

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

CASE NO: 445/2019

DATE: 2020-02-04

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 IMPLICATED SAPS : ADV COETZEE

[Previous SAPS]

ON BEHALF OF SAPS : ADV AMOJEE

[Current SAPS]

INTERPRETER : [not applicable]



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PROCEEDINGS ON 4 FEBRUARY 2020

[09:36]

REGISTRAR: This is the inquest of the late Dr Neil Hudson Aggett, case 445/2019.

COURT: Okay, Mr Smithers, you are still under oath.

MR SMITHERS: Yes, Judge.

COURT: Thank you.

MR SMITHERS: Thank you.

COURT: Yes, yesterday when we... Yes, Adv Singh, you may proceed.

10 MS SINGH: As the Court pleases, My Lord.

MAURICE PETER SMITHERS: (still under oath)

EXAMINATION BY MS SINGH: Morning, Mr Smithers.

MR SMITHERS: Morning.

MS SINGH: Mr Smithers, I just have a few questions for you. Yesterday you testified that when you were at court, you were informed by Warrant Officer Deetlefs that you need to go to John Vorster Square.

MR SMITHERS: Correct.

20 MS SINGH: That there was a Captain van Niekerk that wanted to see you.

MR SMITHERS: Correct.

MS SINGH: And you were told that you were not going to be arrested...

MR SMITHERS: Correct.

MS SINGH: And you were subsequently arrested.

MR SMITHERS: Correct.

MS SINGH: So Deetlefs lied to you?

MR SMITHERS: Correct, absolutely.

MS SINGH: Right.

MR SMITHERS: *Ja*.

MS SINGH: When you got to John Vorster Square, I just want to know, there was a time period when you said that you were taken to Randburg police cells, you were detained there and then there was a time when you were brought to, brought to
10 John Vorster Square, I am given to understand there was a time period that you were detained at John Vorster Square, am I right?

MR SMITHERS: No, no, not at all. I was not kept at John Vorster.

MS SINGH: Right.

MR SMITHERS: What happened was that day, particular day, I was taken from magistrate's court...

MS SINGH: Right?

MR SMITHERS: ...to John Vorster, arrested, you know the
20 processing was done and then I was driven to Randburg Police Station... [Intervened]

MS SINGH: To Randburg Police Office... [Speaking simultaneously]

MR SMITHERS: And then what happened was, I would come in regularly to, and the captain would talk to me and then I

would also write a statement. So there was a time...

[Intervened]

MS SINGH: Yes.

MR SMITHERS: ...that I was actually sitting at a typewriter and typing up my statement.

MS SINGH: Okay.

MR SMITHERS: So they would bring me in to do that and they would take me back but every night I slept... [Intervened]

MS SINGH: At, at Randburg police cells.

10 MR SMITHERS: In Randburg police cells, *ja*.

MS SINGH: Alright. When you were processed, I presume that when you went back to Randburg police cells, you also went through their books as well. Your belt, shoelaces, were you allowed to have that in your cell with you?

MR SMITHERS: No. No, no, the, the, there was a standard practice; as soon as you were arrested... [Intervened]

MS SINGH: Right.

MR SMITHERS: They took away your shoelaces, your belt, anything of that nature, a scarf, if you had a scarf...

20 MS SINGH: Right.

MR SMITHERS: Anything that would be taken away.

MS SINGH: At John Vorster Square, in particular who were your other interrogators? Can you recall? You do not recall their names?

MR SMITHERS: No, it was actually only Captain van Niekerk.

MS SINGH: Only, only him?

MR SMITHERS: *Ja*, he was the only person.

MS SINGH: Alright.

MR SMITHERS: *Ja*.

MS SINGH: There were... Yesterday when you testified, you said at that you had seen Dr Aggett, you had seen him through an opaque glass.

MR SMITHERS: Correct.

MS SINGH: You said: 'You know, there is certain identifying
10 features, like he had, he was very specific, he had a very definitive beard, a very definitive face, and gestures'. Can you just elaborate a little further on that?

MR SMITHERS: Sure. Well, a couple of things, one is that Neil, it seems to be a family thing, has quite a prominent chin. So you know, instead of having a flattish chin like I have for example, his chin actually sticks out quite a bit. So his beard, he had quite a thick beard and that beard also stuck out more than, you know, if I had a beard for example which would go straight down. It, it kind of stuck out a little bit and quite, he
20 had quite a thick luxuriant beard and moustache.

MS SINGH: Right.

MR SMITHERS: So I could not really, you, you could not, I mean his mouth was quite hidden actually.

MS SINGH: Right.

MR SMITHERS: ...by his beard and also his hair, his hair,

both his hair and beard, he was like a lot of us at the time, we did not go to, we did not go to hairdressers. We used to cut our own hair.

MS SINGH: Right.

MR SMITHERS: Or we would cut each other's hair, let me rather say, and I think Neil was pretty much like that. So he had kind of quite a unkempt look about his hair but it was very distinctive particular, the most important thing was this chin that he had.

10 MS SINGH: Right.

MR SMITHERS: Quite a pointed chin and a bit of a turned up nose as well.

MS SINGH: Height wise? How would you describe that?

MR SMITHERS: It is a interesting question. I think he was, we were about the same height. I think maybe he might have been slightly shorter, I am not too sure. I cannot remember that, *ja*.

MS SINGH: You testified, you said, look there were voices, there was an exchange of voices in and around him. Was
20 there a sense of urgency in the voices or was it just relaxed and calm or how was it?

MR SMITHERS: No, I think the, as I said yesterday, the, in the first session, that was the session before I went to the optician, there was just engagement taking place and, but there was a sense of kind of urgency and pressure. As I said

the, the, the...

MS SINGH: Yes.

MR SMITHERS: The police officers who were, he was standing and talking and gesticulating as he was talking, and they were kind of almost, like I say, circular, circling him in a, in a quite of threatening sort of way and so the, the conversation was intense. Afterwards, the time that they were all doing the exercises, much more aggressive. So you could hear the, an aggression in the tone of the police officers
10 themselves and then particularly when I heard them, as I said yesterday, the only time I actually heard words was when he was asked, 'Who told you to stop...' [Intervened]

MS SINGH: Stop, yes.

MR SMITHERS: And the other was, 'Do ten more, do ten more', and that was done very aggressively and very assertively, *ja*.

MS SINGH: You testified yesterday that there was a time where you, you assumed that by the way he had bent down that he had been naked.

20 MR SMITHERS: Correct.

MS SINGH: There was a time when his upper clothing had been removed.

MR SMITHERS: *Ja*.

MS SINGH: He was hit with, it looked like a rolled up newspaper.

MR SMITHERS: Correct.

MS SINGH: On paragraph..., 27 of your statement, on page 8 of your statement, you say:

“Twice, when Neil dropped to the ground, I could hear a loud cracking sound which sounded like flesh being hit.”

MR SMITHERS: Correct.

MS SINGH:

10 “And I witnessed one of the police officers raised the right hand and bent down at the same time as I heard the noise.”

Do you, are you saying that he might have been on the floor and they were assaulting him with the hand as he lay on the floor or who was it?

MR SMITHERS: Correct.

MS SINGH: Yes.

MR SMITHERS: Well, as I said, you know, it, obviously I was speculating about what was happening when he was on the floor.

20 MS SINGH: Right.

MR SMITHERS: But given the fact that at one time when he was on the floor, when he had disappeared from view, let me rather say; when he had disappeared from view, one of the times they said, ‘Do ten more, do ten more’. I think any reasonable person would, would realise that he must have

been doing some sort of exercise on the floor.

MS SINGH: Right.

MR SMITHERS: Particularly given that when he appeared again, he was staggering slightly and wiping his brow...

MS SINGH: Right.

MR SMITHERS: And so, and so the assumption I made was that he was doing probably push-ups and the time that you are speaking about where he, where he, I heard the cracking noise, that was the time that I, I, I again speculated because I
10 saw a police officer doing something around the waist, his own waist... [Intervened]

MS SINGH: Yes.

MR SMITHERS: And then I heard the cracking noise. So it sounded as though Neil was either being hit with a belt at that point.

MS SINGH: Right.

MR SMITHERS: Or otherwise with the officer's hand but the, the movement around the, the officer's waist seemed to indicate that maybe he was taking a belt off but as I have said
20 before, this was pure speculation. I, I, was not able to see with certainty that was happening. [Intervened] [Speaking simultaneously]

MS SINGH: But you were able to draw... [Speaking simultaneously]

MR SMITHERS: But certainly there was, there was definitely

a, a sound of, of flesh being struck.

MS SINGH: Right. Yesterday you said that you asked the policeman on the 5th of February to buy a newspaper.

MR SMITHERS: Correct.

MS SINGH: And that was the..., am I given to understand that was the first time that you heard that Dr Aggett had died in custody?

MR SMITHERS: Correct, *ja*.

MS SINGH: Is that right?

10 MR SMITHERS: Well, he died on the 5th and, and the..., *ja*, the first thing I got was the newspaper and, and nobody told me. Even, even when, even when I was being taken to John Vorster Square on the Saturday morning for a visit...

MS SINGH: Yes.

MR SMITHERS: The, the police officer transporting me did not tell me anything. I think I may have seen a bill board on the street...

MS SINGH: Right.

20 MR SMITHERS: But it did not, I do not think it said 'Aggett dead', I think it said something like detainee dies in detention or something of that nature but even when we saw that, there was not conversation from the, the police and it was only when I saw my sister and my sister said, I cannot remember if she..., but somehow there was an exchange between us that indicated that, you know, I knew that Neil had died, *ja*, and that she, and

she indicated it, *ja*.

MS SINGH: These banning orders that you spoke about, who was it issued by? Where did it come from?

MR SMITHERS: By the security police.

MS SINGH: Okay.

MR SMITHERS: But signed off by the Minister of, of Police, *ja*.

MS SINGH: So the Minister would have known that you were a banned person if he had signed it?

10 MR SMITHERS: Oh absolutely, absolutely.

MS SINGH: Nothing further... [Intervened]

MR SMITHERS: He had to, he had to sign the actual banning order, *ja*.

MS SINGH: Thank you.

MR SMITHERS: Which is why, unfortunately for the security police, which is why I ended up being served the banning order in the court because I had, after I came out of detention, we were told that we could not leave Johannesburg without permission from the police and myself and Liz Floyd and my
20 partner wanted to go down to the Eastern Cape to go and see my mother and so we got approval from the police to do that and it was while we were down there that we heard other people had been banned and when we came back we were supposed to report to the police that we were back and I did not and so in the interim they had had to send the documents

down to the, to the Minister of Police to sign and he was in Cape Town and so it was very unfortunate for them because it appeared that they had wanted to issue me the banning order right there and then to stop me testifying. So the, the minister had to ensure the public that I would be allowed to testify in the inquest which, which I was allowed to, *ja*.

MS SINGH: Thank you, Mr Smithers. My Lord, I have nothing further for this witness.

COURT: Thank you. You may proceed.

10 NO EXAMINATION BY MR COETZEE: Thank you, My Lord. I have no questions to this witness. Thank you.

NO EXAMINATION BY MR AMJEE: None, My Lord.

COURT: None. So re-examination?

NO RE-EXAMINATION BY MR VARNEY: My Lord, nothing on re-examination.

QUESTIONS BY THE COURT: Mr Smithers, can you just remind me again, when, what day was it what you say you saw him in the office adjacent to yours when there was a, a number of security officers surrounding him? What, what day was it?

20 MR SMITHERS: It was on the..., that was on the 25th of January, it was a Monday, and it was the day I had been brought in to, to Randburg, from Randburg to John Vorster, to go to the optician.

COURT: Okay. Now thereafter, did you ever had any encounter to, to see him at any other place?

MR SMITHERS: No, no... [Intervened]

COURT: Neil.

MR SMITHERS: The times I... I had actually seen him on occasion before that, there were times when I was brought in to John Vorster to come and write my own statement and there were occasions that I saw him also in an office sitting at a desk also probably writing a statement but I never encountered him, I never spoke to him, I just saw him but the, the, the time that I saw him on the 25th of January was the last time that I
10 saw him.

COURT: Okay. Now we, we heard evidence from say Rev Chikane and, and, I think Firoz Cachalia, that there were times when detainees written their statement, it will be torn up. Did it ever happen with you?

MR SMITHERS: No, no, no, Judge, that did not happen at all, no. I think that, I think that what happened, if I remember correctly, they may have got me to write statements by hand and there might have been occasions that they read it and said, no, what about this, what about that, but they did not tear
20 it up. They just asked me to clarify certain issues and then eventually I typed the statement. I, I, I could type, I had learnt how to type at that point in my life and so they were able to sit me at a typewriter and for me to actually type up the final statement but it was never torn up. They never, they never, although Captain van Niekerk did, as I testified yesterday, he

did on occasion say to me that I am lying, I am not telling him the whole truth. They never actually tore up the statement in the way that I have heard happened to other people.

COURT: Well, in, in the, in the interview with your interrogation, did they ever ask you about Neil, the deceased?

MR SMITHERS: No, Judge, not at all. No, there was, there was no, you know, they asked me, they may have asked me generally about the other people, that did I know other people that had been arrested and did I know anything about them but
10 I do not remember anything about Neil and Neil himself was only arrested the, as, as we said yesterday, I was arrested first on the 22nd of September and then released and then again on the 24th of November, Neil was then arrested on the 27th of November.

COURT: *Ja.*

MR SMITHERS: So by that time, *ja*, they, they, I think, I think they were, they did not see a connection, a direct connection between me and Neil. They would have asked me more about, Barbara Hogan would have been the key person they would
20 have asked me about because she was the one who had written the close comrades list on which my name appeared.

COURT: Thank you. Any questions arising of that?

NO FURTHER QUESTIONS BY MS SINGH: None, My Lord.

NO FURTHER QUESTIONS BY MR COETZEE: No questions.

FURTHER QUESTIONS BY MR VARNEY: My Lord. Just, just

this one question if I may. Mr Smithers, during detention, did you ever come across a police officer by the name of Lieutenant Stephan Whitehead?

MR SMITHERS: I do not recall ever coming across him. I might have seen him but, and I have seen photographs of him subsequently, but he does not strike a bell for me in terms of, there were people like Deetlefs, Struwig, Conrad, and so on that I, that I knew and encountered often but Whitehead I do not recall at all.

10 MR VARNEY: Thank you. No further questions for the witness.

COURT: Thank you. You are excused then, Mr Smithers. Thank you very much.

MR SMITHERS: Okay, Judge, thank you.

COURT: *Ja*, thank you.

NO FURTHER QUESTIONS

MR VARNEY: My Lord, our, our next witness is Mr Firoz Cachalia and my learned friend, Mr Tye Scott will be leading him.

20 COURT: Okay, he is coming in. He is your witness.
[Speaking simultaneously]

MR VARNEY: [Indistinct – 09:51]

COURT: Thank you, yes.

REGISTRAR: Please state your full names and surname?

MR CACHALIA: Firoz Cachalia.

REGISTRAR: Do you have any objection to taking the oath?

MR CACHALIA: No.

REGISTRAR: Do you swear that the evidence you are about to give will be the whole truth and nothing but the truth?

MR CACHALIA: Yes, I do.

REGISTRAR: If so raise your right hand and say: So help me, God.

MR CACHALIA: So help me, God.

REGISTRAR: Thank you.

10 COURT: Thank you.

FIROZ CACHALIA: (duly sworn states)

EXAMINATION BY MR SCOTT: Prof Cachalia...

MR CACHALIA: Morning.

MR SCOTT: Hi, thank you for testifying today in this inquest and we are well aware that you experienced quite a traumatic experience in detention back in 1981 and 1982 and it takes a tremendous amount of courage to participate in these proceedings. So, thank you for that.

COURT: Please raise your voice, Counsel. I did not...

20 [Intervened]

MR SCOTT: Sorry, sorry, My Lord.

COURT: Yes.

MR SCOTT: Mr Cachalia, you deposed to an affidavit on the 14th of July 2018. Do you confirm its contents?

MR CACHALIA: Yes, I do.

MR SCOTT: My Lord, the affidavit has been entered in as EXHIBIT G7. I have a spare copy if Your Lordship requires one?

COURT: I think I saw it here. I think [mumbling] look it.

MR SCOTT: Do you have a copy, Mr Cachalia?

COURT: I have got it.

MR CACHALIA: Yes.

MR SCOTT: Prof Cachalia rather. Prof Cachalia, will you please describe your current occupation to the Court.

10 MR CACHALIA: I am a professor in the law school at the University of the Witwatersrand.

MR SCOTT: And what do you teach?

MR CACHALIA: Constitutional law, administrative law, and legal theory.

MR SCOTT: And Prof Cachalia, back in the early 1980's what was your occupation at that time?

MR CACHALIA: I think I was a university student, I think I was an honours student at the time in industrial psychology in the class of Prof Eddie Webster.

20 MR SCOTT: Also at Wits?

MR CACHALIA: That is correct, yes.

MR SCOTT: And Mr, Prof Cachalia, I believe you were quite politically active during that time?

MR CACHALIA: Yes, I, I was the president of the Black Students Society, I think in 1980. In my home community, I

was active in the Benoni Student Movement, I was active in the Anti- [indistinct – 09:54] campaign and at that time became part of a network across the country of congress activists who were committed to, to change in the country, ideologically aligned with the African National Congress. There was a national network, Eastern Cape, Western Cape, Natal, Johannesburg. I was very active on the East Rand, Eatonville, with an organisation called ERAPO, the East Rand Peoples Organisation. So this network was involved in, you know, 10 trade unions, civic organisations, the student movement, youth organisations, and I was active in many of those structures. A network was, as I say, with that network of, of activists, many of whom already testified in these proceedings.

MR SCOTT: And, Prof Cachalia, you mentioned that these organisations were aligned with, ideologically aligned with the ANC. Could you just explain to us what that mean, it means?

MR CACHALIA: Well it meant that we, we were committed to realising the objectives of the Freedom Charter. We considered the, our leaders to be in exile or on Robben Island. 20 We wanted them released, we wanted those organisations unbanned. We wanted establishing, the establishment of a, of a..., of a democracy on, based on one person one vote and we were strongly opposed to the tri-cameral system, the bantu [indistinct – 09:56] and all efforts by the National Party to avoid what we considered to be the central question facing

South Africa, which was the lack of democracy.

MR SCOTT: So although you subscribed and, and, and followed the ideals of the ANC, those organisations were not ANC organisations?

MR CACHALIA: Well, we adopted the Freedom Charter for instance, I remember when Mary Moodley died in, in Benoni, we hoisted the flag of the African National Congress. So we were very clearly ideologically aligned with the African National Congress but we understood that there were many
10 different ways, from a strategic and tactical point of view to, to pursue our objectives. So some people were involved in underground structures and they were taking instructions directly from the, from the ANC and others who were also ideologically aligned with the movement, with the liberation movement, thought that it, it was prudent, since they were active in mass organisations like trade unions in the public space, to act in pursuance of the ideals without formally taking instructions from the ANC which was a banned organisation. But you know listened to Radio Freedom, we had networks
20 through which we, we understood what our goals were as well as how to pursue our objectives, if you like, in the legal space which was emerging in the country post [indistinct – 09:58] late 70's, early 80's, after the regime had banned the Black Consciousness Organisations. They were trying to, to defend the *status quo*, by establishing, quizzing, fraudulent political

structures in an effort to stabilise their regime and that, but that ironically created the space for, for mass political work, the [indistinct – 09:59] created the possibility for instance, legalised the African Trade Unions, that made it possible for an organisation like COSATU to, to re-emerge and I think that is what created difficulty, Justice, for, for the security police because we were, we, were persuasive in the public domain; we were calling public meetings; we were articulating our objectives openly but, but treading a fine line, if you like, 10 between falling foul of the law and functioning effectively in the legal space that was then developing in the country.

