress of being interrogated. Of course, little did we know that the following day he would start and these are not things that you know up front?

I mean every day you hope they do not come for you.
10 When you hear the gate: 'Are they coming for me?' okay and so they start taking him on that Monday morning and take him every day, okay. And you know so we would see each other, I mean I do not remember how many times, but a few times. Because as I said they would at seven o'clock or so, they would open the cell of the people they were going to take up.

They would give you your breakfast earlier in your polystyrene cup and then they would ask you to do the, if you wanted to do the exercise and you know that is very literally
20 walking three or four times up the corridor, okay. And then you had to go and shower. So that they would do still whilst you were in your cells. If they were in a rush, they might have one doing the exercise and one in the shower.

And if you are really, really under pressure they could even have two detainees in the shower at the same time,

because there were many a few showers and then they would stand there. But Neil and I, I do not recall ever being in the shower, having our showers at the same time. So it was always from a distance. He in the corridor, or I am in the corridor and he in the shower and often then when we would be taken to the first floor to be taken out to the 10th floor and remember we have escorts.

So we each have one, or two security policeman come fetch us. They handcuff you. You go to the first floor,
10 because at John Vorster as you would have seen, the cells are in a physically different building from the offices, but they are adjoining. So you go from the first floor, I think there is an entrance to the lift of the main building and then you are taken up to the ninth floor and think then you have to use the stairs or something like that, okay. But at that point and in fact you know you make a joke of it. Everything is: 'Dankie hek.' Then someone comes and opens the gate, okay, because different people would hold the key.

So here there would be an occurrence book. Normally
20 it would be a white officer and they would notice when you leave, when you come back and so on. So that is where I would then have seen Neil on a few occasions. Every time I saw him like with all detainees, you greet. You do not even... You just say: 'Hi', or you wink or smile. You take your chances and say: 'Hi.' You cannot say anymore,

because the police will definitely report you.

But we would take our chances with just a brief hi, or smile or so, okay and this happened consistently when I saw him. Very friendly and, but we could not talk, okay. I could not ask him how was he today, or what was happening? None of that, okay. That weekend, I was not taken for questioning, so that is the 30th and the 31st. We I think I noticed it. I know Samuel Lerumo was next to me.

We say: 'Hey, is Neil back? Did he come back at
10 night? Did they bring him?' A lot of that weekend and I think it will be the entire weekend, he was not brought back. So in other words when he was taken on the 29th, I am not sure if he ever got back to his cell in the 29th, or if he was brought back, he was taken on the Saturday morning. But he was not brought back even maybe Sunday night. I do not know, but we noticed from the meal book that he had not; because they would record when you have meals at least once a day.

You are supposed to do it with every meal, you would sign for the meal. That he had not signed the meal book and
20 that was one book, so they would come into your cell. So you know we noticed that he was not brought back. So by then, it was obvious that Neil was going through now some heavy detention.

Sorry, interrogation and it is never pleasant to be on the 10th floor, even if because they can always just come and

ask you and smack you and beat you up and torture you and keep you awake for the whole night. So he was kept there. So I am sure they did nasty things to him if he went through such an intensive period. By the following week... Do you want me to go on?

MR VARNEY: You mentioned in your affidavit paragraph 66 that you did get a glimpse of Dr Aggett on the 10th floor and that was on or about 1 or 2 February.

MR MOMONIAT: Yes, look I might have got even glimpses a
10 few times, but the one on the first and the fifth, so the next week I will come to in a second...

MR VARNEY: Okay.

MR MOMONIAT: Because these windows were frosted windows you know and you are in one. Someone else is a few doors away. Generally you do not see them. You might hear someone screaming, because they are beating someone up. Now and then when they allowed you to go to the toilet they escort you and a door may be open and you might get a glimpse, okay.

20 And I think because he and I was taken, there was a sense that you was there and he would have had a sense that I was somewhere, but definitely the following week now 1 to 2 February, Neil is clearly under stress. Clearly under stress and although I did not particularly notice it at the time, but now that I think back, yes he was having difficulty

walking at some point in that week.

But the thing that stands out, so we get taken on again a few mornings, we see each other, but on the third or the fourth and it is hard for me to remember the exact. Sometimes I think it is the third, sometimes the fourth. We are on the first floor to be signed out and Neil was looking bad and that was the one day I greet him and he does not greet back. Not because he was being unfriendly, certainly not.

10 Neil was like in a daze, like he did not know what was happening. I mean he was almost like a zombie, you know and I was very perturbed and I saw a big mark on his forehead, okay. I cannot remember right or left now, but it stood out and I have never forgotten that, ever. Okay, it was a bruise and it was big and he did not have that before and of course I just concluded that he had been beaten.

You know maybe they took his head and bashed it, or something and he had a visible injury and so I was struck that he did not greet back. He did not wink. He did not say:
20 'Hi.' Nothing and he was in another world, okay. He was clearly under pressure. I was so worried that the first opportunity I could and that could have been that evening or the following evening if I saw him on the morning of the third, then it would have been the following evening.

But the night before Neil died, I spoke to my neighbour

Samuel Lerumo because he could come through the cell, or I do not know how, but I said to him: 'Hey, did you see Neil? He looks bad. He is going through a tough time.' Something to that effect. And I said to him: 'Did you see the mark on his head?', because he told me he saw him that he had been brought back at 03:30 (15:30?) [12:19:23] on that Wednesday or Thursday.

As I said, I am not sure to date, but he said, and he said to me there was on blood on his forehead. I think he
10 meant that there was a bruise, okay. So he and I had kind of seen it and he too commented on like feeling sorry for Neil. He is clearly going through a hard time and either the following morning, or the day after, we hear that Neil is dead.

So this we saw before and I want to add one thing, I did not say this instance at my inquest, okay and I am because you know we had prepared with the lawyers for the family. I had given evidence. We had prepared an overall document where it is noted, but we are still living under an Apartheid state, a very repressive state. We still have to
20 face the Security Branch.

So, certainly in my evidence I did not mention any other detainee, because firstly you are not supposed to talk. Secondly the rumour was still I thought, under detention, or still in jail and the security police could get him anytime. Just like I saw when I complained. In fact later some of my

other fellow detainees told me new facts which I have got in my affidavit like Eric Mntonga.

But in my evidence none of that was mentioned, because we are facing an apartment inquest. We knew how the Court was going to rule. You did not have to be a genius to know that it would rule against the detainee and that there would be totally sceptical of everything that we said and they would just try and knock us down as witnesses.

So I did not name in that affidavit other detainees by
10 their name. Obviously now under democracy, I can reveal all of that as well and so the key point is, the rumour and I spoke with you know, we both saw the mark. We saw he was going through a hard time and then suddenly within 24 hours or so, Neil Aggett is dead. Okay.

MR VARNEY: Can you indicate the means, or methods you used to communicate with Lerumo?

MR MOMONIAT: Okay, Lerumo as I think I said earlier used to shine the floors at the corridor. Clean the shower. They would allow him to do that. I mean they had long finished
20 with his interrogation for whatever he was detained for. And so he was the one detainee who could go between cells and whilst he was cleaning, he would give us a message and tell us something.

So either I spoke to him like by him just being polishing a floor outside my cell when and, or he could come

there near the cell and we could talk. We found time to talk, or although the windows were sealed, you could not speak to people outside. There might have been a gap between the cells. So that could have been another way, but the other way that we had was a toilet system, okay.

Now it was not as effective in the big cells, but later and Jabu Ngwenya was an expert on this. What we would do is, we kept our toilets very clean okay. And we kept those polystyrene. We kept a few, because there were that toilet
10 polystyrenes where and you would only do this at night when you could hear that the outer gates were locked okay, that you then took out the water and once the level in the toilet goes down, it is like a telephone system.

The others do it and we could have long discussions, okay. Bear in mind we assumed that the cells are bugged. We do not talk about cases, what happened to you, what is happening to someone, or sensitive information. It will just be: 'How are you?' Just general chat. We heard something else is happening in the country, because we do not have
20 newspapers.

So it would just be anyone has some snippets of information to give to anyone and you assume that even if the cops know that info, you know you will just be in trouble for knowing it, not that it can be used against someone. So those were the three mechanisms when the Security Branch

police were not present that you could communicate. And I should say that the toilet communication was useful, because that is what keeps your mental sanity.

If you are in your cell and you cannot talk to anybody, you can go crazy okay. You can lose. So just the ability to talk to other human beings is something that is critical and even if you have to risk being caught by the Security Branch, the fact that you could talk to others and just talk about general things, was something you looked forward to and
10 which kept you mentally well. Healthy.

MR VARNEY: You mentioned that a few days before Neil Aggett's death, you had, you were able to communicate to a detainee by the name of Eric Mntonga.

MR MOMONIAT: Yes.

MR VARNEY: Can you tell what he told you in relation to Neil Aggett and also how you were able to talk with Eric Mntonga?

MR MOMONIAT: Yes, look some of those discussions then happened after, after Neil's death and obviously as the
20 interrogations are over, even the cops were sort of maybe not as strict. So whilst you could not talk, but sometimes there might be two of you in the shower. They would be watching, but there is a bit more opportunity to talk.

So I do not remember how I talked to him, but obviously every detainee there had some story about Neil

Aggett, okay. His story was that one day when Neil was being escorted by Constable Chauke, who by the way was quite a rabbit system supporter. I mean he was very hostile to us and Eric told me that he had boasted: 'See how Neil is walking. He cannot walk. He is limping, because we fucked him up. We kicked him in his balls.'

Something to that effect. I do not remember the exact words, okay. Similarly I think there were other detainees you know. Jabu Ngwenya, I remember I saw how he was being
10 treated; may have something to say. I spoke to Auret van Heerden. You know everyone had some story to say that how I think Auret said they are playing cat and mouse with Neil. You know, people had got that info somehow.

They might have had some contact with Neil at some point and before he died obviously. Unfortunately people like Eric who was with SAWU are no more. I mean he passed away a few year after. I am not sure if he ever gave evidence. It may have been that they were still in detention.
20 You know, he might have been released before me. I am not sure.

MR VARNEY: What is your view of the police's version that Neil Aggett hanged himself in his cell?

MR MOMONIAT: You know I think frankly, you know, it is... Firstly I am very clear that Neil Aggett given the state he was

in, given the how difficult it is I would imagine, not that I tried it, to hang yourself. I do not believe Neil hung himself, okay and as part of that you know, once they locked the cells on that Thursday 4 February, on that fifth we were not being taken out. Now I said I was taken to the doctor, but if I remember we were not, it was unusual that morning.

We were not taken for showers. We were not taken out and clearly there was something going on, but even when I went to the doctor, I did not notice anything. I think it is
10 quite easy for them to come if they had killed Neil on the 10th floor and then to come and do something. It is quite possible, okay. You would not hear it if they were soft in how they opened cells and cell doors and so on, you know.

MR VARNEY: Essentially are you saying that given your last sighting of him, he did not have the physical capacity to carry out such a manoeuvre?

MR MOMONIAT: When I think of it now, I do not think so. Neil was literally they had really finished him up and sorry, what I have omitted to say, Eric also said something like this:
20 'Eric I have told them everything, but they are still fucking me up. I do not know what they want from me.' Okay, so that is what Eric said to me that Neil said to him.

So it seems Eric had seen him around the time of that last week before Neil had died and when Neil had told him this. So I do not think he could have. I think he was you

know, physically he was not in a good state. Mentally, I think he was under a lot of pressure. So you know, I do not think so.

MR VARNEY: Now you may have been sleeping but in the late night of 5 February 1982, the early morning of 5 February, did you hear anything in particular going on, on the second floor?

MR MOMONIAT: No. You see by that, the day after Neil died, they moved me away from Cell 204 to the inner cells. I
10 think it was 229. These were smaller cells and they were sealed with Perspex and in those cells I remember when I first went there, it is like you can hardly breathe. But okay after a few hours, you learn to breathe, but it is literally difficult to hear anything and you know once your outer door is locked, it is like the cell is almost sealed.

Okay, it is closed. It is hard to hear. So no, I did not hear anything and I was surprised. I mean you knew something... One day they are taking us out for shower and you know they saw as little of us, the warders and so on, as
20 possible. Just gave you your food and left and whatever, but as I said I was even taken to the doctor on that day. So only when I got back and in the afternoon somehow word went round.

I do not remember, that someone had died amongst us and then you know, it was Neil. And we then got visits the

following day from our parents which never, ever happened under solitary normally, but obviously the government was under pressure to show that we had not been beaten up. So I know that on that Saturday, I had a visit from my parents. A brief visit, but taken again to the 10th floor. So no I did not hear anything. I did not, you know, I do not know what happened.