MR SCOTT: What sort of activities did you specifically participate in as part of your involvement with these organisations?

MR CACHALIA: So on campus, so like say, I was the president of the Black Student Society and even when I was not, you know, I did not hold a formal position, I was active in its decision making structures. Our goals were to represent black students on campus and to advise the political struggle, 20 in that case, in the, the tertiary institutions, a lot of our comrades and colleagues were from, you know from Turfloop University, people like Tiego Mosoneke [sic], Laurence Mboya. So, so our goals were to, whenever there was an opportunity to oppose policies that we considered to be unjust and to make the demands that we believed were the correct ones, the

release of Nelson Mandela, for instance, the unbanning of the African National Congress and the, the Pan Africanist Congress, we did so by, by calling public meetings. When the National Party introduced the, the South African Indian Council, the tri-cameral system, we organised public demonstrations on the campus. I remember I was detained once during the state of emergency, participating in such a demonstration. I was active in the anti-SAIC campaign which eventually led to the formation of the Transvaal Indian
10 Congress, an affiliate of the United Democratic Front. In Eatonville I helped organised the school boycotts in 1980. I was active in the Benoni Student Movement as its secretary. Later I think, I cannot remember, you know the, all the events and sequence but we established a civic organisation called ARAC organising the community around local government issues. As I say, I worked with IRAPO, somebody like Sam Ntuli, the trade union movement MAHUSA on the East Rand, because we were trying to build a non-racial movement in pursuance of our democratic objectives. At the time a lot of
20 the people have already testified were, were part of the network of people I was associated with in, in Johannesburg, but we were in contact with people like Trevor Manual in the Western Cape, people like Pravin Gordhan in Natal, Sisa Njikelana[?]. So, so there was a national network of people involved in organisations that eventually came together in the

early 1980's to establish the, the United Democratic Front...
Ja. [Intervened]

MR SCOTT: Prof Cachalia, I am just, just trying to move on
from... [Intervened] [Speaking simultaneously]

MR CACHALIA: Sure.

MR SCOTT: Your activities ultimately led you to being
detained? A number of times I think.

MR CACHALIA: Yes, so in the year concerning these
proceedings, I was detained in, in November, I think the, not in
10 December as indicated in, in the statement, I had been
detained that year in June, I believe, released and then
banned along with my, my elder brother who is, who is now
also a judge and then re-detained in, in November 1981.

MR SCOTT: And at this time you were still a student?

MR CACHALIA: Yes, I was, I was an honours student in Prof
Eddie Webster's class.

MR SCOTT: Now Prof Cachalia, in your later detention of
November 1981 and, My Lord, just to clarify, the professor has
indicated that reference in paragraph 8 of his witness
20 statement where he refers to December 1981... [Intervened]

COURT: Should be November.

MR SCOTT: Should actually read November.

COURT: November.

MR SCOTT: Where were you then taken? So I was first taken
to Vereeniging, kept there I believe for about a week to ten

days and then transferred to John Vorster Square. I recall on the day that I was transferred, having contact, not contact really, but seeing Prema Naidoo in, in the charge office at Vereeniging, he was manacled... [Intervened]

COURT: Did you say so Gavin Naidoo, did you say Gavin Naidoo?

MR CACHALIA: No, Prema Naidoo.

COURT: Oh, Prema Naidoo.

MR CACHALIA: Who I believe has already testified.

10 COURT: *Ja*.

MR CACHALIA: He was manacled and he, he looked dishevelled; he looked, he, he looked under a lot of pressure and he was able to indicate to me that he had been beaten up. So on the way to, to John Vorster Square I knew exactly what was in store for me.

MR SCOTT: What, what did he tell you about the nature of his beating up?

20 MR CACHALIA: Well he was not able to, to have a conversation with me, he simply gestured that, that he had been beaten and I drew the correct inference from the way he conducted himself.

MR SCOTT: Who were the officers responsible for that initial arrest and who took you to Vereeniging? Do you recall?

MR CACHALIA: No, I do not but I do recall, you know, which was part of the pressure tactics; there were three or four of

them. I was seated in the, the back of the car together with a police officer at the back and two of them in front. I remember that day very clearly for some reason because it was, it was raining, there was a storm and I was, I was, you know, I was quite anxious, I have to, I recall, and on the way we were involved in a, a car accident. So there is a collision and that just sort of added to the atmosphere, if you like.

MR SCOTT: And was any reason given for why you had been arrested and detained?

10 MR CACHALIA: No.

MR SCOTT: You were then moved to John Vorster Square, from Vereeniging.

MR CACHALIA: Correct.

MR SCOTT: What happened there?

MR CACHALIA: Well, so I, I have memories of what happened but not the exact sequence. I mean initially I was kept in a large cell, so I, I do not know if the geography of, of the, of, of John Vorster Square has been ventilated in these proceedings but there was a long corridor on the side, on either side of
20 which was the cells and then at the end of the corridor, on the corner, there was a large cell where I was originally kept and then subsequently moved down, down the corridor to the first cell near the room where we would be checked out for interrogation and, you know where they, they just kept a record, did the day to day administration and so forth.

MR SCOTT: We will, we will spend quite a bit of time dealing with the [indistinct – 10:08] cell block and what your conditions of detention were but I think just to keep your testimony structured in a way, if we can start with your interrogation, if that is alright.

MR CACHALIA: Hmm-hmm. [Sound for yes]

MR SCOTT: Your interrogation at John Vorster started how late, or how long after you were taken there?

MR CACHALIA: So I do not have precise recollection,
10 Justice, from the statements that I now have before me, the statement that was made to the original inquest, it, it would seem that, that for a, for a few days in November they, they left me alone, in solitary confinement of course, and that caused some anxiety because, you know, as others might have explained, we were able to communicate through the, by emptying out the toilet and it was clear that more and more people were being detained, people that I was connected with in some way. So I knew they were active, you know, in, in sort of, if you like ANC politics and that they were being
20 interrogated and, and beaten up. Not all the detainees were involved, you know, in this particular, with us. There was a young man opposite my cell who, who had been caught trying to get across the Lesotho border, who was being terribly treated. I do not know his name because we did not share that information and so, so I, I reckon the first few days I was left
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alone and then at some point they started taking me up to, I think it was the 10th floor, I, you know, 10th or 11th floor. I was... [Intervened]

MR SCOTT: Sorry...

MR CACHALIA: Ja, okay.

MR SCOTT: Could you, when you say 'they took you to the 10th floor?'

MR CACHALIA: So, you know, apartheid is an interesting system. They, they had, the white cops did the interrogation
10 and the black cops were responsible for fetching us from the..., from the cells. They did not participate in the assaults.

MR SCOTT: Do you recall any of the black police officers who would take you from the, you personally from your cell to the 10th floor?

MR CACHALIA: It, it was the same team. So, so I, I recall their faces very well. I, I do not recall their names, no.

MR SCOTT: It is alright. You were then taken to the 10th floor and who welcomed you there?

MR CACHALIA: So, I, I was interrogated in, in a room with a,
20 a kind of, it was like a, had a, a very thick metal door. Once they closed that room, I was soundproof and they would, so the interrogation would start with a beating, with, with an attempt at intimidation. They would bring in, into that room, close the door, you know, have a, have a saturation strategy; the bring in five or six burley cops, push you around, slap you

around, and then get you to start making a statement, a written statement. At that point they would leave you under the supervision, in my case anyway, with one, one police officer who then stayed throughout while you were writing a statement. Sometimes they would open the door and, so that you could hear other people, the shouts and screams of other detainees. So... [Intervened]

MR SCOTT: Do you recall... [Speaking simultaneously]

MR CACHALIA: So I think my interrogation started with, with
10 the kind of initial assault and then I had started making a statement.

MR SCOTT: Yes, Prof Cachalia, we will deal with your assault in, in quite a bit of detail. At this stage I think we are just trying to understand who was involved and paint a picture of the 10th floor.

MR CACHALIA: Okay. *Ja*.

MR SCOTT: These individuals you, you identified, you said five or six different people, do you recall any of the, your interrogators? Their names, their ranks?

20 MR CACHALIA: So I recall, the person I recall most vividly is Arthur Cronwright because he was so mean spirited. He often came, he really did not ever participate in the interrogation. I understood that this was his show, he was in charge of the, the, of the case, if you like. He was..., he was the most senior police officer, he would come in, insult you, use foul language

about your ethnicity for instance, maybe give you a slap and, and then leave. So Cronwright, Whitehead, also did that. Whitehead did not participate directly in my interrogation. I think perhaps except once where I think I got the most severe beating but I – you know I did not, I do not remember exactly. The... Prince, I do not have any visual recollection of but I see his name all over my statement to the earlier Aggett inquest. So, Warrant Officer Prince, so, so, so I think he, he must have been in charge of my interrogation. Other people, Swanepoel
10 from, from Benoni who had previously detained me in Benoni, so we were well-known to each other... [Intervened]

MR SCOTT: Do you recall what Swanepoel's first name or rank was?

MR CACHALIA: I do not but I have a very clear recollection of his face.

MR SCOTT: Would it be a Captain Swanepoel?

MR CACHALIA: Yes, yes. *Ja*, I think so. He was not, he was, he was, you know, he was not the most senior. So I, I think he was, he was a captain.

20 MR SCOTT: Now, Prof Cachalia, you indicated that you would be addressed with foul language by your interrogators. Could you, could you please tell us what was some of the, what was some of the language that was used against you or how would they talk to you or... [Intervened]

MR CACHALIA: Well... [Speaking simultaneously]

MR SCOTT: How would they talk to you?

MR CACHALIA: It is very embarrassing in a way but I mean, you know, the f-word and the c-word, the... I think the use of abusive language unedifying and, and, and calculated to humiliate was, was part the, their, their *modus operandi*, their methodology; coolie, the f-word, afraid I cannot, I do not think I can repeat that.

MR SCOTT: That, that is alright. I think we understand but this was the typical way that you were interacted with?

10 MR CACHALIA: Ja, they break you down. They want to humiliate you, they want to deprive you of any sense of your own dignity or worth and so forth, so that, so that you become, you know, pliable, willing participant in, in what they sought to achieve which was, you know, to, to break you down, get you either, you know, to provide them with information, to charge others, charge, you could be charged, otherwise they wanted to, to, to require you to testify and they also wanted you to, to identify people they could detain, other people and that, you know that is very stressful because you, you do not want to be
20 responsible for anyone else's detention.

MR SCOTT: Okay, so you indicate that Arthur Cronwright had a personal grudge against Barbara Hogan. Why did you, what is the basis of that?

MR CACHALIA: No, I cannot recall exactly how I came by this knowledge but it was urban legend at, at Wits University, that

he blamed her because we were trying to understand, you know, how he had been transformed into a kind of Frankenstein – I do not think that is an exaggeration – so it was well, it was part of the, the history of Wits and the legends at Wits that, that he blamed her for apparently pushing him off the stage at this, at the great hall. So I do not know what he was trying to do and what he was doing in the great hall, they were having a meeting and apparently he tried to get onto the stage. So he blames her for pushing him, I would have done
10 the same, and, and apparently hurt his back. So he held that against her and all of the people associated with her.

COURT: So [indistinct – 10:19] was, was he a student there also at that time?

MR CACHALIA: No, Justice, I am not sure he was a student anywhere but I am, I am not aware of his, his level of education but, but... No, he was there as a security police officer to...

COURT: Oh.

MR CACHALIA: ...to, as I, as I understood what, what was
20 conveyed to me because I was not there at the time of these events at Wits University, but, but, so, so you know, there were always many demonstrations at Wits University and the great hall, many public meetings, and the security police apparently came into the great hall to stop the meeting or to make arrests. I, I understand that, at least that is how, what I have

been told, led to his, his particular visceral dislike for, for Barbara Hogan.

COURT: Okay. Thank you.

MR SCOTT: You indicate in your statement that you got the impression fairly..., early on in your interrogation that your interrogators were preparing for a political trial. Why did you say this?

MR CACHALIA: So as I indicated, you know, I am not, I do not know if the, the security police were, were aware of this
10 method of communication because they were very careful early on to keep you isolated so you had no contact with any other detainee, to give you the sense that you were completely under their, their control and of course because they did not want the, the detainees to, to communicate while they were carrying out this massive interrogation, you know, over a few months, a large number of people, detained in different places over, over months. So in our communications in the evenings when we thought it might be safe, through the, the toilet system, we, we were able to, to build a picture of what they
20 were trying to accomplish and I think it became clear that, to us, that they were desperate to smash this network of congress activists who, who were pushing back, who were making demands that they were trying to avoid and they were desperate to show that these were not genuine trade union activists, not genuine student leaders but really people who

were under the direct command of a subversive banned organisation and so forth and if they could succeed in, in charging this, that generation of activists under the Internal Security Act with various political crimes and either then subsequently banning them or, or arresting them for long periods and so forth, they could deal a severe blow to the political resistance inside the country. Their difficulty was that, you know, I, I, I think we were, we were very effective. We were, we had, we had popular support; we had massive
10 public meetings; we were able to call for strikes; we were able to mobilise boycotts and so forth; anti-SAIC campaign. You know, more than 90% of people stayed away from the polls; boycotts of the local councils in, in townships and so forth. So I think that it was a high stakes trial for them. They, they understood that in order for their own project to succeed, stabilising the apartheid system, they had to defeat this generation of activists that had emerged. A lot of the questioning was, was directed to Barbara Hogan, so it became clear that they, they were targeting her and with the rest of us,
20 I mean, for in..., in my own case for instance, I was never sure whether they were going to charge me, charge Moho, charge Sisa, charge Jabu Ngwenya[?]. We did not know who they were going to charge but they were also, it was also clear that if you were not charged, they were going to, they were going to require you to, compel you to be a State witness. We knew
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that we would never testify and so if you refuse to testify you were facing a jail term anyway.

MR SCOTT: And as part of this process you indicated you were asked to prepare a statement.

MR CACHALIA: I have asked to prepare...?

MR SCOTT: You were told rather.

MR CACHALIA: Okay, so the way that worked is that they beat you up, you make a statement, maybe write two or three pages, they look at the statement, tear it up, you get a beating.

10 Some of that had to do just with plain intimidation, I think some of it had to do with their sort of management strategy. They had different teams of interrogators work in different groups of detainees, writing statements, they then at some point, perhaps under the supervision of Cronwright, you know, I am speculating about with I think was going on; they would look at the statements, collect them, look at the gaps, look at the contradictions and then come back and start the process again. So in my own case I, I, I think the statement was, was, was torn up three or four times after they started interrogation
20 in, in, in, early in December, I think it lasted through December then they stopped and then they started again sometime in January. So I had a kind of four weeks of interrogation, then they stopped, and then they started again and, and all of this was punctuated with abuse, with beatings, which, which got incrementally more extreme.

MR SCOTT: Before we get into that, if you do not mind me asking to you recall your height and weight in 1981, 1982?

MR CACHALIA: I do not think I have, I have grown much since the... So I reckon I am about the same size, I cannot blame them for that.

MR SCOTT: I would like you to put it on record, please, just for, to understand what...

MR CACHALIA: I do not know what my weight was. I think it was probably around, I am about 65kg now, I reckon
10 somewhere between 25, sorry, 55 and, and 60 probably. I was much slighter. Did not have any kind of weight around my tummy then.

MR SCOTT: And your, your height, Professor?

MR CACHALIA: About five foot four, *ja*.

MR SCOTT: And your interrogators, if you had to estimate their height and their weight?

MNR CACHALIA: Groot manne, *ja*, groot manne. Almal groot manne.

MR SCOTT: Six foot?

20 MR CACHALIA: Six foot, I am you know. Whitehead was, you know, could have been a Springbok flank forward. Some of them looked like props. Pretty awesome characters.

MR SCOTT: So then as you indicated your, the, the assaults began. Could you, could you describe what was their nature, how were they performed?

MR CACHALIA: *Ja*, so slaps, punches in the solar plexus, beatings with a baton on the soles of my feet – that is incredibly painful. That might have been the worst pain and I, I reckon the most frightening was the wet sack treatment. So the way that worked, they, they would have, you know, a fair number of a, a whole scrum in the, in the room, apply the wet sack over your face, close the nostrils, prevent you from breathing through the mouth and then sort of punch you in the solar plexus. So it generates... It is, it is a, *ja*, it, it, it is not
10 pleasant to recall.

MR SCOTT: I can, I can certainly understand and having gone through the evidence myself... [Intervened]

MR CACHALIA: Testicles, pulling hair, punching, assaulting one's genitals. I remember on one occasion, you know, one occasion it got so bad I, I defecated in the room. I, I, I think I was not completely naked and of course that provided occasion for, for great amusement on their part, an opportunity to, to humiliate. So, so their, their difficulty was that they wanted information which we were not prepared to provide
20 because you have, you have to remember that, you know, you want to protect everybody you are working with and anything you said, you know, could lead so someone else's detention. So, so they knew that you are withholding information, information about legal activities; information about, about having a public meeting, about, about expressing your point of

view, your political point of view in public and openly. So that is why is say to my students nowadays, please, please just understand how important it is that we now have a bill of rights which protects freedom of speech because they do not always seem to appreciate that, Justice. So, so, so people were being detained, ordinary people, family people. They, they threatened to detain my parents, re-detain my brother – people I, I had known. So I was very careful about what information I would provide and I was prepared only to provide them with
10 information, all my activities were above board, by the way, at this time, but if they wanted to know what..., what... There was a meeting at Jiswa in Lenasia and I had to recall who addressed the meeting. So I would start to [indistinct – 10:31] and say I addressed the meeting. Who else addressed the meeting? I cannot recall. You get a slap. So you, you try and give them information which they must have but information that will not harm anyone else because you have a sense that the way they behave is arbitrary, they, they, they did not have the basis, they did not have the information they needed to
20 have the trial they wanted and so they were using more and more extreme methods, more and more brutal methods to at least to, to break this case and they were not succeeding. That was their problem.

MR SCOTT: There is a lot, there is a lot [indistinct – 10:31] and we would, as difficult as it is, appreciate if you could drill

down on certain details for us just to understand and help the Court to come into its conclusion as to how Neil Aggett died. Starting with the wet sack treatment, if you could just take us through that slowly. A wet sack was placed over your head.

MR CACHALIA: Yes.

MR SCOTT: What was the intention with this interrogation method?