MR VARNEY: The cell that you were moved to after the day that Neil died, you said had a Perspex covering.

10 MR MOMONIAT: Yes.

MR VARNEY: On the grill, what?

MR MOMONIAT: So what they had there was you would have the grills, but within the grills and yourself inside if I remember, there would be Perspex. So when you are in a Perspex cell, then you cannot even reach a bar presumably to hand yourself. You are completely in a... [intervened]

MR VARNEY: And was that cell in those days known as a suicide proof cell?

MR MOMONIAT: Yes, I mean. Yes.

20 MR VARNEY: Mr Momoniat, is there anything else you wish to add before we close your evidence?

MR MOMONIAT: No, look I think just to say that you know, I think that I am happy that the inquest is taking place. That you have an objective process, because the first one was clearly a sham. That I think that Neil Aggett was the little I

know about him, was a very committed South African activist. That he went through a really rough time and I think I hold the police responsible.

I also just want to say one other point. I mean I think, because I have looked at social media, I continue to have the highest respect for Barbara Hogan, okay. I think that Barbara is a phenomenal South African and yes mistakes are made during any struggle and some of us ended up in jail and in Neil's case he ended up having dying.

10 But in a sense you know, as political activists, we kind of understood that being detained and possibly even dying was possible when you got involved in the struggle. And I think that I just wanted to express for both Neil and Barbara, I think I regard them as the best of South Africans and most certainly did not give in to the system and they fought Apartheid and now fighting Apartheid right to the end. I think the legacy is important just to note.

MR VARNEY: Thank you, no further questions, M'Lord.

COURT: Thank you.

20 EXAMINATION BY MR MLOTSHWA: As the Court pleases, thank you, M'Lord. You testified, Sir, that you were interrogated by the white Security Branch officers. Did they Indians, coloureds or blacks ever interrogate you?

MR MOMONIAT: So generally your interrogation was only white Security Branch. There were at that time black African

and coloured Security Branch, but ja they were just used to escort us up and down, or take us to the doctor. Not really part of the interrogation. In my first interrogation which was in 1980, there was even then there were some Indian and I think Harripersad and what was his name? Peterson, who were around, but even then it was mainly, it was only really the white, Major Heystek at that point...

MR MLOTSHWA: Yes?

MR MOMONIAT: That would interrogate you. These guys
10 were and in fact a feature of these police was that they, of black security policemen and I use it in a broad sense.

MR MLOTSHWA: Yes.

MR MOMONIAT: Coloured, Indian, African, I mean they were just trying to always to please their white bosses and in fact they would want to show them they were treating you badly.

MR MLOTSHWA: Yes.

MR MOMONIAT: Okay, but they would not be trusted, you
20 know. They were still not just second or third class citizens and to the point I should add that you could be a captain in the police, you know like Captain Sans (?) okay and you could be told by a white constable, security, policeman to go and buy food okay, which often happened whilst they were there. And that is what they would do, go and buy food for the white security policemen.

MR MLOTSHWA: And they would comply.

MR MOMONIAT: And they would comply. Of course we regarded them as sell outs and as agents of Apartheid.

MR MLOTSHWA: Yes and was there any time that they made tea for you the Security Branch officers on the 10th floor?

MR MOMONIAT: You know when you are interrogated, you do not really feel like eating. They bring something. It is not like you can ask for tea.

10 MR MLOTSHWA: Yes.

MR MOMONIAT: There is water. You have it. You try and minimize going to the toilet, because everything is used against you. They may say: 'No' and then you really have to go.

MR MLOTSHWA: Ja.

MR MOMONIAT: If you do not watch it, then you have to do it right there and then which is what they would enjoy.

MR MLOTSHWA: H'm [non-verbal response].

20 MR MOMONIAT: So I was taken once or twice to the toilet, but it is not like you order tea or that. No. If they bring it, you might consider having it, but you are also careful. Are they poisoning you? Are they giving you something? So you try and not drink more than you have to and I do not recall your food actually being given to you there, because the food was in the cells and if you did not get fed, by the time you

get back, you would find your food is still there in your cell.

MR MLOTSHWA: And if you were kept overnight, would they bring your food upstairs?

MR MOMONIAT: I was never kept overnight myself, so I do not know, but I have my doubts. The security police do not come, the white security policemen, they would come now and then, but they would rarely, it was rare that they would actually come to your cell to fetch you and so on.

MR MLOTSHWA: Ja.

10 MR MOMONIAT: If it was a white policeman, it was someone quite junior and that used to happen.

MR MLOTSHWA: I see and was there a time when they gave you food, or anything from their own pocket?

MR MOMONIAT: No.

MR MLOTSHWA: And you were informed by my learned colleague that Venter, I am sorry, ja Venter applied for amnesty for what he did to you. During that amnesty hearing, were you ever approached about what is alleged to have been done to you by Venter and his company?

20 MR MOMONIAT: I do not think so. It is the first time I heard today that Venter had asked for amnesty. I was not aware of it, so probably not. It is a long time ago that I was talking about.

MR MLOTSHWA: Ja, ja, but you never appeared before the amnesty TRC yourself?

MR MOMONIAT: I did not.

MR MLOTSHWA: And has Venter ever apologised to you?

MR MOMONIAT: No, I have never seen him after that. After I was released. So...

MR MLOTSHWA: Do you know that he is still alive?

MR MOMONIAT: Well I heard through this case that yes, he is still alive.

MR MLOTSHWA: H'm [non-verbal response]. And was there any time when you were asked to drink a liquid that left you
10 dazed or confused?

MR MOMONIAT: No, not that I can think of.

MR MLOTSHWA: Not that you can think of, no. Did you know a person by the name of Warrant Officer Billy Cox?

MR MOMONIAT: No.

MR MLOTSHWA: You do not remember him interrogating you.

MR MOMONIAT: No.

MR MLOTSHWA: I see.

MR MOMONIAT: But look I did not know the names of all
20 the police that interrogated me.

MR MLOTSHWA: Ja.

MR MOMONIAT: In my affidavit I mention, I know the others were Deetlefs; I had some interaction and he was seemingly always smiling and but the day I was being released, he wanted to question me. He played psychological games.

That is the sense I got about Deetlefs.

MR MLOTSHWA: H'm [non-verbal response].

MR MOMONIAT: I know there was a guy Abrie who was maybe a railway policeman who was quite brutal as well, but fortunately I did not have any interaction with him.

MR MLOTSHWA: Yes. Deetlefs, did he do anything to you?

MR MOMONIAT: No he would come in and also read the statement, but he would policy good cop with me.

MR MLOTSHWA: H'm [non-verbal response].

10 MR MOMONIAT: And you could see a smart cop and you would look for the contradictions and so on, but you know he did not beat me up or anything.

MR MLOTSHWA: Yes and when you were beaten up, was this done discreetly, or open in the presence of let us say the black police officers?

MR MOMONIAT: Look the black police officers, look firstly the Security Branch did what they did what they did openly in their offices. They were not going to get demoted for beating you up.

20 MR MLOTSHWA: Ja.

MR MOMONIAT: They were going to get promoted in fact probably.

MR MLOTSHWA: Ja.

MR MOMONIAT: Okay and in fact they tried to almost outdo each other sometimes. So that was done openly. The black

security police would see you being beaten up, but they would not be in the room. If they came to the 10th floor after they left you, they might be asked to sit in another office, or when the white police officers were went somewhere, they would ask them to sit in a room with you. So they were sort of around and you know given the frosted windows, you saw people being beaten up, or you know you heard people screaming and so on and I had heard people screaming, but I do not remember it specifically. It was almost like normal,
10 okay.

MR MLOTSHWA: Ja.

MR MOMONIAT: But I do not think too many people were being questioned in our, I mean in the case that I am in it is clearly Neil, myself, we were all around the Barbara Hogan case. There were other detainees for other cases who would be brought up, beaten up you know. I mean I remember even in our cells there were two young Indian kids who came and there were quite a few young African kids also who came in now and then and but when Neil died there were just two
20 Indian, they might have been at school. I think one's name was Salim Bardad and one Ushraf and they were actually there when Neil died.

MR MLOTSHWA: H'm [non-verbal response].

MR MOMONIAT: So, but I do not hear anything of them. They were not very political themselves.

MR MLOTSHWA: Yes.

MR MOMONIAT: And they were released at some point and...

MR MLOTSHWA: Yes, and you told us that one of the officer's told you about Ahmed Timol. What did he say about him and?

MR MOMONIAT: You know this would be general and not even them. Any detention you went, I guess if you were an Indian, they made sure that they will say: 'I am a Timol.' If
10 maybe they might even say: 'Steve Biko' or... [intervened]

MR MLOTSHWA: Ja.

MR MOMONIAT: You know they always reminded you of people they had killed, because one, they were proud of it.

MR MLOTSHWA: Ja.

MR MOMONIAT: Two, they knew that would induce your fear and three and of course we all knew it that they had died and you know comments about flying Indians and this and that.

MR MLOTSHWA: Ja.

20 MR MOMONIAT: Slipping on a bar of soap, you know. They joked about it generally.

MR MLOTSHWA: Ja. You would not know or remember who talked about... [intervened]

MR MOMONIAT: No, it was so widespread.

MR MLOTSHWA: Ja.

MR MOMONIAT: That kind of talk, you know. It was like their talk generally.

MR MLOTSHWA: And why in your mind, why would they tell you about that Timol or so?

MR MOMONIAT: Well they want to tell you that we killed Ahmed Timol. You know they were also very racist. So they would see me as an Indian and not a South African first and they would say: 'It happened to him and you will be the next one.' Okay. So it was a threat all the time.

10 MR MLOTSHWA: That is right and you informed us that you informed Dr Jacobson of your assaults.

MR MOMONIAT: Yes.

MR MLOTSHWA: When you did that, was there any police officer in that office?

MR MOMONIAT: No.

MR MLOTSHWA: It was only the two of you.

MR MOMONIAT: Just the doctor.

MR MLOTSHWA: H'm [non-verbal response].

20 MR MOMONIAT: But look we always saw everyone as a possible agent of the system. They are not going to take you to a doctor who is really sympathetic.

MR MLOTSHWA: Ja.

MR MOMONIAT: Okay, so it is more about reporting this.

MR MLOTSHWA: Ja.

MR MOMONIAT: So that if and when you charge, you could

at least try and recall that evidence. Also I guess after the way the doctors that dealt with Steve Biko and the pressure they were under, the doctors would try and pretend to ask.

MR MLOTSHWA: Ja?

MR MOMONIAT: You know that they were doing the right job and so on and I am not saying that they were necessarily would report, they might not have liked what would happen maybe, but they felt compelled to tell the security police, because if they did not, they would feel that they themselves
10 would get into trouble. Now being a public servant, I can understand that, okay.

MR MLOTSHWA: Okay.

MR MOMONIAT: That people feel that you need to say that.

MR MLOTSHWA: To [indistinct – 12:47:26].

MR MOMONIAT: But we in fact many of us more experience, would factor that in that anything you say to anyone in the system, the info would get to the Security Branch and the Security Branch would then use that info and you know I want to make the point, they induce extreme fear.
20 So even though I might say that I got off compared to others you know who had much heavier doses of interrogation, you still lived with fear every minute.

You did not know what was going to happen. You always knew that they could become brutal and do what they did to Ahmed Timol, or other detainees who had a rough time

that they would do that. They were capable of that and even whether you went to the district surgeon, or magistrate under the Apartheid law, none of those institutions were independent like today.

MR MLOTSHWA: Ja.

MR MOMONIAT: If you are a doctor, or you are a chartered accountant, you have certain standards, okay. There is certain levels of confidentiality that applies. Under Apartheid that was not the case, in the sense that the state and
10 Apartheid, they had the right to get any and every bit of information.

MR MLOTSHWA: Yes and when you complained to the doctor about your assault, you told us that you did not mention any name of any police officer.

MR MOMONIAT: Yes, I generally I did not want to mention names of people, because if you did, there would be repercussions. I mean, so on the one hand not that I knew the day I went to Dr Jacobson that Dr Aggett had died, but certainly once I knew, we became a bit braver.

20 MR MLOTSHWA: Ja.

MR MOMONIAT: On just stating it.

MR MLOTSHWA: And so it must have amazed you, or taken you aback that the very same people that were assaulting you, are the ones that are asking you about the statement that you made to the doctor.

MR MOMONIAT: No, I was not surprised. I almost expected it. So you know, yes, they know so it just confirms that whatever you tell anyone, gets back to the Security Branch, okay. We used to call them SB Security Branch, alright.

MR MLOTSHWA: Yes.

MR MOMONIAT: And you know, but you know they push to retract an entire statement, but you know I made sure that thereafter I saw Sergeant Blom, or then or before or whenever, or the inspector that there is a consistent story. I
10 did not expect by the way, the way the system worked was even if I was charged and I put that, I am actually surprised it came out in a public domain, because normally even those professionals or others would deny that you told them that. You know it is only you and them.

MR MLOTSHWA: Ja. When they asked you to retract your statement that you made, was it statement that you made to Blom, or the statement that you made to the doctor.

MR MOMONIAT: I think the statement to the doctor and then the statement to the magistrate. So they wanted a
20 piece of paper to say: 'I had told lies, blah, blah, blah.' I guess, or they did not do it. So they could, you know... But the point is this, you are doing all of this under duress.

MR MLOTSHWA: Ja.

MR MOMONIAT: You are not a free player. Your lawyer is not there to guide you, okay.

MR MLOTSHWA: Yes.

MR MOMONIAT: So frankly any of the evidence that they have actually in unless the detainee voluntarily says: 'No, this is true', frankly is under duress. If I had it, I would not give them any statement. I would just reported charges. I would have gone and said: 'I want to see the police and lay charges.' You could not do that.

MR MLOTSHWA: Yes.

MR MOMONIAT: It was Apartheid. In fact they would think
10 you are mad if you said that. They just beat you up and you know, that is it.

MR MLOTSHWA: I see and to Sergeant Blom, did you mention names?

MR MOMONIAT: No. To none of them did I mention names.

MR MLOTSHWA: H'm [non-verbal response].

MR MOMONIAT: And as I said as soon as I spoke to her, she went to, I caught a glimpse of her going to Cronwright's office.

MR MLOTSHWA: You saw her going to Cronwright's office.

20 MR MOMONIAT: Yes, yes.

MR MLOTSHWA: I see.

MR MOMONIAT: All of them and not just them, but the detainees when they felt they wanted something, it is: 'The major, the majoor', you know.

MR MLOTSHWA: H'm [non-verbal response].

MR MOMONIAT: Cronwright was clearly in charge and everything he would say. Sorry the one thing I forgot actually to say, in fact Cronwright one day whilst I was sitting, he came to me to say he has got proof that the anti-SAUC [12:52:26] campaign was an ANC front and he brought a copy of a South African Communist Party publication. I think he brought an African Communist and there was an article on the outcome of the, or on the South African Union Council anti- our campaign against and he made me read the
10 whole article.

And then to confess and try and wanted me to confess that this was proof that we were told by Lusaka, or outside what to do, you know. Needless to say, we did not need anyone to tell us to oppose Apartheid. We opposed Apartheid, because we saw it was discriminatory. That it was infringing on human rights and nobody had to tell us to oppose the South African Union Council.

MR MLOTSHWA: Yes.

MR MOMONIAT: We opposed it, because we knew that was
20 the right thing to do.

MR MLOTSHWA: Yes and did Sergeant Blom inform you of her rank, what her rank was?

MR MOMONIAT: Well she was a Sergeant.

MR MLOTSHWA: She was a sergeant. She told you.

MR MOMONIAT: Ja, she gave a name and so on and so that

is how I knew her name.

MR MLOTSHWA: Ja.

MR MOMONIAT: But she also said that she was an independent channel to the Minister of Finance.

MR MLOTSHWA: Ja.

MR MOMONIAT: Sorry.

MR MLOTSHWA: Minister of Justice.

MR MOMONIAT: Minister of finance are my boss. Minister of Justice, okay.

10 MR MLOTSHWA: He is the present minister.

MR MOMONIAT: Yes.

MR MLOTSHWA: Yes and did she tell you what her problem was being a sergeant and taking a statement from you? For instance did she tell you that she is not able to investigate this matter, because you are making allegations against the Special Branch police officers?

MR MOMONIAT: She may have, but largely she just took the statement and it seemed to me she took the statement because I had made a complaint.

20 MR MLOTSHWA: Yes.

MR MOMONIAT: But she said that this was as I have said, an independent to the Minister of Justice who will then act appropriately, okay. Of course I did not buy any of that nonsense. I mean...

MR MLOTSHWA: Ja.

MR MOMONIAT: Minister of Justice at the time was the minister of injustice if anything.

MR MLOTSHWA: I see. M'Lord, I see the time it is one o'clock.

COURT: Yes, yes.

MR MLOTSHWA: Yes.

COURT: We will reconvene at two o'clock.

MR MLOTSHWA: As the Court pleases, thank you.

COURT: Okay Mr Momoniat, we will see you at two o'clock.

10 MR MOMONIAT: Yes, Your Honour.

COURT: Court adjourns for lunch.

REGISTRAR: All rise.

COURT ADJOURNS

[12:54]

TRANSCRIBER'S CERTIFICATE

I, the undersigned, hereby certify that so far as it is audible to me, the foregoing is a true and correct, verbatim transcript of the proceedings recorded by means of a digital recorder in the inquest hearing of the death of:

Inquest in the late DR NEIL HUDSON AGGETT

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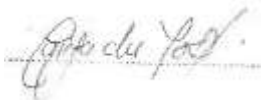
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COURT RESUMES

[13:57]

COURT: Thank you. Mr Momoniat, you are still under oath?

MR MOMONIAT: Yes, Your Honour.

ISMAIL MOMONIAT: (still under oath)

COURT: Thank you. You may proceed, Advocate Mlotshwa.

EXAMINATION BY MR MLOTSHWA (CONTINUES): Thank you, M'Lord. Sir, you told us that you cleaned your cell. If you did not do it, would somebody have done it?

MR MOMONIAT: No, you clean your own cells.

10 MR MLOTSHWA: With the instructions?

MR MOMONIAT: Well, you know sometimes they would tell you but generally you wanted a clean place, so you clean it. As I said they did have, sometimes they use other detainees, like they used Mr Lerumo.

MR MLOTSHWA: Yes.

MR MOMONIAT: To clean the corridor. It is possible they could have gotten him into an empty cell to clean whilst you were out. That you do not know.

MR MLOTSHWA: Okay.

20 MR MOMONIAT: But generally that did not happen. I think he only cleaned on the outside.

MR MLOTSHWA: Did they give you utensils to clean your cells?

MR MOMONIAT: You would have to ask, so they would give you a bucket and some cloth and sometimes I think there was

also a broom around, which you could use.

MR MLOTSHWA: Yes and whilst you cleaning your cell, did they watching you or you would be on your own?

MR MOMONIAT: You generally would be on your own. Ja, they would just leave it and you would clean.

MR MLOTSHWA: Okay. Would there be an occasion when you would have been required to wear a tie?

MR MOMONIAT: No.

MR MLOTSHWA: You did not keep a tie in your cell?

10 MR MOMONIAT: No, no, you did not keep any clothes, if I remember. It is all kept in the room. You did not need a tie and very few people were active, I think would generally then wore ties. I guess only if they had to appear in court or something but then you would be at the waiting trial part. So, people just wore tracksuits generally.

MR MLOTSHWA: And were you ever charged for any offense? That is now during 1982 at the time of the death of the Doctor.

MR MOMONIAT: No, I was not charged around then. I was once charged in relation to an anti-site, sorry an anti-trial
20 Camaro campaign, I think a few years later but it is a minor charge.

MR MLOTSHWA: Yes.

MR MOMONIAT: Some one came and assaulted me and when I laid charges, he laid a counter claim.

MR MLOTSHWA: Yes.

MR MOMONIAT: He was two times bigger than me, I think even the Apartheid Court threw it out.

MR MLOTSHWA: And what do you think would have happened to you if you refused to withdraw your complained of assault against Venter and Rulof Swanepoel?

MR MOMONIAT: Look generally you lived in an environment where nobody could protect you and if you did not do what they asked you to do, the risk you faced was that you would be beaten up brutally. As I have said we knew that with the death
10 of Dr Aggett that there would be perhaps a bit more constraints that there would normally be but that did not mean they could not beat you up. You know whenever the security cops I guess, not that I have this experience, it is like if someone would to break into your house and you are the only one and they have you there for the whole night and you know they can do anything to you and beat you up, you know you fear for your life. You fear that someone is going to injure you also very badly and viciously. So that fear is always there when you are in detention, from day one, right up to when you are
20 released.

MR MLOTSHWA: M'Lord, I have got no further questions, thank you.

COURT: Thank you, Advocate Coetzee.

QUESTIONS BY MR COETZEE: Thank you. Thank you, M'Lord. Sir, I understand that it is difficult for you. It was a

difficult time in our history, as well as for you personally. I act on behalf of Venter, Rulof Venter, as well as Deetlefs. My instruction from Mr Venter is that he admits that during your interrogation which he was part of that he took part in on assaults on yourself that he actually insulted you, as well as that he used derogative words in relation to you and he admits that he did that. He did so in front of the TRC and he has got his amnesty for that. Do you have any comments to that sir/

MR MOMONIAT: Well, I am presently surprise that he
10 admitted what he had did and as I said earlier, I was not aware that he had done so.

MR COETZEE: Sir, your evidence at one stage was that when you were at the showers and you left the showers, you went back to fetch your towel. Where did you keep your towel? Did you keep your towel in your cell?

MR MOMONIAT: No, no, your towels were kept in the room where your clothes were kept.

MR COETZEE: The property room?

MR MOMONIAT: Yes. So, the procedure is that you are going
20 to get your towel before and you shower and remember the police are watching and that you then go into the shower and when you finished you take your towel back to the room and any other, like you may have dirty clothes, you take that back.

MR COETZEE: Sir, your evidence in relation as per your table of events that you wrote, the little calendar that you wrote, so

that between the 25th and the 29th that was when you were taken up, not necessary simultaneously but you saw Dr Aggett when you went up or when you returned to your cell?

MR MOMONIAT: Yes but not return, when you taken up.

MR COETZEE: Taken up.

MR MOMONIAT: Okay because that tended to be the similar time you would take 10 or 15 minutes.

COURT: Yes.

MR MOMONIAT: So, depending on if you were, you know if
10 he was very fast. In fact the police complained that I was not as fast as Dr Aggett in having a shower. Okay and so, it would just depending on the time, I would often bumped into him there and once or twice on the 10th floor bur from afar but close to each other when we are at the first floor to leave because there is a gate that you go through.

MR COETZEE: At the first floor, was there a register where it was filled in before you then went to the 10th floor upper? I am specifically referring to the first floor, was there a register?

MR MOMONIAT: Yes but you know we do not sign those
20 registers.

MR COETZEE: Okay.

MR MOMONIAT: Those are signed by the officer or the warden who is on duty together with; I guess whoever is taking you out.

MR COETZEE: And we have heard evidence about what is

referred to as *klagtes* and complaints.

MR MOMONIAT: Yes.

MR COETZEE: The old *klagtes*. Did you make complaints in a book? Was there a book that you could enter complaints in?

MR MOMONIAT: Yes and if I remember that was on the second floor, okay.

MR COETZEE: Yes.

MR MOMONIAT: Where there would be a book. They did not bring it every day and in theory you could go there and
10 complain but again you are not going to complain because it gets to the security police. So, generally I do think you bother to complain there in the book.

MR COETZEE: And the following week, the week of the 1st to the 4th, the injury, if I may call it that.

MR MOMONIAT: Yes.

MR COETZEE: On the 1st that Monday, did you once again go up with or did you want to go and see Dr Aggett when you went out?

MR MOMONIAT: Look I do not know the exact days. I did not
20 keep a record of that but I know that you know that definitely on the 3rd or the 4th I did and it was happening fairly regularly. So, you know at least the week before and that week it could have been two three days we were been checked out in the first floor around the same time but I cannot tell you which day and on that Monday I am not sure if he was actually brought

back because he had been out the whole weekend. So, I do not know if they brought him. I do not remember whether they brought him on the Sunday night and took him out again on Monday, I do not know and you asked earlier, generally the time we came back was not the same time. It depends when they are finished with you they would send you back to the cell and so ja. Look I do not know the exact days. I did not keep a record of that but I know that you know that definitely on the 3rd or the 4th I did and it was happening fairly regularly. So, 10 you know at least the week before and that week it could have been two three days we were been checked out in the first floor around the same time but I cannot tell you which day and on that Monday I am not sure if he was actually brought back because he had been out the whole weekend. So, I do not know if they brought him. I do not remember whether they brought him on the Sunday night and took him out again on Monday, I do not know and you asked earlier, generally the time we came back was not the same time. It depends when they are finished with you they would send you back to the cell 20 and so ja.