MR CACHALIA: Well... [Intervened]

MR SCOTT: What sensation did it aim to... [Intervened]

10 MR CACHALIA: It is, it is uncontrollable fear because you cannot breath. You are suffocating. You, you think that you could die. You, you had the sensation, an other worldly kind of sensation. You feel like you have been transported into, beyond life. You, it is... So it is a very, I would say it is a very effective technique, Justice. If you want to inspire fear, you know... I have, I have read about sort of tactics used at, in Iraq and so forth, it is, it is... [Soundtrack distortion – 10:33] So, you know that was the worst. They, they never used electric shocks on me but in the room the, the, the threatened
20 to do that and the, the wires were always there with, with electrodes and, and I had heard they, they told me that they had used electric shocks on Rev Frank Chikane, Samson Ndau and that I was next and so forth. So that was in the room but I think the worst treatment, the worst that I recall was definitely the wet sack treatment, the beatings on the sole of the feet;

that, that happened a few time. It was, it is very painful and you always ask them to stop, you know, there is a, there is a threshold of pain actually and, and you, you are more, much more willing to cooperate, at least to give the pretence of cooperation once you have had that kind of treatment. You will start writing a statement again and maybe give them a few more, a little bit more information. You write a longer statement, you know, but you are never sure when it is going to be enough and when it is going to stop. I, I got a lot of
10 punches, slaps, I had to, I had to sit against the, the wall without a chair and then they would kick my legs from underneath. You know, things like that.

MR SCOTT: So when this wet sack treatment was applied to you and you described the sensation, you, you just felt like you were, were in the afterlife. Do you think you could have been pushed beyond the brink?

MR CACHALIA: Look, I, I, I reckon by, by the time, by, by January or so, maybe even earlier we, we were beginning to have a conversation, I certainly thought someone is going to
20 die. It could be me or one of my other comrades. I mean it...
Ja, I, I was not at all surprised when, when Neil died because someone was going to die, someone... I mean the, the, the kinds of treatment that you were getting which I said got incrementally worse, meant that, you know, they could, they could leave you physically and mentally scarred for life or they

could, it, it could result either intentionally or unintentionally in, in someone's death. All of us knew what we were involved in. We, we understood that this was, was repressive, unjust government, that it would use extreme methods. We knew that, that many detainees had been tortured and died in prison. We grew up with, you know, stories of, of, of Ahmed Timol and, and so forth. So we knew of people who had gone into exile, Abdullah [indistinct – 10:37] for instance who had been, I mean we had heard stories that he was not the same person after he
10 went into exile. So, you know, we knew what, what we were about, we knew what they were about, we knew that they were willing to kill. We knew that, that they would torture us, take extreme measures and, you know, that, that something terrible could happen to you as an individual or to somebody that you were connected with, there, who you cared for, you know, because... Sorry.

MR SCOTT: Take your time.

MR CACHALIA: I did not think this would happen.

MR SCOTT: *Ja*, would you like us to take a short
20 adjournment?

MR CACHALIA: No, no. We, we, we were very close, Justice, so what was happening to, to..., [voice breaking], also mattered, you know, and so if you were not, if you were in the cell and not being taken out for interrogation, someone else was. [Emotional silence] Someone else was being beaten up.

MR SCOTT: Professor, would you like us to take just a short five minute break.

MR CACHALIA: No, please proceed. I am okay, thank you. I am okay.

COURT: Thank you.

MR SCOTT: Professor, did you ever recall blacking out or losing consciousness while the interrogation or torture was, was being, was taking place?

MR CACHALIA: Only, I only had that sensation, I never
10 blacked out. I only had that sensation with the, with the sack treatment.

MR SCOTT: You are saying in your witness statement that you, you believe Dr Aggett would have undergone, or experience torture with greater intensity than your own.

MS CHAUKE: Yes, because, because you know, it is partly
subsequent reflection, Justice, but so I was detained in
November. As I understand it he was detained some weeks
before I was detained. So, so time matters when you are in
detention. I believe that when, when I encountered him, I was
20 going through my second phase, my second or third phase of,
of detention because there, it took, you know, two or three
weeks then they would stop and start again and as I say, it
was getting, I was just getting progressively worse. When,
when I saw him in the charge office, when we were being, it
was just, I think pure coincidence, we were taken out and I do

not remember the dates, Justice, but, for interrogation on the same day. It only happened once and that meant that they come and fetch you, you shower and then they take you out through a, a sort of intermediate charge office. It was not the one that the public had access to, when they book you all out. Now I think that, that Neil was going through maybe his fourth or fifth period of interrogation. So they were doing things in phases and maybe I should, I should mention that that is the day that I, I did see him. I did not know Neil Aggett before I
10 was detained and he, he struck me very forcibly that day. I was obviously under stress myself but I was looking at him and as I indicated earlier, detainees, even in that environment where there are lots of police around preventing you from communicating and so forth, you kind of share a human exchange, a human warmth and I looked at him, he looked at me, as all of you have seen, he has, he has got extremely gentle façade. He is, he is, it is, he has got a gentle face but he looked, he, to me, I said to myself, you know I was not then thinking about myself, I was thinking but this comrade looks
20 like he has been to hell and back. He looks terrible and at that point I was worried about him, I was not thinking about myself because he looked, he was under a lot of stress and my recollection is it was the very next day that Jabu Ngwenya informed me in my cell on the corner that, that Neil Aggett had passed on and I can recall that I, I, I was not, I did not say

anything. I was not at all shocked because as I have already testified, it was clear to me that something terrible was going to happen to at least one of us before they would stop and so, I mean it was the very next day, I think. Unless, unless I have, my memory more than, you know, of this four decades go as... But I, I think it was the next day. So that might be important because it means that on the day, the day before he died, I had that encounter, that brief encounter with him in, in that intermediate charge office but it is quite possible that, that the
10 time between that, that encounter and his death may have been longer.

MR SCOTT: Prof Cachalia, we are going to have an entire section to deal with that critical observation of Dr Aggett. ...
[Intervened]

MR CACHALIA: Okay.

MR SCOTT: I just want us to stay on the 10th floor. I believe your, your..., which is, which really gave us Dr Aggett had been detained for a longer period than yourself.

MR CACHALIA: Yes.

20 MR SCOTT: And you believe that the consequence of being detained for a longer time would be that the torture would be of greater intensity.

MR CACHALIA: Ja, because remember the, for them the end point was a massive treason trial. So until they got to the point where they had, they knew who they were going to

charge, they, and they had sufficient evidence to convict, the interrogations were going to continue. We were under, in detention, under section 6 of the Internal Security Act. It meant that we had no access to lawyers, no access, we were being kept in, in solitary confinement and so we were in their clutches. We were under their control and so it was leading to, that was the end game for them, the end point and it would have continued as long as, as was necessary with that goal in mind and we all knew that. We all knew that, you know, 10 section 6, they can keep you indefinitely. There is no, there is no release.

MR SCOTT: Now, Prof Cachalia, did you recall seeing or hearing any other detainees on the 10th floor? You, you alluded to Samson Ndaou in your witness statement.

MR CACHALIA: Yes. Yes. Samson Ndaou, I remember, so I, I would not exactly know who was the shouts that I was hearing but they would say, you know, that is Samson, your comrade Samson, you know we are dealing with him. [Intervened]

MR SCOTT: Sorry, just to, just to unpack that: 'They', your 20 interrogators... [Intervened]

MR CACHALIA: Yes.

MR SCOTT: Would say, pointing at what, at the... [Intervened] [Speaking simultaneously]

MR CACHALIA: Just, *ja*, because I am in a kind of strong room and before, before you get there or they open the door

and you are hearing screams from other, from other interrogation rooms, they would say, well, you know that... Because they knew that we, we were all close, that we are all connected, that we had... So if they say, you know, Samson is being assaulted, it is not just that that can happen to you as well but that, but that somebody you, you care about is, is going through that.

MR SCOTT: Professor, I just want to deal with one more issue around the wet bag treatment. When you explained that
10 the bag would be placed over your head, your nostrils would be blocked. You could see the punch to the solar plexus...
[Intervened]

MR CACHALIA: They stuff it into your mouth.

MR SCOTT: They had stuffed into your mouth. Would they pour water over the wet bag while... [Intervened]

MR CACHALIA: *Ja, ja.*

MR SCOTT: And the effect of that?

MR CACHALIA: Well you, you, you are suffocating. You, you cannot breath, you know, it is like, it is... I, I, I would, I
20 suppose it is the nearest simulation would be if you, if you immersed yourself under, under water until you could not sustain it any, beyond a certain point. It is, it is, you do feel like you are losing consciousness, you, you, you..., asphyxiated, you know. So it, it, your heart, your heart beat goes up. You feel like you are losing consciousness. I am, I

am sort of trying to recall how I felt 40 years ago.

MR SCOTT: That is alright.

MR CACHALIA: *Ja*.

MR SCOTT: No, that is alright.

MR CACHALIA: But I, but, but that, but that sensation is, is, is still in my memory.

COURT: Sorry, let me find out. What did they use to, to keep your nose closed?

MR CACHALIA: So, it is a wet bag. They, they pour water
10 over you. So then, they, they hold you down, you cannot move, close your nostrils, some, somebody does that physically... [Intervened]

COURT: Physically with his hand?

MR CACHALIA: *Ja*. You, when you, when you close your mouth, you might want..., when you close your nose you might want to breath then through your mouth because you cannot breath through your nostrils. So they close, you, they close that option as well and then punch you in your, here... There, there is no, there is no, you are not, you cannot breath
20 anyway.

COURT: You may proceed.

MR SCOTT: Prof Cachalia, we are going to now move on to your cells or rather the cells at the second floor at John Vorster. So, so moving on to a different set of questions. Will you please describe the conditions of your cell on the second

floor?

MR CACHALIA: Ja. I reckon length wise, the, the first cell was, was quite a big cell. The second cell, I think was about 2m in width by about 4m, then a toilet. We did not have beds. There was a, there was a thin mattress. The, there was a grill covered with a kind of Perspex.

MR SCOTT: You were in a Perspex cell?

MR CACHALIA: Yes, so the, the, there was, there was a, a window quite high up that you could not reach. So there is a
10 little light coming through, through that and then they kept the lights on 24 hours even while you were sleeping. So you, you, also as I understand it, now I... You are under constant surveillance, so I cannot remember if there were, there were cameras in the cell or if we simply understood that we were under constant surveillance and the reason that we could communicate through the toilet is that there was like a, a wall as I recollect on the side of the toilet. So and then you, you would take a blanket or put it over your head late at night, two, three in the morning perhaps or when we thought it was safe.
20 So the, look solitary confinement, it was terrible...

[Intervened]

MR SCOTT: Before you move on, Professor, can I, can I hand you this... My Lord, I would like to take the witness through EXHIBIT G10. G10 is that second, it is a photo album.

COURT: Sorry, what is it?

MR SCOTT: EXHIBIT G10. I would just like to take the witness to page 4... [Intervened]

COURT: Okay.

MR SCOTT: ...which is the second floor cell block diagram.

COURT: *Ja*.

MR SCOTT: The numbering of the cells has changed but if you will look where cell B2 is on that diagram... [Intervened]

MR CACHALIA: *Ja*.

MR SCOTT: The area below that is the charge office.

10 MR CACHALIA: Correct.

MR SCOTT: And if you could indicate to the Court the, or identify rather what your initial cell and what your subsequent cell was.

MR CACHALIA: I think my first cell was B12.

COURT: B12?

MR CACHALIA: It, it... *Ja*, I think it was B12 or B11 but I think it was B12 because I was on one side and this youngster from Soweto was, I think, in B11 and then, and then, and then I was in B2 for the most, you know, for the, for the five months.

20 Maybe I was in B12 for two or three weeks.

MR SCOTT: Right.

COURT: You say B2 was the final one?

MR CACHALIA: Yes.

MR SCOTT: Thank you, Professor. Now you briefly mentioned the contents of your cell. You said you have no bed

and a thin mattress was in your cell.

MR CACHALIA: Ja, it was like about a centimetre thick.

MR SCOTT: Were you allowed anything else in your cell?

MR CACHALIA: Nothing, absolutely nothing and I have to say like I mean they, they, look they, they want, they did not want a suicide. They did not want, so for instance your utensils, your eating utensils, no metal. That is also why I believe that we were under constant supervision and surveillance because they, they wanted to bring us to court to prove that they
10 observed the rule of law as you... So they wanted, they wanted a trial. They wanted to bring the physical bodies to court. They did not want to leave the bodies in the cell. We had no access to anything that you could use to harm yourself... [Intervened]

MR SCOTT: Were certain items... [Intervened] [Speaking simultaneously]

MR CACHALIA: No item of clothing, nothing that you could use to, to harm yourself.

MR SCOTT: Sorry, Professor, was anything confiscated from
20 you?

MR CACHALIA: So when, when they detain you, you know, I mean when I was detained at my parent's home, I, I, I think I might, I do not think, I am not sure if they allowed us to take a, allowed me take any clothing but at some point we would have received clothing and then, and they would then make sure

that, that whatever was brought did not contain anything. You could not take anything to a cell that you could use to harm yourself, string, shoelaces. We, we did not have, no shoelaces, not metal spoons, no forks, no knives; nothing that you could use to harm yourself. They were very careful about that.

MR SCOTT: Your belt?

MR CACHALIA: No belt.

MR SCOTT: How did you shower? You were given a towel?

10 MR CACHALIA: You, you dressed... So, so if I recall that, you, someone would come and fetch you from your cell, a police officer, open your cell, lock your cell; take you to the shower alone, no-one else; lock the shower. You, you dressed there then they come and fetch you, having washed. You are not allowed to take anything to your cell, they check that. On each occasion they check that you do not have anything that you could use to harm yourself because they knew that they are putting you under, people under pressure, people might lose, might, might want end it all, might want to end it all if
20 you, if you can because that is better than, than going up to the 10th floor again, again. So they were very careful about that.

MR SCOTT: Were you or any of the other detainees allowed any privileges?

MR CACHALIA: No. What changed, was Neil's death. After

Neil died, the whole..., the whole situation changed because the political situation changed. They were now the ones who were hunted. They were now the ones who were under pressure and not us. We knew that. So I mean they, they have killed Neil Aggett. We could just imagine what the media was saying and, and, and we knew that, that unions were calling for protest action. In fact I think that the COSATU march that took place in response to his death, I could hear from my cell because they marched near John Vorster.

10 Anyway I seem to, to, to recollect that. So that changed. We then started receiving food parcels, clothing from home and most important from, from, I think my point of view and most detainees, was that we were now receiving books – so we could read. We could spend, because you are spending every minute of a 24 hour day in isolation in a cell. So, so that changed. It, it took Neil's death for them take the pressure off. We did not really know, we were not being released, we did not, you know, I did not mean that we were no longer under section 6, we were no longer..., in their clutches but we also

20 understood that, that they now will have to make concessions because they did not want it to happen again, to anyone else and they were now being subjected to scrutiny – their methods of interrogation is something, you know, so, so that is when things changed, I reckon, and we, we, we were then also, I think they then started calling us to make statements to a

police officer about, about whether we wanted to lay any charges or not and, and certainly in my case, I, I think the others, we, we did not know, I mean you, you do not lay charges to, to police officers who are part of the system. So I know I was very hesitant but, but I also understood that they were now trying to dress up their crimes with a veneer of legality. So, so suddenly they are now investigating whether other detainees had been assaulted but I, but none of those, that processes led to any charges against them – none of those police officers as far as I am aware were ever charged with assault.

COURT: Are you saying now the beatings stopped after Neil's death?

MR CACHALIA: Suddenly my own beatings stopped, yes, and I, and I think that we were again at that point more or less in the same position after Neil's death and it would not have stopped had they not, had, had Neil not died. Someone had to die before they were going to stop.

MR SCOTT: So indeed the, Mr, Prof Cachalia rather, you did make a complaint and, My Lord, at page 810 of the record of the first inquest court, it is noted by the evidence leader that Prof Cachalia's complaint was not prosecuted because the Attorney General refused to prosecute the complaint. My leader referred to the same extract yesterday where it was indicated that Mr Momoniat's complaint was also declined.

COURT: *Ja*.

MR SCOTT: Prof Cachalia, what times were you taken up from your cells and back, and returned to your cells upon interrogation?

MR CACHALIA: I was always taken in the morning, around eight o'clock, I think. I have to say I did not have much of a sense of time. It was just, you know, but it was during the day, always in the morning and then returned in the evening. I, I was never kept overnight and then one usually, you know, did
10 not have, you are unable to sleep. So it was like for twelve hours, twelve hours in the cell, twelve hours, ten to twelve hours in, on, on, on the 10th floor.

MR SCOTT: And you recall if any other detainees were taken for longer periods of interrogation?

MR CACHALIA: Yes, I, I, I think Frank Chikane had a terrible time, that is just my sense, Samson Ndaou as well and I know, I think Prema had a, before, before they took him to Vereeniging, you know, I know that he was kept overnight. So, but that never, I was never kept overnight, I was always
20 taken... They, they had a, a routine with me, so... Eight..., more or less eight, eight to, to around, I would say around five o'clock or so, six, five, six, *ja*.

MR SCOTT: And was your cell or any of the second floor cells ever searched?

MR CACHALIA: I, I think that happened from time to time. I

mean I, the, the I... The, I think the police officer who came to collect you sometimes, I mean they had also the responsibility to, to make sure that the cells were, did not, you know, that you, you did not have anything in the cell. So, so, *ja*, that was checked. We, we knew that we, we did not have anything in the cell. I, I, I seem to have a vague memory of, of, of searching of the cells taking place form time to time. They might, might have come in, maybe, you know, I, I do not... I seem to have just, I just feel that like on one occasion they
10 came in and turned everything upside down, looking, and then left and I had a sense that the, the, the, you know, McPherson and these people had a responsibility to, to keep order and to, to make sure that the cells did not have any, anything in the cells that we were not allowed to have.

MR SCOTT: And as a result of, like you said, paragraph 39 of your affidavit, that you find it absurd... [Intervened]

MR CACHALIA: This is the... This is the... [Intervened]

MR SCOTT: Your affidavit, 2018.

MR CACHALIA: My affidavit?

20 MR SCOTT: 2018 affidavit. You say at paragraph 39:

“I find it absurd that Neil Aggett would have been allowed to keep a long *kikoi* in his cell.”

MR CACHALIA: *Ja*, like I say, it, it, it... When, when, when I have, I mean, you know when I heard that that he had hanged himself in the cell, I thought, well, but like how did that happen

because like we were not allowed to have anything that you could, could use for that purpose. You know they did not allow, like I said, no shoelaces, no belt, no, nothing you could put around your neck. Nothing! Never! I, I do not understand that.

MR SCOTT: Did you ever see Dr Aggett wearing such a garment?

MR CACHALIA: Like I say, I only saw him on that one occasion and I do not recall his, his garments but I was not,
10 my, my, my experience of, of this is, I think every, all the other detainees were exactly in the same position; we were not allowed access to anything we could use to harm ourselves at any point. That is, that is absolutely clear.

MR SCOTT: My Lord, before I turn to the next theme which is Prof Cachalia's observations of Dr Aggett. I see it is fairly close to the tea adjournment. Might this be a convenient time?

COURT: Yes. We will take a tea break at this stage for 15 minutes.

MR CACHALIA: Thank you, Justice.

20 COURT: Thank you.

COURT ADJOURNS [11:06] ~ ~ ~ [11:35] COURT RESUMES

COURT: Yes, thank you. You may proceed.

MR SCOTT: Thank you, My Lord.

FIROZ CACHALIA: (still under oath)

EXAMINATION BY MR SCOTT: (continued) Before we

adjourned for tea I indicated we will be moving on to Dr Neil Aggett, your observations of him. You have briefly described some of them but if you could just account where appropriate for the sake of completeness. Let us begin with whether or not you knew Dr Aggett before your detention?

MR CACHALIA: No, I did not. I, I, I have not met with him before I was detained. So he was not among the people detained, who, who was, that I had knowledge of.

MR SCOTT: And how did you come to meet Dr Aggett?

10 MR CACHALIA: It, it was in detention and as I indicated I, I, I recall, I think it was some time in, in January, it was in my second or third round of detention and one morning as was usual, I was fetched, taken through the, the charge office and on that occasion to, when we were being booked out to be taken to the 10th floor, comrade Neil Aggett was, was in that office at the same time and he, he struck me as, as a person, as I said, very gentle person but he, he seemed to me to be having taken a lot of strain and I worried about him actually. I just worried that, that he, he, because I also knew, you know,
20 what, what I was experiencing on the 10th floor and I remember being struck, I was forcibly struck by the sense that he, he was in a lot of trouble and then of course I went to the 10th floor for the whole day and the next morning I, I was waiting to be fetched and it is a strange thing that, the fact that I was not, that they have not come to fetch me also caused some, some

anxiety, I remember and wondering what, what is going on, why have they not come and at some point then that morning, that is my recollection, Jabu Ngwenya came down the corridor, I, I believe he had been taken to shower and Warrant Officer McPherson might have allowed to..., inform the, the other detainees that Neil Aggett had died. So I remember them opening my cell, I do not know if you have seen the cells but there are two, there is an outer metal door and then an, inside there is a grill and they opened the door and he, he informed
10 me that, that Neil had passed away.

COURT: Who? Jabu Ngwenya?

MR CACHALIA: Jabu Ngwenya.

MR SCOTT: Turning back to when you saw him, you testified that it was the day before he died.

MR CACHALIA: That is my, my recollection. It, you know, after, when, after you get released you, everything after a while becomes a little bit jumbled. I certainly did not remember, I did not dwell on, on the experience in detention, you know. So I have had to kind of recover that memory,
20 Justice, but that is the way I remember it. It was the next morning. It is, it is, it is possible that there might have been a longer interlude. So I, I would assume that that can be checked on the records because the record of the day that we were, that he, he signed, we signed out together, you know that would show, there would be a..., documentary evidence of,

of the, the actual date but it was not long after that. It was, it was, and that is why I say, I had a very strong feeling when I was informed, it was not shock, it was not surprise, I, I digested the information immediately as well, something that I anticipated, something that was inevitable had happened.

MR SCOTT: If you could just... We are going to get a copy of the occurrence book and, and confirm that but if you could just try and describe why you said you believed he was at breaking point when you saw him? What, what features or
10 characteristics, what did you observe and what happened in that [indistinct]...

MR CACHALIA: You, you can see when someone is depressed and you can see if someone is full of fear particularly when you, when you have the same feelings, you know, I mean because I knew I am going up to the 10th floor and I, and there is a very good chance I am going to get beaten. You know, you spend the whole day there with them and they can do anything to you and he knew that as well and I remember feeling but he, he looks like he has been through,
20 he has been, he has been through a terrible time and, I mean like I, I think that is a strange feeling in a way to have because, because everyone is going through a bad time, you are going through a bad time. Why did I feel that, especially that Neil was not coping, that he had a, a great sense of trepidation for what, what he was going to experience again. I,

I do not know if I can add further, further light.

MR SCOTT: That is alright.

MR CACHALIA: *Ja*.

MR SCOTT: That is alright. Thank you. You, when, when Jabu Ngwenya told you that Dr Aggett had died, did he tell you how Dr Aggett had died?

MR CACHALIA: You know he would not have been allowed to, it was just, it was just, he was just given the time to say this had happened, no further elaboration, no further information,
10 just... I think, I think it was McPherson who allowed him to, to inform us all. I think I was not the only one he informed or..., I, I, I am not sure about that but my door was opened, Jabu told me, and then went down the corridor.

MR SCOTT: And of course you, you subsequently learnt how Dr Aggett died.

MR CACHALIA: Yes, through the, the, our communication system before the days of the internet.

MR SCOTT: And what, what was that? What was...
[Intervened]

20 MR CACHALIA: The toilet system.

MR SCOTT: No, no, no. What was it that you learned through the toilet system?

MR CACHALIA: That, that, you know that he was dead and there is some speculation, you know, that, that he had been found in his cell, hanged in his cell but you were just, you

know, you do not, you do not know, you do not have first-hand information and I think, I think I thought well, okay, I, I, I think I, I thought well it is possible because of the pressure he was put under, because of my encounter with him that he killed himself but it was a plausible if not more plausible that they killed him – maybe not intentionally because of the kind of, and from the stress that they were putting him, pressure they were putting him under. After all, we came from communities where it was well-known what the police did and were capable
10 of doing and there was so many other people who had died in detention. So I think I was also kind of naturally sceptical when, when there was some speculation, well maybe found in his cell – who knows what happened to him, I thought. You know, I did not trust the police, the security police. I thought they were capable of anything including a cover-up. I mean there is no way that the number of people in detention were, were all accidental and that they did not try and cover up there tracks. They did that routinely and systemically, they did that. They killed people and then they tried to cover their tracks and
20 so I thought, well, maybe that is what happened. I have no personal knowledge, that is what happened to Neil, and in, in any event my feeling was, well, whether he died in his cell or he died on the 10th floor, they were responsible. Who else? They were responsible. Neil Aggett is dead, died then because of the treatment he got at the hands of the South African

Security Police. Chief among them was Cronwright.

MR SCOTT: Do... [Intervened]

MR CACHALIA: They were, they are responsible for his death.

MR SCOTT: Do you believe that having undergone the wet bag treatment yourself, that Neil could have succumbed to such a treatment?

MR CACHALIA: No doubt. How do they... They do not know the exact moment when, you know, I, I think it is certainly... I
10 thought I could, definitely I thought that that is a, that I could... Well, I certainly felt like I am dying or that, like I am, I am, I have lost consciousness. So, so they take you to a point and then, and then, and then they stop. Now what is that point? Physiologically I do not know, maybe, maybe that is something, you know, that the, the, it is, it is, the doctors can, can reflect on but I certainly think that that is experientially I would say that is possible.

MR SCOTT: And, Professor, if you could just clarify you, you referenced the term water boarding through your own
20 research, what position were kept in while this wet bag technique was applied?

MR CACHALIA: I was, I was standing up, I think I was naked waist up and I would be physically pinioned, you know, by say two other guys and the third one putting the, the sack over your head and one other kind of punching, doing the punching.

I mean they, they physically control you in, so there is no, you cannot move, you have got no mobility and then they administer, what I think is a very effective from their point of view, form of extreme torture.

MR SCOTT: And you also mentioned that the room that this was done was a soundproof room.

MR CACHALIA: Yes.

MR SCOTT: What gave you that impression? What characteristics did the room have?

10 MR CACHALIA: It is this, the, I think the, the door was at least, you know about six inches of, of metal.

MR SCOTT: A vault door?

MR CACHALIA: A vault door. That is correct, yes.

MR SCOTT: And were there any other windows or orifices in the room where sound could have travelled through?

MR CACHALIA: I think, I think there were no windows in that room. If... There was another room where I wrote my statement, or statements, where I think there, there was a window that, with a, with a grill and, you know, this Perspex
20 but I think that that room with the vault door, if my memory is correct, had, had no window.

MR SCOTT: You mentioned that there was also electrical apparatus in the room... [Intervened]

MR CACHALIA: Ja, without, without doubt. I mean the electrodes were, were in the, in the room and there were

wires.

MR SCOTT: Did you ever hear the term '*waarheidskamer*' or truth room being referred to during your detention?

MR CACHALIA: No, I do not, I do not remember that. I mean I did not pay that much attention to the conversations they had among themselves, the, the security police, but I do not remember them saying to me, 'ons vat jou, ons neem jou daar, daardie kamer'. I do not remember that but that was a very, you know, in that room, you know, you, I know there is no
10 sound..., so the detainees that get taken into that room, there is no sound. They pack the room six to ten cops, you know, it is, you are completely under their, you are their mercy, you are under their control and, and, you know, that is the whole point. And you know, I want, I just have to say that, Justice, as, as everyone knows out there, all of us know, I mean that is not, this is not, I did... This was not a unique experience. This was not, I, I do not feel like I am, you know, I was especially victimised. I mean this sort of thing was systemic, it was done, we all knew in our communities and so forth that they
20 did these things. We, the, the security police, the whole point was to scare people, to intimidate people. They did, I mean, and so, so that room, you know, and then when you are under their control, under their legislation, no lawyers, they take you into a room, I mean we were all, until Neil died, I just repeat, we were, we were in a terrible situation because we were

completely under their control. We knew that they would use as much force as they considered necessary, sometimes even gratuitous violence for the sheer pleasure of it to get to the point of the trial. We all knew that and I, I think in, in Neil's case, I think, you know, it was even worse because as I understand it, he was not clearly politically aligned at the time and he would have had no knowledge of, of, of their allegations, their insinuations, their, their theory that we were all simply taking instructions directly from Lusaka. So how, 10 how do you deal with people who are using these methods, who are putting propositions to you that are false, who are making claims that has no factual basis, that are not within your knowledge – that adds to the anxiety because you think, well, I have got nothing to tell them. I have got nothing to tell them that will satisfy them and so what else is left? Because they are constantly putting to you a theory that is false, they, they are accusing you falsely in, of, of allegiance to a political organisation or, or to membership of a political organisation, all false. So, and there is nothing you can tell them which will 20 disabuse them of that theory. That I think is, is sort of even worse when you are in that situation and I, I think that Neil must have come to the conclusion, if he did in fact take his own life, that he had no, no option, he had no choice. That was in fact the better option than indefinite detention and torture.

MR SCOTT: So, Prof Cachalia, what, what do you believe happened to Dr Neil Aggett in his cell?

MR CACHALIA: I, I think there is only one of two possibilities; I think, I think I drove him to the point where he, he, he was not able to make a rational decision and he thought that his only choice, if his, if his choice between continued indefinite detention under torture, and taking his own life, that is the better course. It is in my view as plausible that they went too far, killed him. I do not think it was intentional
10 because I think that they wanted a trial. So they, they killed them and then they covered it up.

MR SCOTT: Thank you, Prof Cachalia, I just have a few questions to ask you about the first inquest proceeding and then I will be closing my leading with you. You prepared a statement with the Aggett family's legal team in the first inquest but the magistrate ruled it inadmissible because it was vague. Do you have any comment on that?

MR CACHALIA: I think the inquest courts and the inquest magistrates in those days were, were simply a cog in the
20 wheel. They were part of the system, they were part of the cover-up. There was no way that the opponents of that system, people who were fighting for political freedom could obtain justice in, in the political system. The inquest courts were a charade, intended to create the illusion of the rule of law whereas in fact they were simply an extension of the legal

and coercive apparatus of the apartheid state and so there is no, there was no inquest into the truth of what happened. The magistrate, he can, you can read his comments, the way they handled that inquest, it was an abortion of justice, not an attempt to, to vindicate justice or to establish the truth. So I have no, I am not at all surprised by his comments.

MR SCOTT: Prof Cachalia, when you testified, can you give this Court an idea of what the atmosphere was like at the first inquest court hearing.

10 MR CACHALIA: Ja, I have got no recollection of that. I know that I made a statement.

MR SCOTT: Yes.

MR CACHALIA: I have got no..., I, I do not think I testified at the first inquest.

MR SCOTT: I stand to be corrected. My apologies. My, my final question to you, Professor, is we ultimately did learn of the first inquest court's finding and the finding was that no-one was to blame for Dr Aggett's death. What was your reaction to that finding?

20 MR CACHALIA: I think George Orwell had the inquest courts of the old system in mind when he wrote that book. You know, I just, it is, it is, it is not, I attach no importance at all to the findings of that inquest court. I, I, there is no doubt that he, that, that the whole apparatus was systemically aimed at continuing the repression of the South African people and I do

not think that, that, that the family, the, the..., that the Aggett family got satisfaction, you know, at that, with the outcome and so I suppose that is why these proceedings are, are so important.

MR SCOTT: Is there anything else you would like to add before I close my questioning?

MR CACHALIA: Well, it is a long time ago. I think that that generation, like the generations that went before them were, were determined to, to establish a democratic society, a fairer
10 and just society. I think we have, we, we should, we should continue to, to try and achieve what, what we had hoped for. We got there, maybe part of the way but I have no regrets. I know I had a little bit of a meltdown but, you know, I, I do not..., I, the fact that all of this happened, I, I just feel that it was part of the struggle. So I do not feel especially, I, I, that our experiences were not unique. There were many trials, or many people put in detention, many people were tortured and so it happened to us as well and that, all that means is that we were part of something that was important and we were
20 prepared for what happened. Like I said, you know, they, they would, they, there was no way anyone would, none of us would have testified to save our skins and all of us went into detention repeatedly. We came out and we continued our activities. Even while I was banned, I continued, you know, and I think that that is true of that entire generation. So I do

not think we should be presented as victims. We do not want to put our wounds on display. We did what we did, we would do it again if we had to because it was about struggling for, for a just society. We were right, they were wrong. It is that simple. And today they have got a place in our courts – that is okay, that is good. It is the rule of law. That is what we fought for.

MR SCOTT: Thank you, Prof Cachalia. My Lord, I am... No further questions for this witness.

10 COURT: Thank you. [Indistinct – 12:01] Adv Mlotshwa?

EXAMINATION BY MR MLOTSHWA: As the Court pleases. Professor, if Dr Neil Aggett hanged himself, where do you think he got this *kikoi* to hang himself with?

MR CACHALIA: I have got no idea and like I say, it is..., it is, it is... We were not allowed to have anything that you could conceivably use to harm yourself because the police also had experience. They knew that that there were detainees who also committed suicide because of the pressure that they put you under, under those completely artificial circumstances. So
20 they, you know, the rules, their own rules said, no laces, no, no utensils, no, no... So I, I do recall that now more, a little bit more clearly; every time you, they brought clothes from home, they checked it. Anything that went into your cell, they checked. They were rigorous, systematic. It is possible that sometimes there is, there is a mistake that is made, you know

a police officer, but I think it, it does not add up.

MR MLOTSHWA: Did you have socks with you in your cell?

MR CACHALIA: No.

MR MLOTSHWA: *Ja*, this Honourable Court was informed that there was an inventory that was done after Neil's death in his cell and in that inventory there were about five pairs of socks that was, were supposedly found in Neil's cell. What would be your comment on that?

COURT: Do you mean five pairs of socks?

10 MR MLOTSHWA: Five, five pairs of socks, My Lord.

COURT: What is your question?

MR MLOTSHWA: What would be his comment about these pairs that were found in Neil's... Was it possible or...?

MR CACHALIA: My recollection is that nothing was allowed in your cell. So it is a long time ago, I, I mean socks are not part of my memory whether we had them or not. What I remember is that we were not allowed to have anything that you could use to harm yourself and particularly to hang yourself.

MR MLOTSHWA: Hmm.

20 MR CACHALIA: Were not allowed, that the rules that were rigorously enforced did not allow any detainee who was being held *incommunicado* to have anything you could use to harm yourself.

MR MLOTSHWA: Would it surprise you that one of the items in that inventory was a tie.

MR CACHALIA: Yes, more than surprised. I mean it, it does not make any sense to me. It does not make any sense at all. There is no way that they would allow you to have a tie in your cell. No, no way in hell. No way.

MR MLOTSHWA: Hmm.

MR CACHALIA: What would you need a tie for in detention, *incommunicado*?

MR MLOTSHWA: Yes.

MR CACHALIA: A tie?

10 MR MLOTSHWA: Yes. There would be no occasion when you would be required to wear a tie.

MR CACHALIA: We did not attend dinner parties but, but certainly I think the security police had a sense of, have a sense of humour.

MR MLOTSHWA: Yes.

MR CACHALIA: And a sense of occasion. We had ties in our cells? Okay.

MR MLOTSHWA: Yes. This, this strong room, Professor, that you talked about, was it a standalone room or was it adjacent
20 to another room where you be an inter-leading door?

MR CACHALIA: So the way I, so on the 10th floor there is a corridor and then there are, there were rooms with demarcations both sides.

MR MLOTSHWA: Yes.

MR CACHALIA: The strong room, as I recall it, was maybe

the first to second room on the right-hand side as you walk down the corridor, having come up from the cells. There were other rooms had, had glass doors but as I..., there was a, it was a full line of, of offices or rooms, strong rooms on, on both sides.

MR MLOTSHWA: Yes.

MR CACHALIA: Fully down the corridor. So there were, it was like, if you can, you know it is like if in a house, you have a dining room to eat, you have a place to sleep. On the 10th
10 floor they had a room for torture, a room for, for the, a tea room, a, you know, the black cops who brought us, [indistinct – 12:07] cops who brought us from the cells had their own..., had their own room. So they had their own version of, of residential segregation on the 10th floor. They were well prepared for whatever they needed to do. Rooms where you could, you could sit and write a statement but I only recall one strong room with that metal door.

MR MLOTSHWA: Yes. And you told us that you would, if you recall, spent twelve hours in your cell on the second floor and
20 twelve hours on the, the 10th floor.

MR CACHALIA: No, no, no. So, so let us say, I mean interrogations only took place during the day...

MR MLOTSHWA: Yes.

MR CACHALIA: They would fetch me sometime in the morning and take me back sometime early evening and then I

was left in my cell... [Intervened]

MR MLOTSHWA: Okay.

MR CACHALIA: ...for overnight, you know, say from six to six or something like that.

MR MLOTSHWA: Alright.

MR CACHALIA: In the B2 cell, *ja*.

MR MLOTSHWA: Yes. If, if you were on the 10th floor during the day, would you have your lunch on the 10th floor?

MR CACHALIA: Yes. *Ja*, but I mean, you did not, you did not, 10 they did not always give you food. I mean if they are under interrogation, you did not, you did not have food. Sometimes you would come back to your cell and supper would have been, because you know in prison they, they, they distribute the food quite early.

MR MLOTSHWA: Yes.

MR CACHALIA: And often, often you did not want to eat. You, so the food was terrible and you did not have an appetite.

MR MLOTSHWA: *Ja*. And did you have to clean your cell or somebody cleaned your cell?

20 MR CACHALIA: No, your cell was your own. I mean your own in the sense that, I mean there were no services, no, no, no cleaning, no nothing. You, you, I think on occasion there have, you might have, especially after Neil's death, maybe they allowed us to sweep the cells but, but the cells were not kept clean.

MR MLOTSHWA: Yes.

MR CACHALIA: The, you know, you slept with the dust. The only point of the cell was to, to confine you there. There is no other point of, of, of the cell. They did not, there was no furniture, no cleaning, nothing like that.