MR COETZEE: Sir, what I am actually interested in, you are not clear whether it is the 3rd or the 4th where you saw him with the injury to his head, if I am correct.

MR MOMONIAT: Yes.

MR COETZEE: Did you see him in that week before that? I

know it is difficult but is it possible for you to say whether you saw him on that week without the injury?

MR MOMONIAT: Yes, I saw him a few times the previous week and he had no injury on his face. The only day I saw it, it was the last time I saw him when he was been taken out or it probably was his last detention or the second last day of his detention of his interrogation, sorry.

MR COETZEE: Your statement in paragraph 66, you said you had a glimpse of Dr Aggett on the 10th floor, on the 1st or the
10 2nd of February 1982 when he was writing a statement.

MR MOMONIAT: Yes.

MR COETZEE: As you have previously have done.

MR MOMONIAT: Yes.

MR COETZEE: When you saw him at that stage, would you have seen whether he was injured at that stage already or did he look to you to be fine?

MR MOMONIAT: No, look it was a glimpse from far and it may have been that they were taking me from one office to the other or maybe they were taking me to the toilet or something
20 because generally we were not walking around in the corridor, you were only in the office in which they interrogated you and you stayed there and you only, you know you could not get up and go where you like. You were only there and then they would, if they want to, they can take you from office A to office B. So, I do not remember the exact reason but that is where I

saw him and I saw two policemen over him but it was very far, I did not see much but I know that he was going through a tough time, having not been there for the weekend, clearly he was under pressure.

MR COETZEE: Thank you, M'Lord. I have got no further questions for the witness.

COURT: Counsel.

EXAMINATION BY MR MOHAMED: As it pleases the Court, M'Lord. I just have a single question, M'Lord. Sir, I represent
10 a current police force. During your examination in chief in your closing remark sir, you mentioned that you hold the police responsible. Sir, I just want to clarify that. From my understanding and from the context of the evidence sir, it will be fair that you hold the past police force responsible, except for today's police force, as you know they cannot post [indistinct – 14:02:09].

MR MOMONIAT: Yes, absolutely and I can even more specific. I hold the security police at the time responsible for his death, Dr Aggett's death. I am not talking about the police
20 today.

MR MOHAMED: Sir, on behalf of the police force we apologise what happened to you as it was then. No further questions, M'Lord.

MR MOMONIAT: Thank you.

COURT: Re-examination.

NO RE-EXAMINATION BY MR VARNEY: M'Lord, we have no questions on re-examination.

QUESTIONS BY THE COURT: Mr Momoniat, tell me, when you say the last time that you saw him left, he was in the company of two police officers, would you say one?

MR MOMONIAT: I do not remember how many but normally it would be one. There might be a second one around. It could be two. I mean I do not remember because you are handcuffed. There is no way you can escape and you just
10 escorted. I think normally there used to be two.

COURT: Two.

MR MOMONIAT: But I do not remember who they were.

COURT: And you say that this would be either on the 3rd or the 4th of February?

MR MOMONIAT: Yes. During the inquest, the first inquest I did say it is the 3rd.

COURT: The 3rd?

MR MOMONIAT: Yes. So, it was the day before but looking back, I still think it could have been even the day after. So, on
20 the day that he had his last detention on the 4th.

COURT: Ja.

MR MOMONIAT: So, I am not sure of the two dates. It is too long ago now to remember exactly.

COURT: And it was on the 10th floor?

MR MOMONIAT: No, on the 1st floor.

COURT: 1st floor.

MR MOMONIAT: So, the cells are a separate building. So, you go down to the 1st.

COURT: Yes.

MR MOMONIAT: And when they check you out of the... That is where you are get checked out of the prison cell building and then you go into the building of the police station.

COURT: To the 10th?

MR MOMONIAT: Of the police station to the 10th floor.

10 COURT: So, he must have been from the 2nd floor where he slept and then was taken to the 10th floor.

MR MOMONIAT: So, first we get taken to the 1st floor.

COURT: Ja.

MR MOMONIAT: That is where I saw him, okay. You go brought by the security branch officers' who are escorting us. They have some procedure in a book and they check you out and once you get checked out and you go separately, you get taken to the 9th floor and then you go up the 10th, something like that but... So, I saw him still in the prison cell building on
20 the 1st floor.

COURT: Now, the officials who deal, you said they are security branch officers?

MR MOMONIAT: Yes.

COURT: No, were they white or black?

MR MOMONIAT: Generally they would be black security

guards but there were times that you know White police officers would come. There were... Those that came were quite junior. They were just be white or black and they would just be escorting. They would not know what you were interrogated about. So, their job was just to make sure they brought you that you do not speak to another detainee and you know in those times I guess that they told you that you are a terrorist or something and they have got to watch and so, they kind of also scared of you.

10 COURT: Did you know a security branch officer with the name of White Head?

MR MOMONIAT: I do know of him and I know he was part of that team. I did not have any direct interaction with him. He may have been present in my first assault but I do not remember all the people who were there. That is the day after I was detainee when there were 10 or more officers who kind of throwing me around. He may have been there.

COURT: What I want to get at, the police officers that you saw with Neil, none of them was White Head?

20 MR MOMONIAT: Probably not.

COURT: Not.

MR MOMONIAT: Because anyone was part of the interrogation team. They were clearly more senior.

COURT: Yes.

MR MOMONIAT: They did not come down to the cells to pick

us up.

COURT: Alright.

MR MOMONIAT: So, I do not think so, Your Honour.

COURT: Thank you. Any questions arising from the Court's questions?

NO FURTHER QUESTIONS BY MR VARNEY: None, M'Lord.

NO FURTHER QUESTIONS BY MR MLOTSHWA: None, M'Lord.

NO FURTHER QUESTIONS BY MOHAMED: None, M'Lord.

10 COURT: Thank you, Mr Momoniat. Thank you, very much. You are excused.

MR MOMONIAT: Thank you, very much, Your Honour.

NO FURTHER QUESTIONS

COURT: Yes.

MR VARNEY: As the Court pleases, M'Lord. M'Lord, our next witness is Mr Maurice Smithers.

COURT: Yes.

20 MR VARNEY: He is currently waiting outside and I understand he has been summoned. While he is being brought into the court, perhaps I can refer Your Lordship to the affidavits to have reference to.

COURT: Okay.

MR VARNEY: That is the affidavit of Mr Maurice Smithers himself. M'Lord and first if we can request to hand it up as EXHIBIT G9.

COURT: Yes, let me have this.

MR VARNEY: And then we will also have reference to the affidavit of Mohani Maketha and that is EXHIBIT G6.

COURT: Yes.

MR VARNEY: I do have spare copies for those who needs.

COURT: Yes.

MR VARNEY: As the Court pleases.

COURT: Yes, let us swear the witness. Mr Smithers, what are your full names, sir?

10 MR SMITHERS: Maurice Peter Smithers.

COURT: Do you have any objection in taking the prescribed oath?

MR SMITHERS: I usually affirm.

COURT: You affirm?

MR SMITHERS: Yes.

COURT: Okay. So, you affirm that the evidence that you give will be the truth and nothing else but the truth?

MR SMITHERS: I do.

MAURICE PETER SMITHERS: (duly solemnly swears)

20 COURT: Thank you. You may proceed.

EXAMINATION BY MR VARNEY: As the Court pleases. Mr Smithers, thank you for agreeing to testify about your experiences back in 1981, 1982. We certainly understand that this requires you to in a sense relive some of those experiences. On behalf of the Aggett family we express our

gratitude in willing to do so. Before we proceed, I understand you wish to make a short statement to the court?

MR SMITHERS: Yes.

COURT: Yes.

MR VARNEY: You can proceed.

MR SMITHERS: Thank you. Judge, over the past few weeks I received a number of messages from people thanking me for testifying at the inquest and telling me how brave I am to do so and so on and obviously I appreciate their comments and their
10 messages but I think it is important for people to know that there is no need to thank me and I do not think that I am being brave. I am just doing what is right. I testified back in 1982 because it was right to do it then and I am testifying now because the imperative to speak remains but I am not saying that it is easy. In fact I have released that when talking about what happened, when going into the details, I often choke up and I am unable to continue speaking.

MR VARNEY: Yes.

MR SMITHERS: It is an indication to me that I am carrying
20 emotional baggage from that time and other similar occasions that I have never dealt with it but that are how many of us handle things. We soldiered on regardless of what happened, what we have been through because the times demanded that of us. I suppose it may have been better to have had some form of counselling but I did not and so at times I do find tears

filling my eyes and my voice breaking, responses triggered unexpectedly by something that I or someone else says, by a thought or by an image or something and the point is that I know that is going to happen during my testimony. In fact it happened, I do not know if you noticed that John Vorster Square last Tuesday during our visit to John Vorster and I had to stop speaking at some point to recover but I want to reassure the court that it will not be a problem, it will not affect my testifying in at and it will not disrupt proceedings.

10 MR VARNEY: Yes.

MR SMITHERS: In fact, I want to talk about the positive aspect of such emotions, of the impetus to cry. Reverend Paul Verryn who I saw yesterday, pointed me to a quote from Charles Dickens, which helps to explain this. Dickens says:

“In great expectations heaven knows we need never to be ashamed about tears for they are rain upon the blinding dust of earth, overlying our hard hearts.”

20 So, what he is saying really is I think is giving a way to emotions, allowing tears to flow, particularly in this context, is an affirmation of our humanity and our dignity and our ability to empathise.

In 1982, humanity empathy, dignity were the last things on the minds of the security police when they arrested us and they attempted to get information out of us. In fact Jimmy

Kruger the infamous Minister of Police exemplified that most crudely in 1977 when speaking about the death and detention of Steve Biko that “light may quote”, he said:

“It leaves me cold. It means nothing to me. It does not touch me. Long term detention, solitary confinement, verbal and physical abuse, sleep deprivation and torture, these are all mechanism used to break down dignity and deny humanity.”

The 1982 inquest too had no interest in humanity and
10 empathy. The purpose of the State, the Security Police, the State Attorney, the Magistrate was not to find out the truth behind a tragedy, behind the ending of a human life, possibly by the persons’ own hand. They wanted something to cover it up, to point fingers in every direction but towards themselves to use the occasion for political gain. They did not care about the feelings of Neil’s family, of Liz Floyd, of Neil’s friends and comrades. It was an inhuman callous event without redemption.

As counsel for the family and a former TRC family
20 member pointed out in the beginning of this inquest, humanity has also been sacrificed on the altar of political expediencies since then. This inquest, the Timol inquest and a proper investigation into the death of Abram Onkgopotse Tiro, who was killed by a parcel bomb in Botswana on the 1st of February 1974, 46 years ago this Saturday past, all of these should

have been processed a long time ago. They were not and so Neil's parents and his brother passed away without finding peace, their humanity denied, the humanity and dignity not restored in their lifetime.

So, if my tears do come and I am sure they will, I will not be ashamed of them. They are to me an affirmation of humanity and my recognition of the humanity of others. This process itself, though belated is about honouring Neil's humanity, driven as he was and everything he did by his
10 concern for the wellbeing of others, particularly those exploited at present and discriminated against by apartheid, one of the most dehumanising social experiments in human history.

So, if I do break down, I do not want the court to adjourn. I will recover quickly and I will continue and I also do not want people to, you know get get concern for me. What I actually what I would prefer is that in the moment that that happens I would like everyone here to reflect on what we are doing here. On the role that this process is playing in
20 restoring the humanity and dignity of everyone involved, including I might add that of the police officers who have chosen to tell the truth during this inquest.

The police officers because of apartheid and their own dehumanisation as black people were unable to speak honestly and openly at the first inquest. I do not blame them for what

they did then. I honour them for what they are doing now. They are the ones that I consider to be brave.

So, thank you to everyone who is involved in this process. Thank you to all present for listening and thank you to the court for allowing me to express myself.

COURT: Thank you, Mr Smithers. Thank you.

MR VARNEY: Thank you, Mr Smithers and even though you do not expect any particular special treatment, if you need a moment to catch your breath, just indicate as much to the
10 court. Feel free to stand.

MR SMITHERS: Ja.

MR VARNEY: There is a chair if you wish to sit. Mr Smithers, I understand that you have before you an affidavit that you made out on 15 July 2018.

MR SMITHERS: I do.

MR VARNEY: That is EXHIBIT G9, M'Lord.

COURT: Yes.

MR VARNEY: You confirm that this is your affidavit and you confirm the contents thereof.