MR MLOTSHWA: Yes. Besides complaining to Dr Jacobson about your assault, did you complainant to anyone else?

MR CACHALIA: No. So even with, you know, Dr Jacobson, they, they were very, they, they would either take you to Dr
10 Jacobson before they beat you up, so if they, if they have taken you to Dr Jacobson and they have not beaten you, you know when you come back you are going to get beaten. If they have beaten you, they do not take you to Dr Jacobson until most of the serious evidence, you know, if you have bruising for instance, then they will not take you but I remember on one occasion they took me to, to, to Dr Jacobson and there was bruising.

MR MLOTSHWA: Yes.

MR CACHALIA: But they, and it was maybe say two weeks or
20 so after the last interrogation, so, so there was not much evidence but there was evidence of, of an assault. So I had to work out, do I trust Dr Jacobson because he is also part of the system? Do I trust him?

MR MLOTSHWA: Hmm.

MR CACHALIA: This time I thought to myself well I am, I will

test him because he can see some of the evidence. So I did tell Dr Jacobson and I do not..., I had no contact with Dr Jacobson subsequently so I do not know really what kind of man he was but at the time I felt that there was, that he was basically a good man, a moral man and that I could take the chance to trust him, to tell him, yes look, this is what, what happened, and then I remember that he, he then examined me, you know, and recorded, made a record of, of what, of, of, of some of the bruising.

10 MR MLOTSHWA: Thanks, Prof. And tell us, Professor, did you testify at the Truth and Reconciliation Commission?

MR CACHALIA: No, I did not.

MR MLOTSHWA: You did not.

MR CACHALIA: Were you ever invited?

MR MLOTSHWA: No.

MR CACHALIA: And do you know that any of the police officers that..., that assaulted you or tortured you applied for any amnesty?

MR CACHALIA: I understand that, that one officer, officer did.
20 I was not that interested, to be honest, in what was going on there because, you know, I, I think it was very important...

MR MLOTSHWA: Yes.

MR CACHALIA: ...that, that people had, especially families had the opportunity to, to confront people who had caused so much harm to themselves and their loved ones but, you know, I

wanted the country to change, so my interest was not so much in what was happening in the TRC but really what kind of Constitution, what kind of political institutions were being set up and so forth. So, so that was mainly what I was concerned with at, at the time.

MR MLOTSHWA: Hmm.

MR CACHALIA: And I, I know that someone testified but I..., I really did not take much interest in what he had to say.

MR MLOTSHWA: I see. Did anyone ever apologise to you to
10 what happened to you at John Vorster Square during your
interrogation?

MR CACHALIA: No, and I really did not expect one.

MR MLOTSHWA: Thank you, My Lord.

COURT: Adv Coetzee.

NO EXAMINATION BY MR COETZEE: Thank you, My Lord, I
have no further questions for the professor.

MR CACHALIA: Thank you.

NO EXAMINATION BY MR AMOJEE: No questions, My Lord.

COURT: Re-examination?

20 RE-EXAMINATION BY MR SCOTT: Yes, My Lord, there is just
two issues:

1. I can confirm because Prof Cachalia statement was disallowed by the magistrate at page 324. He did not testify;

2. And secondly if I can take you to EXHIBIT B841 which is

in the occurrence book at paginated page 134 it sets the
3. different individuals that were taken out of the cell on
that day including Dr Aggett.

Prof Cachalia, do you recall what your cell number was, the numbering system has changed so that document will not be able to assist us.

MR CACHALIA: No, I, I do not.

MR SCOTT: Alright. We will make submissions on that, Judge, but having, having done a little bit of investigative
10 work, it appears that Prof Cachalia might have been either in cell 3001 or cell 3012 and the individuals from those cells were actually taken out on the same time as Dr Aggett but we will make submissions to, in that regard in due course.

QUESTIONS BY THE COURT: So there is no re-examination. Professor, what I want to know from you is that you, you say that they wanted you to tell them the truth and if you did not then they tear up the statement. So precisely did they tell you what, what is the truth that they wanted? What is it what they want to know?

20 MR CACHALIA: No, Justice, what, what I meant by that is that what they wanted, they were working with a theory, the theory was we were all directly under the instructions of Lusaka. So until, and, and, and there was a network in the country who, of, of, of ANC cadres in the country.

COURT: Hmm.

MR CACHALIA: They were, they, and they, they wanted to identify which ones were going to be charged in the treason trial and which ones were going to testify. As I said, none of us were prepared to do that.

COURT: Hmm.

MR CACHALIA: So the, the truth for, for, that they were looking for was the evidence that would make it possible for them to have such a trial and their difficulty was that there was some people in that network who were definitely not under
10 anyone's direct instructions and they were not even ideologically affiliated. Some of us were ideologically affiliated and were engaged in what we understood were ANC activities but we were not directly under anyone's instructions at that time and so they were trying to build a case along those lines. I think their, their difficulty was that they knew so little, number one. And number two, they could not tie our activities, even those of us who were consciously working to further the aims of the ANC, they could not make the legal case. So I think as time went on they became more and more desperate;
20 they were flying many kites; they were working with many hypothesis; they were pursuing many blind alleys, and eventually I think they decided that all they can do is charge Barbara and, and try and get others to testify against her but that even was not working, going to work. So they, they kept on upping the ante through this process and then it came to, it

came to a point where they pushed it too far, Neil died and then their, their entire legal and political project collapsed. That is I think what happened.

COURT: And then lastly what I want to know is, when you saw him at that place which you say is the charge office...
[Intervened]

MR CACHALIA: It was like an intermediate office, Justice.

COURT: Yes.

MR CACHALIA: *Ja*.

10 COURT: He was in the company of police officers?

MR CACHALIA: Yes.

COURT: White or black?

MR CACHALIA: It was the black officers who came to fetch us.

COURT: So even in his case it was one black officer?

MR CACHALIA: No, they would have, you would not... There would be two or three at least. So in that room there would have been about six of them apart from the guys standing behind the desk who are, who are...

20 COURT: Hmm.

MR CACHALIA: ...filling in the occurrence book. So it was quite crowded.

COURT: *Ja*. Now one, and you are seeing him for the first time on that day?

MR CACHALIA: Yes.

COURT: For the first time.

MR CACHALIA: First and last time unfortunately.

COURT: And then the following morning Jabu Ngwenya tells you that Neil has passed away. Did you know who he was referring to?

MR CACHALIA: Yes.

COURT: How?

MR CACHALIA: Now I have been trying to piece that one together because like I say, I did not know him before I was
10 detained but, you know, in our communication system we would have been saying like who else is there, who is detained, I mean I knew Auret was detained for instance but I only saw Auret once but Auret of course I knew before I was detained. Coleman, I knew Coleman before I was detained but I never saw, well actually I might have seen him once. So, so the thing is there was so many detainees there and the, the, the group changed from time to time, people brought in and taken out, kept in other places, you know. So I would have been informed that, that Neil Aggett, I knew he was a trade
20 unionist. I think it was the Food and Canning Workers Union. Am I correct about that? I think so.

COURT: *Ja*.

MR CACHALIA: So that information I would have gained in detention from other detainees but I only saw him once.

COURT: Good. Thank you. Any questions from that?

NO FURTHER QUESTIONS BY MR SCOTT: None, none, My Lord.

MALE SPEAKER: No.

COURT: None? Okay, thank you, Professor, you are excused.

MR CACHALIA: Thank you, Justice.

NO FURTHER QUESTIONS

COURT: Yes?

MR VARNEY: May we seek the Court's indulgence. Our next
10 witness is only arriving at Court at, at 1 PM. Can I suggest, if
Your Lordship agrees, and there is no objections from the
parties, that we adjourn now and resume again at 1:30 PM.

COURT: *Ja.* At 1:30? Will they have opened the door for
you? Okay. We will resume at 1:30, that is fine.

MR VARNEY: As the Court pleases, My Lord.

COURT: Fine. Court adjourns.

COURT ADJOURNS [12:21]

COURT RESUMES [13:48]

20 COURT: Thank you.

MR VARNEY: As the Court pleases. My Lord, our apologies
for, for the late start. The, the next witness Mr Sisa Njikelana
is, is disabled and had some difficulty in, in getting up here.
My Lord, our, our next witness is Mr Sisa Njikelana and
perhaps he can be sworn in before we commence?

COURT: Yes, please swear...

REGISTRAR: Please state your full names and surname.

MR NJIKELANA: Sisa Njikelana.

COURT: Sisa?

MR NJIKELANA: Sisa Njikelana.

COURT: Sisa Njikelana. Yes.

REGISTRAR: Do you have any objection to taking the oath?

MR NJIKELANA: No.

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

MR NJIKELANA: Help me, God.

REGISTRAR: Sworn in.

COURT: Yes, you may proceed.

MR VARNEY: As the Court pleases.

SISA NJIKELANA: (duly solemnly swears)

EXAMINATION BY MR VARNEY: Mr Njikelana, do you confirm
that you signed a statement, a recent statement dated the 3rd
of February 2020?

20 MR NJIKELANA: Yes, I do.

MR VARNEY: And you have a copy of that statement, Sir, with
you?

MR NJIKELANA: Yes, I do.

MR VARNEY: And, and you confirm the contents of, of the
statement?

MR NJIKELANA: Yes, I have gone through it.

MR VARNEY: Thank you. [Intervened]

COURT: Is, is there a copy for me? For the Court?

MR VARNEY: Oh, My Lord, I, I am, I beg your pardon, I should have handed these up in the, the first place. My Lord, in fact we, we are handing up three documents. The first document is an extract from the General Law Amendment Act of 1966, it is section 22 and sets out the powers exercised by the police in those days. We will make submissions on, on the
10 law at a later stage and then, My Lord, we have the affidavit of, of this witness, it is marked G20. So that would make the extract of section 22, G19. And, My Lord, just to assist you, we will also be making reference to an earlier statement by the witness, an unsigned statement, it is already part of the record, marked B3.5.4.

COURT: Yes, thank you.

MR VARNEY: Sir, Mr Njikelana, do you also have a, a copy of a statement titled Sisa Njikelana which is marked B3.5.4 with you?

20 MR NJIKELANA: Yes, I do.

MR VARNEY: Do you confirm that you testified before the first inquest into the death of Neil Aggett in 1982?

MR NJIKELANA: Yes, I do confirm.

MR VARNEY: My Lord, just for the record, that testimony is marked A47...

COURT: Yes.

MR VARNEY: And it is between pages 1526 and 1589. I, I, I see that in the first inquest, at least on B3.5.4, you were referred to as Sisa, spelt C-A-E-S-A-R, can you explain why the statement is marked Caesar and yet we are referring to you today as Sisa.

MR NJIKELANA: My Lord, I, I when I looked at the statement, I also got baffled. I do not know how it happened. You know, obviously there must have been some, some, some error
10 somewhere.

COURT: So it should be S-I-S-A?

MR NJIKELANA: Yes. Yes, My Lord.

MR VARNEY: Okay. So it is, it is a simple mistake...
[Intervened]

MR NJIKELANA: *Ja*, it is just a...

MR VARNEY: And your name was Sisa then and it is Sisa
now.

MR NJIKELANA: It is just an error.

MR VARNEY: Okay. You were born on the 10th of August
20 1955. What, what is your current occupation?

MR NJIKELANA: I am an entrepreneur, My Lord.

MR VARNEY: Okay. So that is, your, you are a businessman. Before we deal with the substantive contents of your statements, can we just go back to the early years of your political activism? Can you talk about what kind of political

activity you were involved in prior to your, your first detention in 1981?

MR NJIKELANA: I was a trade unionist and I was part of the South African Allied Workers Union from the, 1978 and in the South African Allied Workers Union I held various positions. I started getting active in the South African Allied Workers Union in East London where I was part of the overall activities of the union recruiting workers, representing them to employers, at the same time fighting for recognition of the trade union itself
10 and, I must say, throughout that period I earned the attention of the Special Branch and I got detained, we got visits in our offices, you know, in so much that it was just a usual thing to get Special Branch coming to our offices, asking questions, interrupting us or getting arrested when coming from a, a factory.

MR VARNEY: Did you hold a particular position or title with SAWU?

MR NJIKELANA: Yes, from being an, an organiser locally in East London, later I became the vice-president of the union.

20 MR VARNEY: Thank you. And unless you have got anything further to add to your early political activities can, can you explain to the Court how it is that you got to know Neil Aggett in those days?

MR NJIKELANA: I hope, My Lord, it will be fine if I give a context.

MR VARNEY: Please.

MR NJIKELANA: Comrade Neil Aggett was part of the African Food and Canning Workers Union, not South African Allied Workers Union. However, because of the, between us we were sharing the same principles, the same political outlook, there was an arrangement of the two unions to assist, support each other wherever and whenever possible. A good example is that in East London, the first union to have offices, was the African Food and Canning Workers Union and the first union to
10 have staff in the office was the African Food and Canning Workers Union and SAWU latched on that until we were able to have our own office, have our own staff. So coming to Johannesburg, the head office of the African Food and Canning Workers Union in Cape Town would logically and obviously referred us, refer us to comrade Neil Aggett and that is how I met him because now we had the intention of establishing ourselves in Johannesburg recruiting and obviously not recruiting in the industry, that is food and canning industry where African Food and Canning Workers Union is..., is
20 organising.

MR VARNEY: And can, can you explain to the Court your, your further interactions with, with Neil Aggett?

MR NJIKELANA: Well, I can say I, I, I met Neil Aggett in the battlefield, battlefield in the form that we met at the offices of the African Food and Canning Workers Union. I may not be

accurate but they were not far from here, you know, between here towards the Park Station and by then he had already a couple of workers and a couple of companies whom he had, shall I say, prepared to refer to us because they were in the food and canning industry. So immediately I had to start preparing to attend to those workers.

MR VARNEY: And, and from time to time, did you stay at his, at his home here in Johannesburg?

MR NJIKELANA: Yes.

10 MR VARNEY: So you got to know him quite well?

MR NJIKELANA: Well, other than being in the office attending to workers' problems, we had time to sit and chat at his place.

MR VARNEY: And, and perhaps you can describe to the Court, you know, his personality, his character, as you knew him in those days.

MR NJIKELANA: Well, My Lord, the first thing that struck me is that Neil was a doctor and he, he was working night shift at Chris Hani Baragwanath and then I asked him the reason thereof. He said it is because that gave him time to be able to
20 do union work during the day and obvious, naturally that becomes a little bit odd – he worked at night, he still worked during the day. However my observation was that Neil would, we would meet in the morning at the union offices and he would pull a bench, take a nap and before I realise, he is up either assisting me or attending to workers in the, in his, in his

area of, of, of operation. That is the first thing that struck me and remember I, here is this young chap coming from East London and I was exposed to, shall I say black people. Now Neil is a white and I see this commitment; it gets reinforced now when we sit at home, his outlook in terms of advancing the [indistinct – 14:01] struggle, the need to ensure that, you know, we organise workers, represent them, we have unity amongst the trade unions which was one of his concerns because at that stage there were quite a number of unions and
10 some obvious invisible competition amongst unions, you know, where we, we recruit workers and that is what also concerned him but, look, I do not want to bore the Court but one could go on and on, so combining his commitment at, at the union offices and sitting and chatting with him, you know, and him also encouraging me that I should not just be an activist. You know I should give some time to, to read, you know, as part of self-empowerment, I mean that is just one of the things that comes up. Those are the things that we chatted about, of course about the struggle generally, how it is essential for, for
20 that we take, you know, a firm stand about the, the exploitation and oppression that is taking place in this country, particularly the workers.

MR VARNEY: So you, you saw him at that time as a serious and committed dedicated young activist?

MR NJIKELANA: My Lord, there was no reason to doubt

anything other than that.

MR VARNEY: And, and indeed according to paragraph 8 of your affidavit, you say that on the night of 29 May in 1981 security branch officers arrived at Neil's home to arrest you. Can you just give a, an indication to the Court what transpired in that detention from 29th May 1981?

COURT: Which paragraph is that?

MR VARNEY: Paragraph 8.

COURT: Okay.

10 MR VARNEY: You indicate at paragraph 8 that the, the detention was somewhat unremarkable. Why, why did you describe it as unremarkable?

MR NJIKELANA: At paragraph?

MR VARNEY: Paragraph 8, you were detained at Neil's home...

MR NJIKELANA: Okay.

MR VARNEY: On the night of 29 May 1981.

20 MR NJIKELANA: Okay, unremarkable. My Lord, you see once Special Branch comes in, the first thing that you brace yourself, is try to prepare for torture because you do not know what is going to happen and by the time you get released you make a sigh that I got off the hook, not because of suppose previous experience, remember I was part of various comrades who either were tortured, who either were threatened or anything. So at that stage and time I think the harassment

that I had received was, was relatively, by standards, mild wherever I got any, any harassments in the, in the previous detentions but in that detention specifically I was arrested, taken to John Vorster, which is Joburg Central these days. I was questioned while the usual abuse came about and nothing else and... [Intervened]

MR VARNEY: I see, okay... [Intervened] [Speaking simultaneously]

MR NJIKELANA: I, I, it is, it is sort startled me because
10 initially I, I, I assumed that the, the kind of attitude and harshness that the, the, special, Special Branch, the, the direct, the officers themselves was, I might get dealt, get me a couple of punches and kicks and whatever.

MR VARNEY: Well, but I think in many other people's books that would be quite serious but obviously at that time you did not regard that as particularly remarkable although I suppose what is remarkable that, that detention was for some ten weeks. It was not a short detention.

MR NJIKELANA: Yes, because I was, I was... Look the, the,
20 the union work, I was really grilled about my union work and I was really grilled about my association with comrade Neil Aggett and the, the, the interrogators were pretty clear about their unhappiness about me working with comrade Neil Aggett.

MR VARNEY: On, on that score, do you recall which interrogators were unhappy with you, at least your relationship

with Neil Aggett?

MR NJIKELANA: Whitehead.

MR VARNEY: Stephen Whitehead. Lieutenant Stephen Whitehead.

MR NJIKELANA: Ja, Lieutenant Whitehead. I, I would not remember his first name... [Intervened]

MR VARNEY: Sure.

MR NJIKELANA: But the Whitehead name is, is...

MR VARNEY: And any other names of officers who also
10 expressed a concern about your activities with Aggett?

MR NJIKELANA: No, I, I cannot remember the others.

MR VARNEY: Okay. Well, let us, let us, let us now move to the next period of detention, the one that started on 8th December 1981 when you were arrested in East London which you, you might refer as, or, or, or describe as more remarkable but before we get into that, do you recall making out a statement, a signed statement, before the first inquest? I have already referred you to the unsigned six page statement but do you recall making a proper signed statement before the first
20 inquest? Perhaps taken by the lawyers for the Aggett family?

MR NJIKELANA: Probably.

MR VARNEY: Okay.

MR NJIKELANA: Probably.

MR VARNEY: Because the... [Intervened]

MR NJIKELANA: But a statement was taken. I mean I was

flown from East London, I came here, I was taken through and...

MR VARNEY: And you, you, you sat down with the lawyers for Neil Aggett at that time and... [Intervened]

MR NJIKELANA: Yes.

MR VARNEY: And took a statement. Do you remember per chance the names of the lawyers who, who took the statement from you?