20 MR SMITHERS: I do, Judge but there are a couple... Having going through this again and again and going through my testimony or the record of the previous inquest, I do realise that there might be one or two slight variations and I feel more confident referring back to the original testimony because that testimony was given two months after the incident of Neil's

death and so I had a much stronger memory but they are minor things. It is about what happened when but it does not change the essence of the testimony.

MR VARNEY: That is fair enough and at any time during the evidence today you are free to point out and indicate where there might be an inconsistency and you are free to explain it. So, you do confirm that you did testify before the first inquest?

MR SMITHERS: Yes.

MR VARNEY: And if you may count an affidavit before the
10 first inquest?

MR SMITHERS: Would that have been with the
...[intervenes].

MR VARNEY: Most likely with the attorneys.

MR SMITHERS: With the attorneys.

MR VARNEY: With the attorneys for the Aggett family. Let me put it this way. The record does disclose that an affidavit was taken from you at that time. I can advise the court that not withstanding our best efforts that particular affidavit is not the record as it exists at the moment. We have a suspicion
20 that it is part of the missing folder B2, which we hoped to recover in the next few days.

COURT: Okay.

MR VARNEY: Alright Mr Smithers, let us commence. You were born on the 21st November 1951?

MR SMITHERS: Correct.

MR VARNEY: Can you describe to the court your current occupation?

MR SMITHERS: I am currently working for a non-governmental organisation called the South African Alcohol Policy Alliance, which is working to increase the capacity of civil society to have a say over government policy around alcohol legislation that kind of thing, ja.

MR VARNEY: I see when this statement was taken you were a full-time student at Wits University doing your Masters of
10 Science in Development Planning.

MR SMITHERS: Correct.

MR VARNEY: Did you graduate with that degree?

MR SMITHERS: I did yes.

MR VARNEY: Congratulations.

MR SMITHERS: Thank you.

MR VARNEY: I see that you also have occupied a few other posts, including work with organisations such as Awethu Peoples Platform for Social Justice.

MR SMITHERS: Correct.

20 MR VARNEY: What did you do for that organisation?

MR SMITHERS: That was an organisation that was I guess trying to address some of the challenges that were happening in South Africa about five six years ago, kind of leading up to around the issues of State Capture and various other challenges were happening in South Africa and as a

consequence denying social justice to people in the country, as a consequence of the corruption that was taking place and denied access to service delivery, improving the lives and so on, ja.

MR VARNEY: And previously you also have done work with the Yeoville Bellevue Community Development Trust.

MR SMITHERS: There I was working... I lived in Yeoville Bellevue for many years and it was transitional suburb, a previously white suburb that had gone through lots of changes
10 in the post-apartheid period and they were trying to develop a program whereby the community could have direct involvement in the way in which the suburb developed and dealt with some of the challenges that were prevailing in the suburb at the time.

MR VARNEY: And previously you were a director in the then Gauteng Department of Agriculture Conservation and Environment.

MR SMITHERS: That is correct for 10 years I worked for the Gauteng Provincial Government and just before that I was in
20 National Government. So that was post 1994, obviously with the new Government, ja.

MR VARNEY: And just to complete the story, what job did you do with National Government?

MR SMITHERS: I was Director of Communication in the Department of Land Affairs.

MR VARNEY: Now, if we can take you back in history somewhat to the early 1990s, to the period before you were detained, will you describe to the court what occupation you were doing, as well as what kind of political activism you were involved in?

MR SMITHERS: Well, perhaps I should go back to 1972, which has some relevance to something I said in my opening statement and that was that in 1972 I was at Wits University studying there and I had not really been exposed to politics
10 very much as a typical white male person growing up in South Africa but when I got to university I began to develop a social and a political consciousness and in the middle of 1972 about June 1972 we at Wits University there was a protest, which I really came at the tail end of a serious of protests that was happened at black universities and then at Cape Town University around the expulsion of Abram Onkgopotse Tiro from Turfloop University because he had the temerity to challenge the apartheid system and Bantu Education when he was doing a valedictory address at Turfloop University and so
20 that was my political bleeding I guess, I got arrested a few times that week and beaten up by the cops and got charge with writers assembly together with about 60 other students and that kind of set the scene I suppose for the future direction of my life.

So, over the next few years I went to Lesotho as a

volunteer. I left university. I dropped out and that is why I only went back to university now. I dropped out of university and went to work as a volunteer teacher in Lesotho and then I came back and I worked for the South African Council of Churches running a shop for them, a craft shop and the Council of Churches in those days was a political centre really for the anti-apartheid movement and I therefore came in touch with a whole range of people like Beyers Naude and Wolfram Kismar and Desmond Tutu, Frank Chikane and so on, including
10 some black consciousness organisations that had their offices in the building where I was working. So that kind of continued my involvement in politics.

I did a few other things after that and towards the end of the 70s, I did some traveling around the country, buying and selling crafts and realised that there was a problem with the sustainability community projects and so the Council of Churches gave me the money to go and do some research and that research led me to travel around the country, visiting
20 projects, talking to them, finding out what the issues were, which is a very interesting process and in that period I also travelled to Botswana. Where I went, it was not just in South Africa but in Southern Africa and I went to Botswana and I...

In fact I went to meet a young man who had been in the Council of Churches building who left the country after the 1976 uprising and he was living in Botswana, living with an

ANC activist called Joe Gqabi and myself and a friend went to visit him and Joe Gqabi wanted to recruit us to teach politics to young black activists and I did not feel qualified to do that to be honest but also myself and my friend I think were more orientated towards working with Trade Unions and so.

It happened that a friend of mine, Jenny Curtis or Jenny Schoon as was then was living in Botswana with her then husband Marius Schoon who was an ANC activist who spend 12 years in prison. They both left the country and they were
10 operating, working for the ANC and for SACTU, South African Council of Trade Unions and so we were recruited by them to do work for SACTU and the ANC but mainly SACTU. So, 1979 is when myself and this friend were recruited. So, we came back to South Africa and we were doing ...[intervenues].

COURT: Just a second, recruited into the?

MR SMITHERS: Into the ANC.

COURT: Into the ANC.

MR SMITHERS: Correct.

COURT: The ANC underground?

20 MR VARNEY: Underground.

MR SMITHERS: Into the ANC underground, correct. So, it was just the two of us, although we also then recruited my partner, my then partner to work with us and then as a result of the research I did for the Council of Church, I then set up a small project, whose name I still cannot quite remember. It

was something like... It was something about buying raw material. It was called a raw materials project, something like that. It was buying raw materials to make them available to projects around the country so that they could get the goods at a cheaper price and therefore make their projects more sustainable and that is where I was working at the time that I was detained in September, 22 September I think it was. I was also involved in sort of printing of political posters, Trade Union posters and that sort of thing and that all led up to the
10 period the 22nd of September.

MR VARNEY: Ja. So, you were detained in the early hours of the 22nd of September.

MR SMITHERS: Correct.

MR VARNEY: Of 1981.

MR SMITHERS: Correct.

MR VARNEY: But it appears from the affidavit that not much happened in that particular detention. You were released after a period of two weeks.

MR SMITHERS: Ja, I was arrested. I had no idea why I was
20 been arrested initially. The police came to the house in the early hours of the morning but while I was been, while they were sort of standing on the pavement outside the house, I heard on the walkie-talkie of the police the number, they mentioned the telephone number of Barbara Hogan and I realised that it was not just me been arrested. So that was a

little bit comforting because I thought perhaps I was been arrested because of our underground work but when I heard Barbara was been arrested too, I did not think that was the case because although I had a close relationship with Barbara and we considered ourselves to be political comrades and we did have a lot of discussions and she had actually quite an intense discussion with me about whether she should leave the country shortly before that.

She did not know exactly what I was doing. I did not
10 know exactly what she was doing. So, it made me realised that it was something different but I had no idea what it was. So, they took me into custody and put me in Randburg Police Station and I was questioned quite extensively for that period of two weeks and then released along with some of the other people who had been arrested at the same time.

MR VARNEY: And at that time you were not aware that your name appeared on the so called comrades list that Barbara Hogan had drawn up?

MR SMITHERS: You know I think I only discovered that. I
20 doubt that the Security Police would have told me that. So, I think I probably only found out when I came out of prison, ja or when I came out of detention and I think I probably found out then.

MR VARNEY: M'Lord that list which has been referred in the evidence, previously is EXHIBIT B3.5.21 of Mr Smithers name

appears, it would be the last category that Barbara Hogan had a list of people who regarded her as the consultant.

COURT: Yes.

MR VARNEY: If we can then move to your next arrest, Mr Smithers and in that story I understand commences 25 November 1981?

MR SMITHERS: Correct.

MR VARNEY: In the Magistrate Court in Johannesburg.

MR SMITHERS: Correct.

10 MR VARNEY: So, you indicated how you in the court and how it was that you got be arrested?

MR SMITHERS: Ja, there was a young man called Les Laggs who lived in the same house that I did and before I have been arrested, I do not remember what date it was, he was also arrested from the same house because he and two friends had been caught... That was the year I think the 60th anniversary of the Communist Party. So, they had been arrested putting up posters around town commemorating the 60th anniversary of the Communist Party and what I did not know actually was that
20 he was actually in Randburg Police Station.

So, for the two weeks that I was in Randburg Police Station, I think on the last day I discovered that he was there, which was a real pity because it would have been better for both of us if we have known we were there we could have shouted to each other or somehow communicated but we did

not manage to do that.

So, on the 24th of November he and these other two were appearing in court to be charged with putting up posters and I went to the court and when I went into the court, a policeman walked in Warrant Officer Deetlefs, I think he was at the time and he saw me in the gathering and beckoned to me to come to him and then he walked out. So, clearly he wanted me to meet outside.

I then informed my partner who was there and I also
10 informed Neil Coleman whose father was the head of the Detainees Parents Support Committee and so, Neil came with me to Deetlefs. Well, Neil followed me to Deetlefs. By the time I have spoken to Deetlefs, he said to me that the Captain wanted to ask me more questions and I said, are you arresting me and he said no, we are not arresting you. We just want you to come down to the station and you know answer a few questions and I said, okay and Neil came up and I said to Neil, Deetlefs said that I need to go to the station to answer questions but he is not arresting me.

20 Well, of course he was not entirely telling the truth because I was then arrested and kept for another four months and they again arrested me and took me to Randburg Police Station, back to exactly the same cell in Randburg Police Station and then a whole new period of interrogation commenced.

COURT: Sorry, when he said the Captain want to speak to you, who was he referring to, which Captain?

MR SMITHERS: That was Captain van Niekerk, I think his name was. I think his name does appear. I always get mixed up with that. Ja, I think it was van Niekerk, Captain van Niekerk. He had been the person who was interrogating me the first time.

MR VARNEY: So, from the court, where did you go, where it happened?

10 MR SMITHERS: So, from the court Judge, I was taken to... I may have been taken to John Vorster first but the very same day I was taken back to Randburg Police Station.

MR VARNEY: Yes, in fact your affidavit discloses that you went straight to John Vorster Square and you were formally arrested in terms of section 22.

MR SMITHERS: Ja.

MR VARNEY: And there was nothing then when you were taken.

MR SMITHERS: Correct.

20 MR VARNEY: Back to Randburg Police Station, where you say you were detained for four months.

MR SMITHERS: Yes.

MR VARNEY: And yes, holding for four months as an arrest and a detention.

MR SMITHERS: Yes.

MR VARNEY: So, you were held at Randburg Police Station but you indicate that from time to time you were taken up to John Vorster Square.

MR SMITHERS: Correct.

COURT: Counsel, just remind me, section 22 of the Treason Act, what does it imply? I know section 6 but section 22, what is it?

MR VARNEY: M'Lord, it also provides for detention without trial. I often see that it is sort of slightly lighter version of
10 section 6. We will let you have a copy of it.

COURT: Okay.

MR VARNEY: So, you indicated, Mr Smithers that during this period you were not tortured per se, nonetheless solitary confinement. You also say that later in your interrogation it appears that they were strictly interested in a piece of information relating to Barbara Hogan.

MR SMITHERS: Correct.

MR VARNEY: Can you elaborate on that?

MR SMITHERS: Judge, what happened was that it became
20 clear when they were talking to me that they had somehow gathered new information. When I was first detained the questions were quite general I think, as I recall and not in great depth but now this time it appeared that they did not know anything about my underground work but the second time it appeared that they had some information and they wanted to

get more information out of me.