MR NJIKELANA: Yes.

10 MR VARNEY: Can you indicate?

MR NJIKELANA: David Dison.

MR VARNEY: Anyone else?

MR NJIKELANA: Advocate, Adv Bizos.

MR VARNEY: Maybe Adv Bizos... [Intervened]

MR NJIKELANA: Was part of the team.

MR VARNEY: Okay. I can confirm from the record that a full statement was put up. My Lord, regrettably we do not yet have a, a copy of that statement.

COURT: Yes.

20 MR VARNEY: As with many of the other statements we believe that to be part of the missing B2 folder and as mentioned we are in touch with the archives of the University of Sussex and they are busy digitising their records which we are advised includes B2 and we, and we hope to be able to submit to the Court the missing B2 or at least copies of the

digitised version in the not too distant future. We have asked them also to authenticate true copies for us.

Now before we proceed with your current affidavit and what you have to say about the more remarkable detention from December 1981, I want to take you to your unsigned statement; this is the small six page document, the one in which they refer to you as Caesar, the one marked B3.5.4, and I, I do not wish you to, I am not asking you to comment on the contents, I simply want you to tell me whether you recognise
10 the facts as set out in these paragraphs because it does seem as if there is quite a big problem with this unpagged, unsigned, six page statement. So can I refer you to the first paragraph, it says, it appears that you are responding or referring to paragraph 6 of your original affidavit and referring in particular to the assaults of Major Cronwright and in paragraph 1, you make reference to Lieutenant Booysen and Lieutenant Steyn and then you described briefly an assault perpetrated by Major Cronwright. Do you remember those facts?

20 MR NJIKELANA: Yes, I do.

MR VARNEY: Thank you. Let us then turn to paragraph 2 and now you are referring to paragraph 7, presumably of your main statement; you are talking about incidents that took place in the first week of January of 1982 that you were writing your statement for the second time and then you mention that you

were placed into leg irons as well as hand cuffs. You were placed into a crouching position and you then had to endure electric shocks. Do you recall those facts as being facts that you recognise?

MR NJIKELANA: Yes, I do.

MR VARNEY: Then let us turn to the next page, page 3, paragraph 3 you make reference to a mark that you observed on Neil's arm. Do you recall those facts?

MR NJIKELANA: That will always be indelible in my memory.

10 MR VARNEY: Okay and, and we are going to return to all these incidents in your, in your main statement shortly, and in paragraph 4 with apparent reference to paragraph 13 of your main statement dealing with the conditions of detention and here there, there are quite a few references to facts or allegations – the fact that you have started getting lots of visits at night; that you complained to a police officer so that the hassle by these people, presumably late at night; that there was banging on the doors and waking us up all the time; you say that you saw security policemen coming into the cells;

20 there were two young Indian guys and the security police left; you heard a noise and you stood on top of the toilet bowl and you looked out the window and saw them passing, you cannot remember the date and time. Is there anything from this paragraph that you can recall or is it, is this familiar to you or not?

MR NJIKELANA: Parts of it.

MR VARNEY: Which part?

MR NJIKELANA: The fact that I heard noise and I stood on top of the toilet bowl. And looked at the windows up there and... [Intervened]

MR VARNEY: But, but the rest, the, the noise and the complaints... [Intervened]

MR NJIKELANA: No, and, and page, and page 4 the, the fact that I did make complaints to the... But it was not the
10 magistrate, I do not know why it said magistrate because the people who, who, whom we were asked complaints was either the district surgeon or the inspector, I think Mr Mouton, if I, if I recall... [Intervened]

MR VARNEY: Yes.

MR NJIKELANA: *Ja*.

MR VARNEY: Before we move on, the reference to two young Indian guys... [Intervened]

MR NJIKELANA: No... [Speaking simultaneously]

MR VARNEY: Do you have any recollection of that?

20 MR NJIKELANA: I do not remember that. I do not remember this issue of lots of visits at night. I did not complain about that because I mean usually there, there is, there were regular checks that were done by the police just to check if we are alright and also I do remember in the, in the subsequent... No, that is, that is all, that is all I am... [Intervened]

MR VARNEY: I see, and... [Intervened]

MR NJIKELANA: I am very clear about.

MR VARNEY: And while we are on that paragraph, if standing on the toilet bowl and looking out and you saw them passing, that was not in reference to the two young Indian guys?

MR NJIKELANA: No.

MR VARNEY: What was it, what was it in reference to?

MR NJIKELANA: That is the time I saw Neil Aggett being carried by the security.

10 MR VARNEY: I see. Alright, we are going to return to that in some detail but for the rest of that paragraph it does seem alien to you. Then turning to next paragraph, that is paragraph 4.2 where you are dealing with the events at the end of January 1982 and, well, actually I should not say you are dealing with events, so whoever drafted this was dealing with events at the end of January 1982 and there is a reference to somebody together with Neil Aggett being taken up to the 9th floor where the lift stops and while, while that person and Neil were waiting for the gate to be opened, Neil says, and maybe I
20 should just quote it to you:

“The words that I actually remember him saying to me are; Eric, these people are fucking me up.”

Your name is not, Eric?

MR NJIKELANA: Definitely.

MR VARNEY: So do you have any recollection of any of this?

MR NJIKELANA: No, because I never spoke to Neil.

MR VARNEY: Right.

MR NJIKELANA: At any stage in time when I used to see him in detention.

MR VARNEY: And then if, if we... [Intervened]

MR NJIKELANA: I mean other than, if I can be just exact?

MR VARNEY: Yes.

MR NJIKELANA: Other than greeting, just saying, hi, or then nod – that is all.

10 MR VARNEY: Yes.

MR NJIKELANA: That is the most that I did.

MR VARNEY: And, and we will return to the, the little interaction that you did have. And then if we carry onto the next paragraph, the unnumbered paragraph on page 5, it deals with an incident that apparently took place in the second floor cells where the individual, apparently giving this information, says that he was doing morning exercise by running in a passage, that he encountered Detective Constable Chauke who was standing in the passage together with other black security
20 policemen that had come to fetch you and you go into conversation and it appeared that Chauke was waiting for Aggett to finish his breakfast and he then made a derogatory comment about the way Aggett had been walking, allegedly because he had been struck in his testicles. Any recollection of that?

MR NJIKELANA: No, that definitely was not me but I must say, I know, or I knew Constable Chauke but... [Intervened]

MR VARNEY: Yes, I am not saying you do not know but, but I am talking about this incident of exercising and then... [Intervened] [Speaking simultaneously]

MR NJIKELANA: Ja, that is, that is what I was coming to. That, that was, I was not present there.

MR VARNEY: This does not relate to you... [Intervened]

MR NJIKELANA: Ja, it just does not relate to me.

10 MR VARNEY: Okay.

MR NJIKELANA: Whatever interaction I had with Chauke was elsewhere, not as, as stipulated here.

MR VARNEY: And, and then finally, another curious paragraph, paragraph 5 on the last page, page 6.

‘During my period of detention at John Vorster Square I was not physically assaulted or tortured.’

Which seems an odd thing to say given that in paragraph 1 you said you endured electric shock treatment amongst other abuse. So I am putting it to you, does that apply to you?

20 MR NJIKELANA: Not in the detention of late December 1981... [Intervened]

MR VARNEY: Yes, no... [Intervened] [Speaking simultaneously]

MR NJIKELANA: When Neil and others were there.

MR VARNEY: Yes.

MR NJIKELANA: No.

MR VARNEY: Now, now we are talking about your second period of detention.

MR NJIKELANA: Ja, not in that... [Intervened]

MR VARNEY: Not, not, not in 81, the period from December 1982 through to May of 1982.

MR NJIKELANA: No... Okay. Definitely... [Intervened]

MR VARNEY: So does... [Intervened]

MR NJIKELANA: ...that does not apply to me.

10 MR VARNEY: So paragraph does not, paragraph does not apply to you?

MR NJIKELANA: No, it does not apply to me.

MR VARNEY: So it seems that it is only paragraphs 1, 2, 3, and then only sentence of paragraph 4.1 that has any application to you, namely the fact that you did stand on top of the toilet bowl and looked through the window at, at some point in time.

MR NJIKELANA: [No audible answer]

MR VARNEY: Alright, then we will put that statement aside.
20 Before we finish with up with that, you mentioned that you had made a, a statement to, to David Dison. Have you had any contact with David Dison since that first inquest in 1982?

MR NJIKELANA: Yes.

MR VARNEY: Have, have you had a meeting with him since 1982?

MR NJIKELANA: Meeting, no?

MR VARNEY: No.

MR NJIKELANA: But I just met him in an event and later we came across each other over social media, we just greeted, long time no see and... [Intervened]

MR VARNEY: I see.

MR NJIKELANA: That is as far it, as it goes.

MR VARNEY: Aside from your consultations in 1982, did you discuss the Aggett inquest in any way post 1982?

10 MR NJIKELANA: I do not remember, no. If, if, if there was any, it must have been very close just after the, after the inquest itself.

MR VARNEY: Okay. My Lord, I can confirm that we have consulted with Mr Dison on this question.

COURT: *Ja*.

MR VARNEY: And he does confirm consulting with the witness on this question which we will be dealing with a bit later in, in the evidence and we may have to recall Mr Dison on, on, on this aspect.

20 COURT: Okay.

MR VARNEY: Alright, thank you Mr Njikelana. Let us now begin in earnest with the detention in question, in other words when you were detained in East London towards the end of 1981, what transpired after you were arrested on 8th December 1981? Did you spend some time in East London that you can

perhaps just indicate to Court what, what took place?

MR NJIKELANA: I cannot remember.

MR VARNEY: Okay.

MR NJIKELANA: I, I cannot remember pretty well. I think what was most vivid to me with that, although I was arrested in East London, I did not spent much time there relatively...

[Intervened]

MR VARNEY: Much time there.

MR NJIKELANA: You know, we were together with my other
10 comrade Timela Kwete, we were quickly transpired up to Johannesburg.

MR VARNEY: Yes, and it does appear from your affidavit that you arrived at John Vorster Square on the 13th of December – so just a few days later and you remained in detention until, until the 5th of May 1982. Do, do you recall where you were held? What, what cells you, you stayed in within John Vorster Square?

MR NJIKELANA: Ja... [Intervened]

MR VARNEY: Was, was it the second floor cells?

20 MR NJIKELANA: Yes.

MR VARNEY: And if we can turn to your interrogation, you mention that your interrogation started approximately one week after arriving at John Vorster Square, from the 21st of December onwards. Do you recall who, who were your assigned interrogators?

MR NJIKELANA: Ja, it is Lieutenant Booysen and Steyn.

MR VARNEY: Okay. [Intervened]

COURT: Is it Booysen and Klein?

MR NJIKELANA: Steyn, Steyn, My Lord.

COURT: Steyn.

MR NJIKELANA: Steyn, My Lord, yes.

MR VARNEY: My Lord, for the record, it appears to be Lieutenant Johannes Jacobus Steyn. There, there is a, a statement which is marked EXHIBIT B5.1.3 but I can advise
10 Your Lordship that the witness does not appear in the particular statement.

COURT: Alright.

MR VARNEY: There is also a, a Booysen listed on the record, My Lord. It is Warrant Officer Adriaan Jacobus Booysen. His statement appears at EXHIBIT B51.5.

Is, is it possible that, that the Booysen who was dealing with you was a warrant officer and not, not a lieutenant?

MR NJIKELANA: Juh!

MR VARNEY: Difficult to remember?

20 MR NJIKELANA: Difficult to remember, you know.

MR VARNEY: Okay.

MR NJIKELANA: Remember all they did was just to introduce themselves the day they fetched me and they just told me that we are assigned to you and that is it. So what is, what is more indelible is their names, more than their ranks.

MR VARNEY: Okay, and what did they, what did they want from you? What did they want you to, to do? What were they trying to get from you?

MR NJIKELANA: Well, they instructed me to write statement about my union activities and also just my education but more about my union activities.

MR VARNEY: And so you, you commenced writing and you say that the process started in the same way the next day, they, they handed you a pen and paper and asked you to carry
10 on writing and that this was the program through to the first week of January 1982.

MR NJIKELANA: Well, I mean although it, it has been some time but that, that is still vivid... [Intervened]

MR VARNEY: Yes.

MR NJIKELANA: And I would finish a page, they would take, go through it whilst I am continuing writing. Then I would finish that page as well and that was sort of the continuous drill.

MR VARNEY: Yes. And you indicated that carried on through
20 December, through to early January with the exception of, of Boxing day when they mistakenly took you for interrogation which it turned out not to be an interrogation.

MR NJIKELANA: Yes. On the Christmas day nothing happened but on the Boxing day I was almost interrogated but, I mean when we went up to the interrogation rooms it was

clear that I was not, I was the wrong person for that pair of interrogators.

MR VARNEY: I see because, because that was not Booyesen and Steyn... [Intervened]

MR NJIKELANA: No, definitely it was not.

MR VARNEY: And you, you mentioned rather amusingly that someone, one of them was referred to by presumably a nickname Karl Marx.

MR NJIKELANA: Yes, My Lord, it struck me right inside John
10 Vorster to have someone called Karl Marx. I have, obviously I was, I would honestly... [Soundtrack distortion – 14:27]

MR VARNEY: Okay, let us, let us move and, and let us deal with the officers interrogating you, namely Booyesen and Steyn. You describe them as both are polite and aggressive in, in paragraph 15. Why both polite and aggressive?

MR NJIKELANA: Lieutenant Steyn in particular was, was quite polite. He would chat a bit, here and there, and remember, you know, in the beginning when I was writing, you know, they would just take the, the, the, each page, you know,
20 and it is, oh, you finished this one, you know – talk nicely. However down the line the attitude changed now, the moment they started using the word ‘shit’ as well and they would come back and said, ‘*Meneer*, no, you are writing shit now.’ So that is why I am saying it, it was Dr Jekyll and Mr Hyde, you know, behaviour. Initially they were polite but down the line they

became aggressive in, in terms of their language and of course I would extend the aggression right into when electrocuted me. I, I, I really got quite stunned as well because they never come across at the initial stage as people who are like the other Special Branch officers who would just be very, very aggressive from the onset.

MR VARNEY: So perhaps just a little more sophisticated?

MR NJIKELANA: I suppose that is the correct description, My Lord.

10 MR VARNEY: And did they want you to admit or confess to anything in particular?

MR NJIKELANA: Yes.

MR VARNEY: What was that?

MR NJIKELANA: Up to today there are two bizarre instances that they forced me to concede to which after the electrocution I did although I knew that those were, [indistinct – 14:29] to say blatant lies or outright untruths. The first one is that they said I received funds from Craig Williamson and I denied that. I looked, I mean I was just confused. Most to that, at that
20 stage in time I did not know Craig Williamson. I had to ask people afterwards who is this Craig Williamson that I actually ended up being electrocuted for? Then they said, no, student at Wits, activist. He has gone out of the country. Okay. Then I got calm because then I said I will meet him and tell him one day that I got electrocuted because of some funny allegations,

you know, from you but they, they, they insisted that I received funds from Craig Williamson – that is the first one.

[Intervened]

MR VARNEY: Just, just, just before you move on...

[Intervened]

MR NJIKELANA: *Ja*.

MR VARNEY: Did you subsequently hear that Craig Williamson turned out to be a Special Branch spy?

MR NJIKELANA: *Ja*, down the line.

10 MR VARNEY: Down the line.

MR NJIKELANA: And, *ja*.

MR VARNEY: Sorry, to interrupt. What, what was the second one they wanted you to confess to?

MR NJIKELANA: The, the second one was that they made reference to an, an anti-SAIC conference which was held in Durban, SAIC, South African Indian Council Conference. At this conference they claimed that the Freedom Charter was adopted there. Now, My Lord, I am sitting in front interrogators, the moment they say anti-SAIC conference to
20 me, I knew a couple of organisations would come in mind – the Natal Indian Congress and the Transvaal Indian Congress, could have been other organisations but closely working with those two organisations because those were the ones whom I knew were at the centre of the anti-SAIC campaign as a campaign and bear in mind also I did not even know about the,

the conference. I may have known but there were lots of activities. So my response to them was that the Freedom Charter was never adopted, you know, in 1981. I knew the Freedom Charter was adopted in 1955. I tried to reason with them, I said the only resonance or [indistinct – 14:32] between what could have discussed in that anti-SAIC conference and the Freedom Charter, were principles. That is where there could have been [indistinct – 14:32]. My Lord, they were adamant – No, the Freedom Charter was adopted at this anti-
10 SAIC conference and on both instances, the Craig Williamson allegation and this one, I did something which was very unusual as someone who has been in and out of detention, who knows what comrades go through, I had a heated argument with them because I just, I just felt, even in detention, quite annoyed because the first thing, how can they say I received funds, I know funds were funnelled through but to, to, to tell me about someone whom at that time I did not know, you know, I found it was rather odd, you know. It, it, it could have been fine if they could have mentioned maybe a
20 comrade which is, I worked with that skipped the country, then that is close enough, then I would have prepared myself to either deny and whatever but to say someone I do not even know. Now, the other one is Freedom Charter being adopted last year – that is the time in 1981. I said this is very *dom*, very stupid. So I just blew up but after that it culminated in me

getting electrocuted.

MR VARNEY: Yes.

MR NJIKELANA: So those are the two, I mean up to today they..., they are very, very indelible in my memory that I was electrocuted for very, very bizarre, stupid allegations.

MR VARNEY: Before we return to the, to that particular torture, if you can just go to a prior incident. You, you mention in your affidavit that Major Cronwright would come into the interrogation room from time to time. Can you explain the role
10 of Mr, of Major Cronwright and what happened when he would come into the interrogation room?

MR NJIKELANA: Major Cronwright would come into the room, take a page from my statement, of my statement rather, go through it and initially he came shouting, saying that I have written shit, I must write more, I must come out with the truth but he would then frequent, and the, the frequency and the visits were accompanied by grabbing me, slapping me, punching me.

MR VARNEY: And, and, and you say that would visit the
20 interrogation room sometimes several times a day and, and assault you in this fashion?

MR NJIKELANA: That is, that is possible, I mean it has been some time but, look, he, he was just frequenting, you know/

MR VARNEY: And you, you lost count how many times he assaulted you in that fashion?

MR NJIKELANA: Ja, even, even if I would have been asked the day after, I would not have been able to recall but he was really frequenting.

MR VARNEY: And while Cronwright would be assaulting you, what would Booysen and Steyn be doing?

MR NJIKELANA: No, they would just watch and keep quiet.

MR VARNEY: So you, you, you indicate paragraph 19, that you completed your first statement in the last week of December 1981, you handed that to Booysen and Steyn and
10 you were given the, the normal response that it was 'shit' and so forcing you to write a second statement which you completed in the first week of January 1982 and it appears then that this was when the disputes over the adoption of the Freedom Charter arose and I would like you to indicate to the Court what transpired when they refused to accept your answer that the Freedom Charter have not been adopted at that conference in Durban?