So, they were asking me lots of different questions but then they homed in on a particularly issue and they kept on asking, did I bring anything back into the country from anybody, for anybody and to be quite honest I could not remember having done so and they kept on asking about that and in particular if I had brought something from Botswana, which is partly I think what confused me because eventually they said, did I not bring back a box of chocolates for Barbara
10 Hogan from Botswana and that is when I remembered that in fact I had been to Zimbabwe in the mid 1980s, just after Zimbabwe's independence and the purpose of going was partly to go and visit friends and celebrate Zimbabwe's independence but it was also the plan that was to have a meeting with Marius Schoon, a debriefing session with Marius Schoon.

Unfortunately, he did not make it to the meeting because of the strange honesty that he had because he actually went to the border post at Plums there and they asked him if he ever had been convicted of a crime and he very proudly said
20 that yes he spent 12 years in jail because of ANC activity. So, they would not let him in the country.

MR VARNEY: Yes.

MR SMITHERS: So, he had to go all the way back to Gaborone and then sent another guy called Patrick Fitzgerald, who was a friend of ours, who was also in exile living in

Gaborone. He sent Patrick to come and see us and we had a debriefing and Patrick gave me this box of chocolates. It was sealed, a proper box of chocolates sealed with cellophane and so on and obviously I assumed that it was not just a box of chocolates, it was probably something in it. I also assumed that it was not anything particularly dangerous, like explosives or anything like that because it did not have that kind of weight or capacity but I did not ask obviously. I just said to Patrick, I assume you know this is not anything dangerous and I brought
10 it back and I gave it to Barbara and that was the end of it and so, I confirmed that was been the case.

You know, one of the things that I did all the way through my testimony was to tell the truth as much as possible because I realised that well one of the things it is a kind of law of this kind of work that you tell the truth as much as possible because the more lies that you tell the more you have to remember and the more lies you have to remember that you told. So, therefore it is better to tell the truth where ever you can and safe the lies for the really important stuff and so, I did
20 that all the way through and there was no point in denying a box of chocolates because they clearly knew about it anyway. How they knew about it I had no idea but they did.

MR VARNEY: So, then Mr Smithers, you indicate you spent an entire month at Randburg Police Station where they left you in solitary confinement. How were you in that month of solitary

confinement?

MR SMITHERS: Well, you know solitary confinement generally is you know, even if you are surrounded by other people, which I was.

MR VARNEY: Yes.

MR SMITHERS: Obviously because I was in a police station. There were lots of other people around and obviously I did see people in the sense that the police came in but I had no human contact, no real human contact with anyone and it became
10 increasingly difficult, also just being inside that space all the time because at the time that I was there, the first month was when I was been interrogated.

I was taken through to John Vorster quite often and I was... I did eventually write a statement and so on. So, at least I did manage to be out and to see the world on the way, on the journey between the two places and I also got to see occasionally glimpses of people, for example Neil himself at certain times but then the month, once they finished my statement, they just left me there. I think it was from the 4th of
20 January I was stuck in there and I started to feel what they call stir-crazy, you know you just want to get out; you want to just be somewhere else. Ja, I was feeling the pressure of being in this isolated space, ja.

MR VARNEY: And so, it appears that you took some steps in this situation to get you out.

MR SMITHERS: Correct, ja.

MR VARNEY: I know Randburg Police Station.

MR SMITHERS: Ja.

MR VARNEY: What did you do?

MR SMITHERS: Well, what I did was, I knew that my experience up and till then was that the police were very responsive if you needed to go to the doctor and so on. So, what I did was, I broke the lens of one of my pair of glasses. Sorry, one of the lenses from my pair of glasses. I broke one
10 lens and I then told the Uniform Branch that I have broken my glasses and could they inform the Security Police so they would then come and fetch me and take me to the optician.

MR VARNEY: Did that indeed happen on the 25th of January 1982?

MR SMITHERS: Yes that indeed did happen, ja.

MR VARNEY: Can you indicate approximately who came to collect you and at what time you made it through to John Vorster Square?

MR SMITHERS: I think my appointment was for 10 o'clock.
20 So, two black police officers came and fetch me and I think we arrived there somewhere just after half past nine.

MR VARNEY: Yes and then you proceeded to the 10th floor?

MR SMITHERS: Correct.

MR VARNEY: And since you were present at the *inspection in loco*, do you confirm pointing out to the court where it was that

you were taken?

MR SMITHERS: I do, ja.

MR VARNEY: And now that you are in court, can you just give a description of the office you were in, if you recall the office number?

MR SMITHERS: The office number was 1011, I think and it was a... We used to come in a lift from the basement. There was a lift that served only the 9th and 10th floors, which was where the Security Police were. So, we go into the basement
10 and then go up in the lift and come out of the lift and walked down a long corridor with offices on either side and I guess half way down the corridor, there was a door to the left and they took me into that room. It was a largish office which could have... I remember it been used. It seems there was fingerprint equipment around. So, it seemed like they did fingerprinting and other things there and just a few tables and chairs in the room.

As you went into the door from the corridor you would facing directly to windows, which looked out of the building
20 and I was taken into the room towards the left hand side and sat on a chair with my back to the wall. So, the windows were on my left and the corridor was on my right.

MR VARNEY: And directly opposite you, you say in your affidavit that there was a wall or a partition. Can you describe the make up of the partition?

MR SMITHERS: Ja. All the offices seemed to have this. There was a partition that was up to about waist height. It was wood and above that was glass but it was a kind of ribbed glass. So with vertical undulations, if you want to call it that. So, it was not clear glass but it was not opaque.

MR VARNEY: So, you could see through the glass but your vision was somewhat obscure?

MR SMITHERS: Correct.

MR VARNEY: In your affidavit at paragraph 20, you say that
10 you were there for approximately three quarters of an hour with a few black security police officers. What then transpired?

MR SMITHERS: Well, shortly after we had arrived there, we sat down and they were keeping me there just until it was time to go to the optician. I looked ahead of me and I saw that there were people in the room next door. The room appeared to be a quite a lot smaller. It was obviously the same width but it did not have the same depth as the room that I was in and there were a number of people standing there, one of
20 whom I recognised as been Dr Neil Aggett and initially it appeared that he was surrounded by a number of other people and he appeared to be talking to them, gesturing and so on.

I did not recognised any of the other people but Neil I could recognised because he had a very distinctive face, distinctive beard and so on. So, eventually most of the people

left the room and I think there were only two or three police officers, what I assumed to be police officers who were with him, who were actually then talking to him, engaging with him and he was standing all the time and as I said, I could see him gesturing and engaging with them and they engaging with him.

MR VARNEY: When you say he had distinctive features, what were they?

MR SMITHERS: Well, he had a beard and I do not how to describe it but a particular shape of face and his gestures, his
10 movements, I knew him fairly well. So, I knew how he moved, how he walked and so on, how he held himself.

MR VARNEY: Yes.

MR SMITHERS: And so, it was very clear to me that it was him, even I could not recognise... What I realised is that I could not recognised any of the other people because I did not know them. There was nothing to help me to identify them but in the case of Neil, it was clear that it was him.

MR VARNEY: Have you known Dr Neil Aggett before detention?

20 MR SMITHERS: Absolutely, ja.

MR VARNEY: Can you describe to the court how you knew him and what kind of relationship you had with him?

MR SMITHERS: Well, we moved in the same circles. We were in the same communities, you know political, social, cultural communities. So, we would see each other at events,

at parties, at friends' houses and that sort of thing. I did not work directly with him. I knew that he was a doctor. I knew that he was working also in trade union work and I have been at a couple of social events with him as well. I knew that he had been in a long standing relationship with Dr Liz Floyd but towards the time when we knew each other, they had had some kind of separation and I saw them.

So, I saw him independently of her and it appears from my affidavits, which it is something I had completely forgotten
10 that he and I were actually talking about moving into a house together because I had been living in Yeoville and after the time of my first arrest I decided to move to Crown Mines where a lot of our community was living and it appears that I had been having discussions with him about the possibility of us sharing a house together.

MR VARNEY: So, you were quite familiar with Dr Neil Aggett?

MR SMITHERS: Yes.

MR VARNEY: Even before the detention?

MR SMITHERS: Yes, absolutely.

20 MR VARNEY: Then let us pick up the story where you were indicating initially Neil was standing surrounded by a number other individuals and some of them left.

MR SMITHERS: Yes.

MR VARNEY: And then what transpired?

MR SMITHERS: Well, as I said you know, for some time, for

all the time that I was there for that period, there was this intensive engagement, conversation going on between them where there was you know gestures. It was clear that there was a dynamic going on of conversation and so, it was clear to me that they were interrogating him in some kind of way. It was not a friendly conversation. It was not four guys standing around having a chat. They were moving around him all the time and he was you know, confronting him almost. It was the kind of sense of them circling him and confronting him on
10 issues and so on and then I got taken away.

I was taken to the optician. I was worried about what I had seen happening with Neil and it turned out that the optician that I was going to that the police were taking me to was in fact my own optician. What I learned later on was that they were taking me there because he was the optician that they used for prisoners normally.

So, it was a complete co-incidence and I had thought that because he had been my optician since I was about 10 years old. My first pair of glasses that I had ever got was from
20 him. I thought I might have the opportunity of saying to him, could he send a message to my then partner, telling her that I have seen this thing happening with Neil and you know just letting people know that he was been intensively interrogated and so on.

Unfortunately, I was not able to do that because when

we got there, the police officer took me, who was a white police officer. He was quite happy to sit outside the booth, you know where they examine your eyes but the optician insisted that he sit inside the booth while he was testing my eyes and later on I spoke to him about it, a couple of years later and he said it was because he did not want to put himself to compromise himself, put him in a situation where he might end up being accused collaborating with one of the prisoners.

So, I had no opportunity to tell him anything and then
10 we finished the consultation and I went back. They took me back to John Vorster Square.

MR VARNEY: And where were you taken on your return at John Vorster Square?

MR SMITHERS: I was taken back to exactly the same room and I was left in the same room again with one of two black police officers and waited until they were ready to take me back to Randburg Police Station.

MR VARNEY: And what did you witness whilst sitting in that room?

20 MR SMITHERS: Well, what I saw when I got there, was that Neil was still there but now the whole scenario had changed quite dramatically. He was... First of all he did not have a shirt on. Before when I had seen him he was wearing a white shirt, a collar shirt and now he was clearly without a shirt because I could see that he had no top on at all and now he was being

made to do a variety of exercises and these exercises and again I could not see all of the exercises but I made certain assumptions around what kind of exercises they might be, given what I saw happening.

So, a lot of what he was doing was been made to run on the spot with his arms outstretched in front of him. Sometimes when he was running on the spot he was clearly made to lift his knees very high because his whole gate changed. The way he was moving changed. You could see there was a much
10 greater effort being carried out.

He was getting quite tired, I noticed because he staggered on occasion, wiping his forehead. So, I assumed that he was sweating from the exertion and every now and then he would go down, he would disappear from view but the police officers standing over him and at times them shouted, you know the only time I ever heard the actually words been said because all the time there was a murmur of voices but the only time I ever heard any actual things said, was when they said things like, "Who told you to stop?" or "10 more. Do 10
20 more." So and that particularly was happening when he was down out of view.

So, the only assumption that I could make was that he was doing more exercises, possibly push-ups or sit-ups, I do not know what it would have been because I could not see but then when he came up again, he was again clearly tired,

staggering, wiping himself but then again been made to run on the spot.

MR VARNEY: And do you construe that the exercises he was made to do a form of punishment?

MR SMITHERS: Absolutely. There was no other reason why as a political detainee you would be standing in a office on the 10th floor of John Vorster Square doing exercises with three policemen walking around him and shouting at him. That could be the only conclusion.

10 MR VARNEY: That is right.

MR SMITHERS: Ja.

MR VARNEY: And this was not a gymnasium?

MR SMITHERS: Correct.

MR VARNEY: On the 10th floor on John Vorster Square.

20 MR SMITHERS: But in addition to that the other thing that was happening was that they were or at least the one police officer had something in his hand which looked, again it was impossible to discern what exactly it was but it looked like a rolled up newspaper or a rolled up magazine or something of that nature and they were... This police officer was hitting Neil with this thing, not very hard, more I think as a form of harassment than assault, if you want to make that differentiation but clearly harassing him as he was doing these exercises, as he was running up and down, just going around and hitting him on the body on his upper torso.

And the other thing that happened, again and of course I am again surmising because there were certain things I could not actually see but I could surmised from what happened. There was an occasion when one of the officers appeared to adjust his clothing, to do something around his waist and then and this is why Neil was down on the ground, out of my view and then heard, I saw the officer lift his arm and I heard a noise of something striking, what sounded like striking flesh and so, I concluded that he may have taken a belt of and was
10 hitting Neil with a belt but it may have been with his hand, it may have been with the newspaper again, I do not know but certainly that appeared to be what was happening.

And what is important to understand about all of this is that I was deliberately watching and trying to record in my own mind what was going on because I knew that somehow it was important for me to get the information out to people, to the DPSC in particular and so that they could actually then make some effort to bring legal action etcetera to try and stop whatever was been done to Neil, bring some kind of court
20 action to protect Neil from what was happening to him and ja.

MR VARNEY: You also indicate that the striking with the rolled up newspaper or magazine in paragraph 29 of the affidavit that in particularly when his arms were shagging.

MR SMITHERS: Yes.

MR VARNEY: That is when he was struck more.

MR SMITHERS: Correct. Ja, to encourage him to lift his arms up again, correct.

MR VARNEY: Will you just clear up one thing, Mr Smithers. In your affidavit you indicate that the abuse as in the exercises and the striking commenced before you were taken to the optometrist. In your oral evidence you indicated that while you did view Dr Aggett through the ripped glass before you were taken to the optometrist, the actual abuse commenced afterwards.

10 MR SMITHERS: Correct. You know when I was going through my original testimony, which was 38 years ago.

MR VARNEY: In 1982.

MR SMITHERS: Ja. I think that over time what has happened is that my memory kind of merged the various things that happened. So, when I read the testimony that I gave at the time and this is one of the occasions I was referring to earlier on, when I read the testimony that I gave in 1982, I realised that it was indeed the case that in the first period there was no actual physical abuse taking place.

20 There was intense questioning, intense engagements, as I said this kind of circling, threatening, circling action taking place with Neil talking and engaging in that way with the police but there was no actual physical abuse at that time. That all I actually only saw happening when I came back but I had that confused by the time I did the affidavit last year or the year

before with you, ja.

MR VARNEY: Now, you mentioned that there were some like security branch officers with you in that room.

MR SMITHERS: Ja.

MR VARNEY: While you were observing what was happening to Dr Aggett, what did they do and what was their reaction?

MR SMITHERS: They were just sitting there. I mean I do not recall exactly what they were doing but they were sitting there, maybe reading a newspaper, maybe just starring out the
10 window. They did not seem to find it strange or peculiar and I am talking about both times. I am talking about the time before I went to the optician and the time that I came back. They did not seem to find it a problem almost that why a detainee was sitting in the room and watching another detainee been tortured. They never said anything to me. When I looked at them, there was nothing, there was no, not even a recognition or some indication from them that they felt that it was a problem.

I found it so strange that I began to wonder whether it
20 was almost deliberate because I thought perhaps they were trying to intimidate me and saying to me that this is what could happen to you. Now, in the previous inquest the question that was asked of me was, why would the police want to intimidate me if I was, if my interrogation was already finished and if I have finished my statement.

What I obviously could not say at that time in that inquest was that I was working underground for the ANC. They have not actually discovered that but I had no idea whether in the interim they had actually managed to get further information, get new information, just as they had done after my first detention, which occasions, my second detention when they had got new information which they wanted to find out from me about the box of chocolates.

I assumed that there was a possibility that they had
10 more information or that they were at least sufficiently... In fact, Captain van Niekerk even said to me at a certain point, he said: "I know you lying. I know you are hiding something." You know even during my statement. So, I assumed perhaps this why because it was completely baffling to me that this could be happening that I could be sitting in this room and seeing this thing happening and it did not seem to matter to anybody that I was seeing it.

MR VARNEY: And you say that this saga continued for an approximately an hour?

20 MR SMITHERS: Ja.

MR VARNEY: How did it come to a conclusion?

MR SMITHERS: Well eventually, all the way through and the reason I knew about the time by the way, I did not have a watch and obviously I was a political prisoner. I did not have a watch but so all the time because I was trying to record the

information so I would be able to get the information out if I could, I was asking the police officer what the time was and so, I kind of built up this picture of the time. And ja so, about 55 minutes to an hour after I had come back from the optician, they suddenly stopped. In fact there seemed to be a kind of a flurry outside of somebody else arriving outside that room and then Neil was told to stop.

There was indication that he was told to stop what he was doing and then he bent down and his gestures, the way he
10 bent down was it look, you know you kind of bent forward and then stood up again and then he bent forward a second time and stood up again and what that made me realised is that he had probably been naked because what it appeared what he was doing that each time that he bent forward, was first he was pulling on his underwear and then he was pulling on a pair of trousers and having done that he pulled his shirt over his head and then he was led out and taken away.

MR VARNEY: And then what transpired there, were you at some point taken back to Randburg?

20 MR SMITHERS: Then I was taken back, ja. Shortly after that I was taken back to Randburg by the police, ja.

MR VARNEY: And after witnessing such a disturbing event, how did you feel when you were taken back to your cell in Randburg?

MR SMITHERS: Well, you know I was assailed with a range

conflicting emotions. You know, while I was sitting in the room, in particularly in the second phase after coming back from the optician, I felt you know a huge amount of anger because of what I was seeing happening but I also felt completely helpless because you know I wanted to do something.

There was a moment at which I actually contemplated picking up a chair and flinging it through the window of the room that they were in with the view to I guess saying to police
10 you know, you are been watched, kind of thing and that Neil would also know that he was not alone but I realised that that would be probably a fairly foolish thing to do because it can only have negative consequences for me but also and more importantly it would not achieve anything for Neil because even if I did do that how would that changed anything for Neil, how would or why would the police even care that I knew or that I had seen what was happening and so I decided like I said that my job was to record what was happening so that I can give a reasonable account of what I had seen and get that
20 information out. So that at least people who did the capacity to deal with it, which would be people like the Detainees Parents Support Committee and the lawyer and lawyers would be able to try and take action.

When I got back to the police station, I mean ja, to the police station, to Randburg Police Station, I was feeling pretty

devastated and not really knowing what to do. I felt a serious of emotions. Like I said, I felt anger. I felt this sense of helplessness. I felt concern for Neil and I guess concern for all of us because if that was happening to Neil, it could be happening to all of us and I almost wanted to identify with Neil. I was kind of... I think I was in a very disturbed state actually and so on.

I started to force myself to do the same kind of exercises that Neil was doing but in a very punishing way by
10 so forcing myself to run on the spot and possibly even crying while I was doing that and just out of rage and frustration and everything else. And it was a way I guess, of getting rid of the tension that I experienced through that whole incident but also in a perverse kind of way to identify with Neil and kind of trying to feel the pain and the frustration and indignity and so on that he had gone through. And I tried that for three days actually, every day until that I eventually was so sore that I could not continue.

MR VARNEY: Were you seeing perhaps whether if you could
20 withstand similar ...[intervenes].

MR SMITHERS: I think there was that too. I think that having seen that it was happening to Neil and considering that there was a possibility however remote that my interrogation might start again and if it did, it might move into different phase, a similar phase of what I have seen happening to Neil. Would I

be able to handle it, you know would I be able to continue without collapsing, without breaking and so on? So, there was that element of it as well. As I said it was very complex. It was very difficult, a few hours actually after I got back.

MR VARNEY: Then you decided to take some kind of action alert the outside world?

MR SMITHERS: Ja.

MR VARNEY: Can you explain your efforts?

MR SMITHERS: Ja. You see and again that this is not
10 something that I was able to talk about in the earlier inquest. When I went to Randburg Police Station, out of all prisoners and in particularly political prisoners, I was going to try and devise ways to get messages out, to get information out. And so, when I got to Randburg Police Station I was in a cell on my own with a little exercise yard next to it but above the toilet there was a window and if I looked out that window, running along all the cells, there was actually a wall outside.

So, if you imagine the cells are here, these are the cells, there was like a wall over here that you could not see
20 that was the same height as the windows. You could not see over the all and a passage running between them, an open air passage and at the end of that passage was a gate and because I was in the first cell right at the end of that passage I could see the gate and from the gate I could see into the parking lot of the police station.

There was a kind of a lawn, a piece of lawn coming down and then the parking lot and I realised, this is with my first detention and I realised that actually if somebody came to see me I will be able to see them in the parking lot and so I had somehow acquired a pen and I wrote a small note, which I then hid in the jacket that I had and after the first week they allowed me a change of clothing and so I sent the jacket out in the hope that my season political friends realised that there was possibly a note hidden somewhere in my clothing.

10 Unfortunately they did not and so they just washed the jacket and destroy the note. So, when I came out of detention that time I was able to explain to them that this is what I tried to do. So, when I went back to ...[intervenes].

MR VARNEY: So, to clear that experience you have just relayed to the court was from your first detention?

MR SMITHERS: Correct.

MR VARNEY: Not from your second detention?

MR SMITHERS: Correct, this was from my first detention and the note basically said to them: "Come to the police station.

20 Come and park in the parking lot and then turn on the car radio." and I said to them play a particular piece of music., which was a song by Leonard Cohen called "So long Marianne" and the first line of that song is "Come over to the window my little darling." and I knew it was pretty unlikely that sort of the average person would come and park in the parking lot of the

Randburg Police Station and play that song. So, I would know that it was them and then I would go to the window and at least I would get to see them. So that was the idea.

So, when I went back into Randburg Police Station and I was put into exactly same cell. I was exactly in the same circumstances and therefore I realised that I would be able to have some kind of contact with them and I sent the same message out, saying that I am in the same cell and this time they did find it and so indeed they began to come and at first
10 they would sit on the grass and play music and I would see them and wave and whatever it was and then I started to realise because I was surrounded by ordinary prisoners.

I used to often hear people, family members of the other prisoners standing outside the wall and calling to their friends and calling to their families and saying, you know whatever, talking about food, money and whatever it was they were talking about and I started to realise that actually my friends came up to the gate and spoke to me and nobody would even noticed. And I think it was because the Uniform Branch did not
20 have the same understanding, did not have a clear understanding of what it meant to have a political prisoner in their midst and that you would not want people from outside to come and talk to that political prisoner and so that began to happen.

So you know, I remember the first time I called them. I

said come stand by the gate and they did it and we chatted and so on and then eventually I worked out that the toilet had like a long wire, like you know that kind of wire that coat hangers are made of, had a long wire and I could disengage it and so I started to take little a straw from a Liqui Fruit and put on the end of the wire with a message inside it and I was able to pass it out and then I would get money in that way as well, notes and that was very useful then because I was able to use that to buy newspapers and so on, even though I was not
10 supposed to read newspapers but I managed to do that.

So, when I got back to the police station and after I had done the exercise and after I had kind of calmed down from what had happened, I thought okay, what do I do now and I thought the only thing that I can do right now is hope that somebody will come and see me because if they do I will be able then to pass them a note and they will then be able to go to the DPSC and give them the information about what I have seen with Neil and that Neil would then be afforded some kind of protection.

20 So, I had a bible because the first month I was only allowed a bible. So, I had a bible and I tore a page out of the note section of the bible and I wrote this note just explaining what I have seen happening and saying that you know that somebody should do something and then I waited and you know there was nothing I could do. There was no way that I

could actually will people to come and I tried but it did not work and so for the next 10 days nobody came to see me. I did get clothes but I did not want risk hiding the notes in clothing because obviously I knew the police did search the clothing to see if they could find notes and I did not mind if I sent out an innocuously note but I did not want to take a risk and put this note into my clothing in case it got found.

So, I just waited and nobody came and then on the 5th of February I happened to ask one of the police officers to go
10 and buy me a newspaper and he did and he brought it back and the headline was that Neil had died.

MR VARNEY: So that must have been just devastating for you, Mr Smithers.

MR SMITHERS: Well you know, it basically... I just felt this huge amount of guilt actually that was the main thing I felt because I felt as though I had let Neil down that I could have... I almost felt like I could have done something, something more to get that message out, to get the information out and that I failed him.

20 So, it was very, very difficult, a few hours for me and I reread the article a few times and in the article it said that the Detainees Parents Support Committee was trying to arrange visits for the rest of us because obviously they were now worried. Everybody was worried. All families were worried about the fact that their families were there and so, I knew that

I would probably get a visit the next day and so, I thought that well this is going to have be my opportunity to get this message out.

I do not know how I am going to do it because if I had a visit it was most probably going to be at John Vorster Square and if it is at John Vorster Square it is going to be difficult to communicate because what used to happen if we had visits, which we did have occasionally, we always had a police officer sitting, usually very closely.

10 I can remember this one police officer when my partners used to come and visit me, he would sit... One of us would be here and the other one would be here and he would be sitting here, almost like watching a tennis match because he would you know as we would speaking he would go like this the whole time, watching to see what we are saying and making sure that you were not saying anything that we were not supposed to be saying.