MR NJIKELANA: Well, as I have said, My Lord, there was, this argument about adoption of the Freedom Charter versus
20 my own position that there was..., you know, essentially, you know, resonance of convergence of, of principles by those who were holding that anti-SAIC conference. Then thereafter they just left the office and came back with the leg irons and handcuffs and the [indistinct – 14:38] started; the leg irons on my ankles and I was made to sit in a crouching position and

then the handcuffs on my wrists and they were linked and then a canvas bag over my head. Thereafter... [Intervened]

MR VARNEY: Just, just, just, I just want to check that. They seem to tie you up in an unusual way; you, you mentioned that Booyesen attached the leg irons and handcuffs so that the handcuff chain was under the leg iron chain. Was that to... [Intervened]

MR NJIKELANA: I hope I am accurate because I, I could not understand myself but, because I was made to sit, bend my
10 legs, leg irons on my ankles and then my hands behind the legs and then, remember then I, I, I would not be able to see exactly but I could see that they were linking my hands to the, to the leg irons... [Intervened]

MR VARNEY: I see.

MR NJIKELANA: ...through the handcuffs.

MR VARNEY: And, and a canvas bag was placed over your head?

MR NJIKELANA: Yes, correct.

MR VARNEY: Was, was it dry or wet?

20 MR NJIKELANA: No, it was dry.

MR VARNEY: It was dry. And once they had completed that and you were now in that position, what, what did they do?

MR NJIKELANA: I was wearing a, a shirt with long sleeves. Now I could only sense what were they doing but I, so I could feel that they were, you know, rolling up my long sleeves and

they started putting a cloth around my biceps. However there was, you know, something metallic, cold, you know on the inside part of the, of the biceps, on both arms and thereafter I got electrocuted a couple of times.

MR VARNEY: And I, I, I do not wish for you to relive that experience unduly but can, can you describe the sensation of pain that you went through?

MR NJIKELANA: Well, there would be just shocks going throughout my body, vibrations with pain. The whole
10 experience was so intense that every time they would switch it on, I would fall on my side and get unconscious.

MR VARNEY: Was it done once or was it done repeatedly?

MR NJIKELANA: It was done repeatedly.

MR VARNEY: So once that torture had, had been completed, you were told to get back to the table and to continue writing your statement?

MR NJIKELANA: Yes.

MR VARNEY: And you mentioned that at this point you made, you, you decided to write certain things. Can you just indicate
20 what it is you were then, not willing to write but perhaps forced to write?

MR NJIKELANA: Well the two contentious things, I just threw myself into them and said Craig Williamson sent me funds but what was most interesting is that they did not, they did not even ask how much but I wrote and also I said the Freedom

Charter was adopted at the anti-SAIC conference in Durban in 1981.

COURT: Yes.

MR VARNEY: Did, did you notice any injuries forming on your body thereafter?

MR NJIKELANA: At that time, no, however a couple of weeks thereafter whilst I was in the shower I then realised that I have some funny, you know, feelings and when I looked it was scabs, tiny scabs on both sides and they were at the places
10 where I, I, the, the metals, I would say, were put.

MR VARNEY: Hmm-hmm. [Intervened]

MR NJIKELANA: But then by then it was dry and a dry wound, you know.

MR VARNEY: You, you, you mentioned that in your earlier detention in 1981 questions had been put to you about your relationship and your activities with the late Dr Neil Aggett. Now in this detention, did Booysen or Steyn put questions to you in relation to the late Aggett?

MR NJIKELANA: I must be, I must be very frank and honest,
20 I, I would not know who, who..., in, specifically, but some, somehow the name of Neil, Neil Aggett came, you know, just to say, you know, what was I doing with Neil Aggett. I think, My Lord, one other thing that, it is, it is 38 years now, if one could get the actual statement that I wrote, you know, it, there is a possibility that I included my interaction with Neil Aggett when

I was here in Johannesburg.

MR VARNEY: Yes. And, and hopefully we will have that statement and others in a few days' time. You also mention in your statement that you were not allowed that much in your room. Can you... In your cell rather. Can you give an indication what you were allowed to keep in your cell and what had to be kept elsewhere?

MR NJIKELANA: [No audible answer]

MR VARNEY: In other words you, you mentioned that there
10 was a, a room that you had to return items to. Sometimes other detainees had referred to this as the property room. So what kind of items had, did you have to keep in the property room and what kind of items could you keep with yourself in your cell?

MR NJIKELANA: Most of our things were kept in the property room. Things like belts were definitely kept in the, in the property room. I, I, I do not [mumbling], I, I am trying my best to really strain my memory.

MR VARNEY: Yes.

20 MR NJIKELANA: It may have been possible that we, we had, we were allowed clothes to change but I, I, it is very vague, you know... [Intervened]

MR VARNEY: Okay.

MR NJIKELANA: But most of whatever we [indistinct – 14:46] to us, was kept at the property room.

MR VARNEY: Yes.

MR NJIKELANA: Whether it is medication or anything that was, was our, our property.

MR VARNEY: You did mention in your affidavit that things you needed for washing, you would have to collect from the property room.

MR NJIKELANA: Oh. Yes, that was, that was the drill every day in the morning, you, an officer would come and open, you go to the property room, take your washing rags, your towel, soap, toothpaste, toothbrush, go down to the shower, you do everything. After that you take all of that back to the property room.

MR VARNEY: What, why, why do you think they would not let you keep the towel?

MR NJIKELANA: Well, my only interpretation was there has been a number of instances in the past where it was alleged that our comrade had hanged themselves with a pair of trousers, with a, shoelaces, with this and that.

MR VARNEY: Right.

20 MR NJIKELANA: So I could only assume that that was the reason for, for such thing to be kept out of our reach.

MR VARNEY: Now you also mention in your affidavit that you were occasionally visited by the inspector of detainees, a Mr Mouton, as well as the district surgeon on a few occasions. Did you decide to make any complaints to either the magistrate

or the district surgeon?

MR NJIKELANA: No, I did not. I did not make any, any, any complaints about the Special Branch.

MR VARNEY: And was there a reason why you decided not to complain when in fact they, they were abusing you?

MR NJIKELANA: My Lord, I think one has to come a couple of steps back. As comrades we would discuss, chat about our experiences in detention and it was clear those who would try their best to complain about assault would get the wrath of the
10 Special Branch after the report has been brought to the attention of the district surgeon. A very glaring instance is about a comrade very close to me, the late Tusamela Kweta. When I was detained for the first time on the 29th of May here in Johannesburg, coincidentally, I do not know when but within that six weeks period, he was also detained in East London and he was really [indistinct – 14:49], he was, he was thoroughly beaten up and when it was taken to district surgeon and he complained that he has been beaten, low and behold, when he went back to the torture room or the interrogation
20 room, he actually get further wrath just because of that until he retracted that. So other than just discussing with comrades generally, now I heard, you know, an, an instance that was closest to me, to my comrade Tusamela Kwete, so it is logical that I was not going to get myself beaten up, you know, when I know that at the end of the day that also would be futile. So I

just did not bother, whether it was the district surgeon and whether it was the, Mr Mouton. I think at some stage, I would not be able to remember exactly when, we, we, I, I, I, I complained about food because I felt that is something that can be attended to.

MR VARNEY: Right. Just as a matter of interest, was it attended to?

MR NJIKELANA: After the death of comrade Neil Aggett. Other than the good food that we got through the detainees
10 support committee, the regular food parcels, the food improved. I remember when I was shocked when I saw steak in my food.

COURT: Steak?

MR NJIKELANA: Steak, My Lord. The one that is, that is grilled, you know, that is taken through the machine. I really got a, I got a shock but obviously I could link it to the fact that now there has been this death and all of a sudden my mother was here... [Intervened]

MR VARNEY: Right.

20 MR NJIKELANA: Brought in to come and see me, you know, for a couple of minutes and then thereafter there were radios, there was food parcels... [Intervened]

MR VARNEY: We, we, we are going to get the post detention, post death shortly... [Intervened] [Speaking simultaneously]

MR NJIKELANA: But as I say that went along together with

the, with the good food right inside John Vorster...

[Intervened]

MR VARNEY: Okay, so that was only post the death of...

[Intervened]

MR NJIKELANA: Post the death of Neil Aggett.

MR VARNEY: And, and your decision not to make complaints to the magistrate or district surgeon, did it make any difference with your interrogators?

MR NJIKELANA: No.

10 MR VARNEY: They, they carried on... [Intervened]

MR NJIKELANA: To, to me, they, you see now, it is the timing because I, I, I would not be able to know when they would have come to me because the, the visits to district surgeons was regular and the visits by Mr Mouton was, was less regular. In fact I, I, I speak under correction, if he had met me more than two times, I would be surprised. So I, I would not know but also my interpretation was that the reason why the, there was change or no change was because of what they were interested to get out of me because after I wrote what they
20 wanted me to write about Craig Williamson and this, the Freedom Charter issue... [Intervened]

MR VARNEY: Okay.

MR NJIKELANA: ...then the aggression stopped, the torture stopped.

MR VARNEY: Can we turn to your observations of the late Dr

Neil Aggett while in detention? You did disclose in paragraph 35 of your affidavit that you did have occasion, a few occasions to observe him. The first time in late December in 1981; can you describe the circumstances in which you saw him and, and how he looked?

MR NJIKELANA: He was fine. He was the Neil Aggett that I knew. I mean fine in fact that I saw nothing untoward like the other comrades whom I saw there, you know.

MR VARNEY: And, and, and typically the glimpses you would
10 have of him, how, how would that happen? How would you get to see him?

MR NJIKELANA: My Lord, because we were, we were quite a group, what would happen is that some of us would be taken to the shower for shower, some of us would be doing the exercising, running up and down the passage, and at times, even going into interrogation, we would be going, Your
Worship, more or less at the same time with our interrogators. So from time to time, you know, we, we, we met and we just greeted and that was it. So, in a sense that is, that is where I,
20 I saw him.

MR VARNEY: Now you had a more significant sighting, you point this out in paragraph 36 of your affidavit, in the first week of January 1982 and you are talking about presumably the property room on the second floor, cells, because you refer to a place where you kept your washing utensils and medicines

and the like and then you saw Neil walk into the room. Can you explain to the Court what you observed at that stage?

MR NJIKELANA: As he may have come at some stage in, in the past, Neil came in and I was already in the room, sitting. He did something strange, I would say, he pointed at his forearm and I saw a triangular red mark.

MR VARNEY: Were you able to speak to him to ascertain...
[Intervened]

MR NJIKELANA: No, no, that definitely was not on. That was
10 not to be.

MR VARNEY: Is that because you were being monitored all along and not allowed to speak?

MR NJIKELANA: The rule was very clear, no talk.

MR VARNEY: And what did you think he was trying to, to say to you by pointing to the mark on his arm?

MR NJIKELANA: Well, the only interpretation I could give was that he was being tortured.

MR VARNEY: You then indicate that you saw Neil again in late January 1982 and that his condition had deteriorated.
20 Can you try explain to the Court in what circumstance you happened to see the late Neil Aggett towards the end of January 1982?

MR NJIKELANA: [No audible answer]

MR VARNEY: Was, was it again perhaps in taken up to the 10th floor or what, what circumstance might it have been?

MR NJIKELANA: My Lord, it is, it is difficult to be exact as to which of, which is which, it could have been that he was going to the showers and I was returning from showers or I must have been just doing my exercise, running up and down, it could have been that we were both, you know, going up to the interrogator rooms. It is, it is, as you can see the flurry of activities, it, it, it would have been, it, it... I mean after so long, it would be difficult, even, even closer then, it would be difficult to be exact as to, you know, which of those instances
10 but we did walk past each other... [Intervened]

MR VARNEY: I see.

MR NJIKELANA: And that is where I made this observation that now there is a change now in Neil.

MR VARNEY: And, and, and what led you to, to conclude that there had been this change for the worse?

MR NJIKELANA: How to, to describe, I mean, someone's facial expression, you know? But, *ja*, it is, it is clear, I mean, even myself you can, you, you would be able to see when I am depressed and when I am not depressed. I, I, I, that was clear
20 to me that something wrong is happening to Neil now.

MR VARNEY: And in your statement you, you say that you saw him one last time, approximately a week before his death and this was in the second floor cell area and can, can you describe how he looked at that time?

MR NJIKELANA: Well, it is the same, you know, he was, he

was really depressed. He did not look good.

MR VARNEY: You, you greeted him?

MR NJIKELANA: I did.

MR VARNEY: And did he respond?

MR NJIKELANA: He simply nodded.

MR VARNEY: Okay.

MR NJIKELANA: Look, I, I, I want to, to be clear but he simply nodded and it was a little bit unusual. Whilst there was this rule of no talk, but at least the, the, the officers were fine
10 if you say, hi. That is the most that we could do.

MR VARNEY: Alright. If we can now turn to Neil Aggett's death? So this is now, and I, I indicate to you that we are not clear as to the precise time of death but it would have been either the late night of 4 February 1982 or very early on the 5th February 1982. Can you describe what you heard and saw because in your affidavit you say during the night of 4 February 1982 or early morning of 5 February 1982, you were woken up. Indicate to the Court why you were woken up and what happened and with transpired thereafter?

20 MR NJIKELANA: Well, I see there is, there is a map that, I mean a, a plan, a floor plan that is attached to here. Closer to the lifts there, there is an iron gate... [Intervened]

MR VARNEY: Perhaps, perhaps for a start, indicate why you, you woke up?

MR NJIKELANA: *Ja*, because there was noise of a gate being

opened.

MR VARNEY: So, so the noise of the gate woke you...

[Intervened]

MR NJIKELANA: And that also was combined with a number of low voices. Now even if we are being checked at that time, the only thing that happens is that you hear someone opening the gate, they take the rounds to check us and that is it. But now when it is combined, you know, with the low voices, that is when I, I really got curious.

10 MR VARNEY: And what did you do?

MR NJIKELANA: Well I jumped on the top of the toilet bowl and checked what was happening because I could hear there some commotion in the passage.

MR VARNEY: And can, can you just indicate, once you were on top of the toilet bowl, what, what were you looking through?

MR NJIKELANA: Well I saw what I would interpret as a group of... [Intervened]

MR VARNEY: Yes, but just, just, just for the Court's
20 knowledge, are there windows at the top of the toilet bowl?

MR NJIKELANA: Yes.

MR VARNEY: Can, can you just give, give a description what these windows looked like? Perhaps how big they were?

MR NJIKELANA: Sjoe! After so long?

MR VARNEY: Yes.

MR NJIKELANA: I, I can only say the, the, they are typical prison cell or detention cell windows.

MR VARNEY: So these were windows that, that were facing onto the corridor as opposed to windows facing onto the outside of the building?

MR NJIKELANA: They were..., windows facing inside the corridor and there were windows facing outside the..., the cell.

MR VARNEY: Yes, but to be clear, the windows above the toilet bowl, what did they face onto?

10 MR NJIKELANA: Into the passage.

MR VARNEY: Into the passage. And were these windows open or shut?

MR NJIKELANA: No, they were shut.

MR VARNEY: They were shut. And the glass, can you, can you describe the kind of glass? Was it clear glass, frosted glass? Where there any other, were there, were there perhaps bars on those, on those windows?

MR NJIKELANA: They were clear transparent glasses. In terms of bars, most probably.

20 MR VARNEY: Okay. And please carry on, what, what did you then see?

MR NJIKELANA: I saw Neil being carried through. He was carried face up. If, if, if I can use a, an example, it is, the way Muslims carry their dead – that is how he was carried.

MR VARNEY: I see. And, and for the Court's benefit can you

describe how you would understand how Muslim would carry their dead?

MR NJIKELANA: Well, they carry their dead shoulder high.

MR VARNEY: Shoulder high. In what direction were they moving?

MR NJIKELANA: They were moving from the lifts towards the showers.

MR VARNEY: So here, if, if you wish you can refer the Court to the map because I understand you have marked the
10 direction on the floor plan and, My Lord, I it is a map to his affidavit as SM1. Perhaps you can indicate to the Court the, the direction of the, of the arrow.

MR NJIKELANA: Well, as I have said the, if, if you look at first the, where the lifts are, and just next to the lifts was the, is the iron gate, that is when I heard it being opened and when I jumped on to the toilet bowel, that is when I saw the commotion moving from the lifts down towards the showers which are 'Y'.

MR VARNEY: Which are indicated as a red 'Y'.

20 MR NJIKELANA: Yes.

COURT: Sorry, I am, I am lost. Can you, in which cell were you, it, I have got this one says second floor, [indistinct – 15:05] section.

MR NJIKELANA: B10, My Lord.

COURT: In B10?

MR NJIKELANA: Yes.

MR VARNEY: My, My Lord, it is, it is marked as 'Sisa annexed to B10'.

COURT: Yes.

MR VARNEY: And, and, and also to be clear when, when you say the lifts and the gates, is that somewhere near the, the X that is marked there, the red X?

MR NJIKELANA: Yes. Just next to be B1 and B2.

COURT: Okay.

10 MR VARNEY: So they were moving from, from the lifts at the bottom, or the gate at the bottom in the direction of the showers marked as 'Y'.

COURT: Oh.

MR VARNEY: Now in your affidavit you, you indicate, or you speculate as to where you thought they might be taking him. Where did you think they were taking him?

MR NJIKELANA: I, I, I could only conclude that they were taking them to this, the staircase marked 'Z'.

MR VARNEY: And why did you speculate that they were
20 taking him to the staircase marked 'Z'? My Lord, just for the record, this is now the staircase that is on the far side...

[Intervened]

COURT: Yes.

MR VARNEY: ...of the second floor section. What, why, why at that time did you think that they may be taking him to that

staircase?

MR NJIKELANA:

1. My Lord, this is taking place at the middle of the night, number 1.
2. Here is someone obviously, clear to me that there is something wrong with, you know, with him, you know? Obviously one would immediately assume at that time with, in that environment, that he is dead. [Intervened]

MR VARNEY: So... [Intervened]

10 MR NJIKELANA: So the only conclusion I came to was that they were taking him through that staircase otherwise they should have taken him through the, the lifts because the only entrances I saw in that floor were either the lift or the stairs, that staircase which was kept locked all..., all, all throughout. Every time we would run past it, it was locked.

COURT: Sorry, which cell was that of Neil?

MR VARNEY: My, My Lord, the witness was in cell B10... [Intervened]

COURT: Ja... [Intervened]

20 MR VARNEY: But perhaps I, I need to ask the, the witness; did you know in which cell Mr Aggett, Dr, Dr Aggett occupied at that time?

MR NJIKELANA: No. I, I, I... No. I, I, I just, I, I, I would, I would not go into that. I, I do not know.

MR VARNEY: Okay.

MR NJIKELANA: I only saw him on the passage.

MR VARNEY: Okay, so you would not have known whether he was in a cell in that portion of the passage where you were located or perhaps along the longer passage around the corner?

MR NJIKELANA: Could have been possible.

MR VARNEY: I, I can point out to you that he was found hanging in the cell that is now known as B15 which is the 5th cell along the, the next corridor, if one goes around the L-
10 shaped corridor. Can you see where B15 is... [Intervened]

MR NJIKELANA: Yes, I can see.

COURT: Hmm.

MR VARNEY: Did you, did you believe or think that at that time Neil Aggett was alive or, or dead, and he was being carried?

MR NJIKELANA: My instinctive reaction was that comrade Neil was dead.