20 So, I did not quite know how I was going to manage it but I thought that it was the only opportunity that I am going to have and then I did not know who was coming to see me either because my... I hoped that it would be my partner. I guess it could have been a family member but I was not certain. So, knowing that I probably get a visit, I decided to rewrite the note but now to indicate that I knew that Neil had died and to say that I hope that somehow the information that I am going

to give them is going to help to try and find out how it happened and what happened and so on and at least people would know that this torture had been happening.

At this stage I did not know that there had been other information about Neil been tortured, etcetera. I found that out later that he written statements himself and other people and that he spoken to other people about it. So, I did not know at that stage that I was not the only person who was aware that he was been tortured.

10 And so, I rewrote the note indicating that I knew this and then I prepared the note, put it into a match box and put a false bottom in the match box so that the match box appeared to be innocent, innocuously but if somebody fiddle around with it enough they would find that there was a false bottom to it and they would find the note in it and that was what I did in preparation for the meeting the next day.

MR VARNEY: In fact, it was your sister who came?

MR SMITHERS: Yes, she is my older sister. My partner was away and could not get back in time and so it was my sister
20 who came to see me, ja.

MR VARNEY: And explain to the court how you managed to give a note to your sister?

MR SMITHERS: Well, luckily and perhaps I do not know why it was done like this this time. Maybe It was because it was not a normal kind of visit but when we went in, it was a similar

room to the one that I had been in when I saw Neil. I am not sure what floor it was on but 9th or 10th but when we went into the room, I was sitting in a chair next to a table, a normal office table and the police officer, a white police officer was sitting on the other side of the table, which meant the table was between us and that he could not see below you know waist level I guess.

So that was incredibly fortunate because my sister came in and she sat directly opposite me. So, our knees were
10 almost touching and that meant he could not also see much below the waist, below her waist because of the table being in the way.

So, we had this conversation and at some point I pulled out a tissue and at the same time pulled out the match box and put the match box on my knee and while we were talking, I was trying to do this while we were talking so that the police officer would not have any indication of what was going on and I was trying to with my eyes and my hand trying to indicate the match box to her so that she would know that I wanted her to
20 take it and she realised that and I must say to her credit she was very clever because she then took a tissue out and blew her nose and with the tissue in her hand she placed it over the match box on my leg but you know like in a sort of intimate gesture of support and so on to me but covering the match box and then she was able to at the right moment to pick it up and

just put the match box and the tissue back into her handbag and so that was done and then she left.

They ended the visit then and it was a very emotional parting almost because she said to me as she was leaving. She said: "Please be careful. You are my own brother." And I was feeling anyway quite emotional about our family situation because of something that I did not mention earlier is that a week after I was detained the second time, so it must have been towards November. I do not remember the exact date. I
10 got a visit from my other sister who came to tell me that my father had died.

So, I had to process that as well and the fact that the police would not allow me to go to the funeral. So, for that point of view and my sister said to me being her only brother, it kind of added to the emotional turmoil that I was in at the time. Anyway, we finished off the meeting, the visit and I was then taken back to the police station and left there and then another week went by and again I seem to get the timing all wrong or right around this but I again ask for these guys to buy
20 me a newspaper and I got a newspaper and the headline this time was that Helen Suzman had read my note out in Parliament and later on I discovered that my sister and her husband had once they found the note they thought the only thing to do was to give it to Helen Suzman and she used the opportunity of been in Parliament to read it out.

Once again I was thrown into huge emotional turmoil because I thought that is it I am gone because the police were very careful about keeping records of moving people around. You know people were signed in, people were signed out and so I thought it was impossible for them not to know that it was me who sent the note out because you know they had to be able to just track the movement of everyone and say, well where was Neil at that time, which office was he in, who was in the office next door, you know etcetera and they would have
10 worked it out.

So, I spent the next few days absolutely unsure you know what was going to happen, whether I was going to live, whether I was going to be fetched and go through the same kind of thing that Neil went through. I had no glue. ...[intervenes].

MR VARNEY: Could you just pause for a moment and return to the note.

MR SMITHERS: Yes.

MR VARNEY: I understand that the note was EXHIBIT EE1
20 before the first inquest and it is also attached as an annexe to this affidavit.

COURT: G2?

MR VARNEY: That is right. It is in annexure 2, EXHIBIT G9. Mr Smithers, the text of the note is set out under paragraph 41 on page 13 of your affidavit.

MR SMITHERS: Ja, here it is.

MR VARNEY: And I would like you to read the note into the record.

MR SMITHERS: Okay.

10 “On the 25th I was at John Vorster Square JVS from plus minus 9:30 to 10 o’clock and plus minus 11 o’clock to 12:15. In the first period I saw Neil been interrogated by plus minus six guys and then some left and three remained. Neil was standing all the time. In the second period he was still standing, except he was naked. He was made to do push-ups as a substantial number. He was hit either with a belt or a rolled up newspaper while doing them. Then he had to get up and run on the spot, arms outstretched in front of him. Every so often he was made to lift his legs up high while running and all of this was interspersed with more push-ups. All the while he was been interrogated. The hitting with the news paper went on all the time, especially if
20 his arms sagged. He was sweating profusely and when once he nearly fell over a chair with extortion, he was further harassed. When he got dressed after 12 o’clock he was pushed around even then. It was clear that he was completely naked because he obviously drew on his underpants and then his

trousers.

I can only imagine how often he had to go through this and what worse things were done to him. Use this info but for the moment do not use the date or my name but keep the note in a very safe place in case it is needed later. Please give to Yvette especially but also everyone else all my love and strength. We must go on. I did know Neil very well but he was obviously a very special person. His killing must not be for nothing. I am okay. Nothing has been done to me. I do not think anything will be done. I am not that important. Take care. Maurice.”

10

MR VARNEY: Thank you. Now, we can just return for a moment to the black officers who were present with you in the room and you were called like one of them, a Mohani Gedden Maketha gave evidence in the first inquest and in fact contradicted your version of the events.

MR SMITHERS: Correct...

20 MR VARNEY: Do you recall how he attempted to contradict you?

MR SMITHERS: Well, he said that there was nothing going on in the room next door and he also said he did not have a watch. So therefore he could not have told me the time.

MR VARNEY: And your view was that evidence false?

MR SMITHERS: Completely.

MR VARNEY: So, I can advise you that Mr Maketha will be testifying in the re-open inquest.

MR SMITHERS: Yes.

MR VARNEY: M'Lord, his affidavit which has been already put up. I believe it is exhibit?

COURT: 36.

MR VARNEY: EXHIBIT 36.

COURT: Ja.

10 MR VARNEY: Mr Smithers, before this inquest you will confirm that he was in the office with you and had in fact he did witness what was going on in the office next door. At that particular point in time he felt fearful and had to comply with the instructions of the Security Branch. Do you have a response to that development?

MR SMITHERS: Well, I was aware, Judge. I was aware of this because at the onsite visit to the prison, no to the police station on the 2nd day of the inquest he was present and he indicated then that he had... He did not talk about the issue of
20 the timing as far as I recall but he certainly did indicate that there was activity going on in the room and there was somebody who was been made to jump and down as he put it and so on and he also indicated that he was in a position at the time where, had he said anything, he would have been in trouble and therefore he had to, basically he had to lie.

MR VARNEY: While we were dealing with the first inquest you indicate in your affidavit that there were attempts by the legal team for the police to discredit you what appear to be the pettiest grounds, such as the spelling of a name and the taking of the oath.

MR SMITHERS: Correct.

MR VARNEY: Can you elaborate on that inquest?

MR SMITHERS: Judge, ja. I had actually... it is true that I did spell my name in two different ways and that was just a
10 personal historical choice that I have made, partly related to a general irritation that I had that the people always spelled my name incorrectly because my name is spelled Maurice in the French way but my family always call me Morris and so I had this situation that I was not spelling my name in the official way as Maurice.

So, everyone knew me as Morice, which is my own particular concoction and so I also signed myself as Morice but because legally the name was Maurice and the police seized on this as some kind of evidence that I could not be trusted or
20 something or that I was trying to hide my name, although I think that had I been having a false name I would not have actually just an alternative spelling of my own name. I did in fact have a secret name but it was not Morice, it was Martin I think if I remember correctly. It was my nom deplume as an underground ANC person.

And the other thing that happened was that when I have made my statement in, when I was in detention I took the oath. I do not recall when I took the oath the phrase, "So help me God" being used. Somebody I think just said will I take the oath and will tell the truth, the whole truth and nothing but the truth and so on but I suppose even, I am not a religious person. I am not a practicing Christian or any other kind of a religion. Even at the time I think I probably would have agreed because that was the way that the average... that was the
10 norm that people took the oath and I did not want to rock to the boat any further.

I was in a very delicate position, being in prisons and being in the hands of the security police and for me to have made an issue at the time about using the oath, I think would have probably caused more difficulties than I thought it was necessary and so I took the oath.

When I then appeared in court for the inquest I affirmed and partly I supposed because my objective situation was different and I did not feel as threatened, although it was a
20 hostile court but nevertheless I felt able to say that I affirm rather than taking the oath and so, ja. That was the reason and they used both of those of a way to attempt to discredit me to say I was untrustworthy witness.

MR VARNEY: Thank you. Mr Smithers, before I close and hand to my colleague for the State, is there any further you

wish to add in conclusion?

MR SMITHERS: I do not think so. I think that you know at this point just to say like I have said earlier on I think in my statement that I am very happy to have had the opportunity of actually talking about this and coming and be able to tell the story again and to tell it more fully because of the different circumstances but also that we will hopefully find out what the truth is because it was a very devastating experience for everybody and there needs to be proper closure around it so
10 that there is a sense that the truth has been... Whether we will get to the full truth I do not know but hopefully we will get as close to the truth as possible and be able to continue with... continue with the sense at least Neil's death has been understood and honour almost, ja but as far as evidence goes, I do not think there is any more information that I can give you at this point in time with in relation to...

Except maybe, it is useful to mention that although I did say that the police did not appear to know that I was the one who gave evidence that I was the one who wrote the note. I
20 was very surprise when I came out of detention that I was served with a banning order and I honestly did not believe that I was doing enough to justify having a banning order and the only conclusion that I could reach was that it was a vindictive act to get at me for having sent out this note and having given evidence at the inquest and this is a way that they can do it

without having to answer for it because when banning orders were issued there was no obligation on the State to actually explain why the person has been banned in great detail.

All they had to do was to say that the person is a threat to the State. Their activities have been a threat to the State and that will be the way that they could actually punish me I guess for having sent out this note and for having expose what had happened because if they have done anything.

I think they realised if they have done anything to me
10 while I was in prison still that that would have not... I was almost untouchable because they knew that Helen Suzman and various other people knew who sent the note out and if something happened to me there would have been a major incident. It would have been a major incident. So, I am surmising. I am not saying it is why but it could be one of the reasons why they actually served me with that two year banning order.

MR VARNEY: And what were the basic terms of the banning order?

20 MR SMITHERS: Well, the banning order had meant basically that you had to stay within a certain magisterial district unless you have got permission from the police to move here, to report to the police once a week.

You were not allowed to go into an educational institution. You were not allowed even to go into a court room

unless you had reason to be there. You were not supposed to be with more than one person at a time. You could not communicate with another banned person. Ja, those were the kind of things.

MR VARNEY: And you had to be home at certain hours?

MR SMITHERS: No, that was not house arrest. That was house arrest. Some people like Helen Joseph and others had house arrest and that meant you had to be at home at certain hours but no, I was not under arrest. It was just a banning
10 order, ja.

MR VARNEY: No further questions, M'Lord.

COURT: Thank you. Counsel, what do you want to do now?

MS SINGH: M'Lord, I think it is 4 o'clock already.

COURT: 4 o'clock.

MS SINGH: May we then stand down until tomorrow then?

COURT: Ja okay.

MS SINGH: Thank you, M'Lord.

COURT: Mr Smithers, we cannot continue today because of the time.

20 MR SMITHERS: Sure.

COURT: Will you please be here tomorrow?

MR SMITHERS: No problem, Judge.

COURT: Tomorrow morning at half past nine.

MR SMITHERS: Sure.

COURT: Thank you, very much.

MR SMITHERS: Thank you, very much, Judge.

COURT: The court adjourns.

REGISTRAR: All rise.

MATTER IS POSTPONED TO 4 FEBRUARY 2020

COURT ADJOURNS

[15:54]

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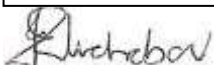
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