MR VARNEY: Right. Now because we are still waiting for your main statement that you made before the first inquest,
20 and I suppose there is always a possibility that this incident is reflected there, in relation to the records that we do have, at least in the transcript, so the evidence given in court, the oral evidence, at least, this incident did not feature in the first inquest. So my, my question to you is, did you raise this with the lawyers for the family at that time?

MR NJIKELANA: [No audible answer]

MR VARNEY: Perhaps I am being a bit unfair because you have already indicated that you, you had a consultation with Mr David Dison and I think you mentioned that Adv Bizos was also present but perhaps confirm to the Court that this incident was raised with the family's lawyers during a consultation at the time of the first inquest?

MR NJIKELANA: What I can say is that I, I would find it strange that I would have left out this when I was talking to
10 them because obviously I was responding to questions in preparation for testifying, well, the witnesses that that took place long ago but in, in my mind that, you know, I would have shared, you know, things that I had experienced. I would...
[Intervened]

MR VARNEY: My, My Lord, I, I can confirm that either by way of an affidavit of a recalling, that Mr Dison will state that he was involved in working with this witness on his statement for the 1982 inquest, that he does recall the witness telling him that he saw members of the police carrying Neil Aggett on the
20 night in the cells and that he will also state that he is, he does not know why that this particular information did not make it into the evidence, at least the oral evidence of the first inquest.

We, we can now move, we can now move to the period post the death of, of Neil Aggett. You have already alluded to

the fact that conditions changed quite dramatically and perhaps you can now indicate in some detail, how your conditions changed or improved.

MR NJIKELANA: Well, after comrade Neil's death, I was given a radio, I received food parcels regularly and we were give books to read.

MR VARNEY: And you even mentioned that a steak appeared in, in your food.

MR NJIKELANA: Once I may, My Lord, once I may, I may
10 forget quite a number of things but that stuck in my mind. I just could not believe, steak inside detention!

MR VARNEY: I perhaps should not ask you but was that the finest steak you ever had?

MR NJIKELANA: Not necessarily because my mother was a butcher, had a butcher shop. I, I, I could only say that it, it was of good quality.

COURT: *Ja.*

MR VARNEY: And looking back, what is your view on how Dr Neil Aggett met his death at that time? Do you, do you have a,
20 have you formed a view on, on what happened that night?

MR NJIKELANA: My view has not changed. Comrade Neil was killed. My view has not changed, comrade Neil was killed. We are talking of someone whom I met for brief moments but in all those instances he did not just impress me because he was impressionist, he impressed me because I observed him

and I could only conclude this was a dedicated person. He meant what he said and he said what he meant. For someone to come all the way from the Soweto, from Chris Hani Bara, every morning, and take a nap, not on a bed but on a wooden bench and thereafter start, you know, serving the poor, the down trodden, and not only that, during the anti-Republic celebrations in May, which I suppose, and me my detention on the 29th of May 1981, he was the coordinator or shall I say intermediary for me to attend various meetings and address
10 them and he did it quite meticulously and I would say he [indistinct – 15:16] family because at times I would indicate, you know, some exhaustions but he would do his best to persuade me, Sisa this, Sisa there, let us go and address and that is it, and to me those, those, that kind of conduct can only be done by someone who, whose outlook in life was noble more than anything, who also was prepared to face the worst. I mean I do not want to, I may, I may have not had an opportunity to ask about his background but I knew, the fact that he associated with people like myself who had already,
20 you know, had some brushes with the Special Branch; the fact that he was, you know, instead living a luxurious life as a doctor but he would stretch himself. He gave only one impression though, that this is a dedicated cadre, this is someone who would prepare, prepared to face the worst. I mean it is not that we would talk about what would do when

you are in detention and all of that but the very fact that you would talk about the problems that we are facing in, in this country, the necessity for us to be resilient, is enough for me to dispute anyone who would say that Neil took his life. It is not that some of the comrades I, I would not, you know, accept that [indistinct – 15:18] because personalities differ – some cannot take the punch, some did not take the punch. That I understand. Some..., some ended up not enduring the tortures but I, I am sorry, My Lord, this is subjective – as far as I am
10 concerned, not Neil.

MR VARNEY: Thank you. No further questions, My Lord.

COURT: Thank you. Adv Singh. You may proceed.

EXAMINATION BY MS SINGH: Thank you, My Lord. Good afternoon, Sir.

MR NJIKELANA: Good afternoon.

MS SINGH: I just have a few questions for you. When you testified in your evidence in chief, you said that Neil was not just a work colleague, he was, here is a person that invites you at your home, it even piques the interest of the Special
20 Branch, will it be correct to say that he was ahead of his time in thinking or in, in foreseeing that black and white people can live together and it not being an issue? Was that the type of person, or that type of impression that he created on you?

MR NJIKELANA: Yes, but I would not agree when you say ahead of his time.

MS SINGH: Why do you say that?

MR NJIKELANA: The white people have been involved in our struggle for years. So as far as I am concerned he was just amongst them.

MS SINGH: Right.

MR NJIKELANA: In fact it was one of my first encounters close to a white comrade.

MS SINGH: Right.

MR NJIKELANA: So I saw someone who was just picking up
10 the baton from Joe Slovo, Ruth First and others.

MS SINGH: Helen Suzman, yes. So why would that have been a problem for the Special Branch? Why did they want to know from you, what was you, what were you doing in his house?

MR NJIKELANA: My Lord, the Special Branch was the Special Branch. In other words I will have to take this Court for hours to try and describe the Special Branch. Those are people who would not, you would not rationalise with. It is the same thing they had about comrade Barbara Hogan. My Lord, [indistinct –
20 15:20] does not count here but amongst others, because I had some interactions with her...

MS SINGH: Yes.

MR NJIKELANA: I did get some [indistinct] around Barbara Hogan as well – that what are you doing with this white woman? What does she want?

MS SINGH: Yes.

MR NJIKELANA: As if they are speaking to me and, look, I, I would, I would [indistinct] say that she is, she is a comrade and Neil is a comrade but deep inside I knew that if I had time, I would explain to them but those are people who would not rationalise with, you know, because as far as I am concerned as I say, it is people who took baton from other, few whites in South Africa, who had joined the struggle for the liberation of his country.

10 MS SINGH: When they keep repeating to you, we want the truth, what truth were they asking you for?

MR NJIKELANA: My Lord, once again, the witness of 38 comes in because I even say here some, some info, some, some question that Major Cronwright asked about my involvement with SACTU. I, I am raising this because I am trying to show that there obviously were a number of things that were, were, were quite serious and sensitive were I..., asked, you know, of, from me and unfortunately I would not be able to remember all of them.

20 MS SINGH: Okay.

MR NJIKELANA: I am raising this as an instance because I was a SACTU, an underground SACTU operative...

MS SINGH: Right?

MR NJIKELANA: So I tried my best not to say much about SACTU, only to say that, look, we followed SACTU's

principles. So, and it, even in previous detentions, the Special Branch would hint, just hint possible links between me or South African Allied Workers Union and, and SACTU.

MS SINGH: Right.

MR NJIKELANA: So, it would not..., it did not surprise me when they would ask or, as they say, when they would start complaining that I am, I am writing nonsense, I am writing shit, I must come out with the truth.

MS SINGH: Right.

10 MR NJIKELANA: Because from time to time they would ask certain things which some of them I would know that there was some truth in them but you do not expect me that when I was writing my statement, I would let out..., sensitive things.

MS SINGH: Right.

MR NJIKELANA: No ways.

MS SINGH: So you would have held on for as long as possible. Would I be correct?

MR NJIKELANA: Of course.

20 MS SINGH: You said that when you, a question was put to you by my learned colleague that on your unsigned statement, that there were regular visits by the police to check at night. I need to, could you tell, was it like every hour on the hour or you had no concept of time?

MR NJIKELANA: Yuh! Very much unfortunately I, I would not know.

MS SINGH: Okay.

MR NJIKELANA: But all I know that, they would either than bring in food, the, there were, there were regular checks and they were done day and night.

MS SINGH: Okay. You testified that they wanted you to admit to certain things and really you did admit to things that were not true, [soundtrack distortion – 15:24]

MR NJIKELANA: I, I, I cannot [soundtrack distortion]

MS SINGH: You mentioned that you were asked a question
10 about what you were allowed to keep in your, in your, in your cell and you mentioned that there were certain comrades or colleagues or fellow detainees that hung themselves with items of clothing, for example trousers. Were you aware that Dr Haffajee was alleged to have kill himself by hanging himself with his pair of trousers at Brighton Beach in 1977? Were you aware of that?

MR NJIKELANA: I would not be exact but I mean, Mpheta, I cannot, I cannot remember others but I mean there has been a couple of them.

20 MS SINGH: And, and there was a Mr [Indistinct – 15:25] Msizi who was alleged to have hung himself with his sleeve of his shirt, 11 days after Dr Haffajee also at Brighton Beach. Were you aware of that?

MR NJIKELANA: I, I will be cautious on that. I, I cannot remember the names.

MS SINGH: No, that is fine.

MR NJIKELANA: It is, the names that would come in mind or in memory are those who, who have the strongest impression for me. As I say, you know, I remember the, the, the Mpheta because of several reason.

MS SINGH: Okay.

MR NJIKELANA: But obviously all I knew that there has been this allegations, you know, of, of people hanging themselves in detention.

10 MS SINGH: On the night that you say that you saw, when Dr Aggett was being carried, you said that, you know, what piqued your interest was the banging of the, of the gate, the opening of the door and then the low voices. When these cell visits were done ordinarily, would you be aroused from a deep sleep or would the police make a noise when they were checking on you? Usually?

MR NJIKELANA: The most would be opening of the gate.

MS SINGH: So it was the low voices that piqued your interest?

20 MR NJIKELANA: And the shuffling of the feet.

MS SINGH: Alright. Now that, I, I needed to ask, when, when my learned friend put it to you, how were they carried, how was he carried and you said, no, he was carried on the shoulder, the way Muslim carry. Was there a stretcher of sorts or how was it?

MR NJIKELANA: I will dare say there was none. Remember they were not, they were not sort of moving at a slow pace.

MS SINGH: Right.

MR NJIKELANA: And I only caught a glimpse and the only thing that makes me confident is because I knew Neil. So I knew his face.

MS SINGH: Okay. And, and how many people were carrying him?

MR NJIKELANA: Anything between four and six.

10 MS SINGH: And the rest of the, of the police officers?

MR NJIKELANA: Well, they were white.

MS SINGH: Alright. Was he facing up or was he facing down?

MR NJIKELANA: Facing up.

MS SINGH: Facing up. Now, Mr Njikelana, I see from your diagram that has been submitted together with your statement, I see you say there Sisa, that would be you, on B10. Now that you know that Dr Aggett was found hanging in cell B15, is there a possibility that when they were passing by, now you
20 say you assumed that he was being carried towards the showers, is there a possibility that he was being carried to his cell?

MR NJIKELANA: That could... [Intervened]

MS SINGH: Now did you know where B15 is.

MR NJIKELANA: Ja, that could be possible.

MS SINGH: Okay. My Lord, I have nothing further for this witness.

COURT: Thank you. Adv Coetzee?

EXAMINATION BY MR COETZEE: Thank you, My Lord. I do have some questions. Sir, first of all I am going to ask that a picture must just be shown to you. My Lord, the inspection in *loco* photographs of cells, it was on... May I, if I may ask that, if Mr Varney perhaps to make it available. This [indistinct – 15:29] cell.

10 MALE SPEAKER: Which...

MR COETZEE: I want the second floor cells. All these in the middle of the pack. *Ja*, the cells itself. No the, there is... 15. Sorry, thank you for that.

COURT: It is B15, no?

MR COETZEE: On page 15. Thank you, Sir. Do you, do you see this, can you recognise this as the inside of a cell? I do not say your cell necessarily but a cell?

MR NJIKELANA: If you say the inside, internal of a cell, yes.

20 MR COETZEE: Yes. And the cell that you were kept in, it was more or less in the same state? Was it more or less the same cell?

MR NJIKELANA: No.

MR COETZEE: What would have been different?

MR NJIKELANA: The enclosure of the toilet.

COURT: Sorry which page are you looking at?

MR NJIKELANA: Oh, My Lord...

MR COETZEE: My Lord, if I may, it is, photograph 15. My Lord, this is the document which Mr Varney compiled, Inspection in *loco* John Vorster Square, dated 31 January 2020.

COURT: No, I do not have that one. I only have this...
[indistinct – 15:30]

MR COETZEE: *Ja*, that is, that is not the correct picture. I am sorry, My Lord. If, if I may just then hand up to Your
10 Lordship that picture, I have, I am sure we will hand this up formally at a later stage.

COURT: Thanks.

MR COETZEE: Thank you, My Lord. Sir, can you explain what was different in the cell where you were detained?

MR NJIKELANA: Well first of all I do not know which cell it, is this.

MR COETZEE: Yes, but perhaps you can just explain to the us, we have this picture of this cell, was your..., your cell where you were held different in the layout than this?

20 MR NJIKELANA: Yes.

MR COETZEE: And in which sense was it different?

MR NJIKELANA: The toilet was close to the door and, and the top, there was no, there seems to be an internal surveillance camera there.

MR COETZEE: Yes.

MR NJIKELANA: And also there is, there is something metallic with a white container inside, I assume it is a...
[Intervened]

MR COETZEE: Water source, it is.

MR NJIKELANA: No, there was nothing of that sort there.

MR VARNEY: My, my, My Lord, before he proceed, perhaps I can just assist my, my learned colleague since we handed up that photograph and perhaps that might be helpful if we just indicate where that photograph was, was taken.

10 COURT: [Indistinct – 15:32]

MR VARNEY: So that photograph does not belong to the cells that are situated closest to the reception area. In other words from B2 through to B10, it was not taken in one of those cells. It was rather one of the larger cells between B12 and B20 at the, at the top section. My Lord, it is in EXHIBIT G10 page 4.

COURT: G10, page 4.

MR VARNEY: Either a stair [indistinct – 15:33] [speaking simultaneously]

COURT: [Indistinct] G10, page 4. I do not have this. This...
20 Yes.

MR VARNEY: So, My Lord, since we constructed that PowerPoint presentation for purposes of the inspection in *loco*, that particular photograph, I cannot recall which particular cell that was but, My Lord, it would have been one of the bigger cells that are situated between B12 and B19 as it would not
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have been the, the smaller cells situated closer to the reception area between B2 and B10 and My Lord will, will see from the layout that the size of the cells are, are smaller and they appears to be in a, a [indistinct – 15:35] different configuration. I just point that out to assist my, my learned friend.

MR COETZEE: Thank you, My Lord, that was helpful. Do I then understand from you that the toilet section was closer to the door, to the grill and there was no water point on that wall?

10 MR NJIKELANA: Yes.

MR COETZEE: That had been the difference?

MR NJIKELANA: No, not only that. The window, I mean why should I stand on, on, on a, on a toilet bowel if the windows are like that.

MR COETZEE: Yes.

MR NJIKELANA: I, I know it because in my, in my earlier detention, I hope I am correct because it is too long, I, I remember when I got food, specifically avocado, because here is this young boy from East London who does not know
20 avocado, I looked at it and said what is this funny thing. I did not eat it and for some funny reason I was peeping and watching Constable Sibiyana and I saw him eating this avocado and there was no other way I was standing on the toilet bowel and peeping there, I saw him, and it is a different situation. This comes back because I wanted to make myself sure that I

am not imagining. So I am very sure, I stood, I stood in a cistern and also the configuration or the design of the windows in our cell was not like that.

MR COETZEE: It, was this, it then higher from the ground?

MR NJIKELANA: Which is why I had to stand on a, on a, on a toilet bowel.

MR COETZEE: Okay. But you remember specifically that the windows were clear. It was not a frosted window or a, anything obscuring the view.

10 MR NJIKELANA: Not, not, not at that time.

MR COETZEE: And when you saw them carrying the body, was it only this four or six people or were there people walking that were not carrying the body?

MR NJIKELANA: That I cannot confirm.

MR COETZEE: And after they have passed your, your cell, did you again hear keys opening a, a grill or a door?

MR NJIKELANA: No, I cannot confirm that.

MR COETZEE: And was it correct that at night time there were uniformed police at the [indistinct – 15:38] cell complex
20 there on the second floor?

MR NJIKELANA: Yes.

MR COETZEE: And where were, did you see the uniformed police whilst this was transpiring?

MR NJIKELANA: No.

MR COETZEE: Did you again, after you saw this procession

passing your cell, did you again see them leaving?

MR NJIKELANA: I did not check again.

MR COETZEE: And from where could you see them? Could you see them from the, from the areas at the lifts, at the, at the first gate; in other words at the lifts side? Did you see them from there?

MR NJIKELANA: How, how do I explain this, My Lord? You hear an unusual commotion...

MR COETZEE: Yes.

10 MR NJIKELANA: Down, close to the lift. You get to your [soundtrack disruption – 15:39], you jump, stand on top of the toilet bowl...

MR COETZEE: *Ja*.

MR NJIKELANA: You peep just in time to see someone being carried, which was, I claim is comrade Neil Aggett. And, and that is it.

MR COETZEE: And then you do not hear anything further and you do not see anything further because you were not paying attention or you are not looking anymore?

20 MR NJIKELANA: Well, you will appreciate that shock was coming in.

MR COETZEE: I understand that.

MR NJIKELANA: You know?

MR COETZEE: Yes.

MR NJIKELANA: It could be possible that I, I am, I may, I

heard them coming back. That is, that is, that is the, that is the closest I can, I can say, but one thing, I, I did not bother to check again.

MR COETZEE: Now, Sir, the, the purpose of the inquest, first of all 1982 and similarly to this inquest, is to..., to determine what caused the death of a person. Did you understand that or do you still understand that to be the reason for the, the proceedings?

MR NJIKELANA: Well, that is my understanding of inquests.

10 MR COETZEE: Yes, and also that was your understanding in 1982?

MR NJIKELANA: Yes.

MR COETZEE: Sir, I, I have read the record of your evidence as it is contained and, in, in the documentation that was supplied to us, and on page 1567 at, at line 9 of the, the transcript of the..., of the proceedings, you were asked specifically when last did you see him, referring to Dr Aggett and your answer was:

20 "I saw, I last saw Dr Aggett, Your Worship, late January, about a week before he died."

You remember that answer?

MR NJIKELANA: My Lord, that was long time ago.

MR COETZEE: Ja. Now that... [Intervened]

MR NJIKELANA: It, it, it is possible I would have said that.

MR COETZEE: But would that answer have been correct?

MR NJIKELANA: I am cautious to, to, to concur to that because I would not know the accuracy but I would not [indistinct – 15:41] that I saw comrade Neil Aggett shortly before his death.

MR COETZEE: Yes.

MR NJIKELANA: Whether shortly is a few days or a week and according to the records, you know, it says a week. So, I mean 38 years thereafter I, I, I would not necessarily dispute that, honestly.

10 MR COETZEE: I am, I am not trying to test your memory on, on this, Sir. I am, I am... Because memory is fallible specifically over 38 years.

MR NJIKELANA: Okay.

MR COETZEE: I am not, I am not trying to test you. Please, do not see it like that but in this answer you said you saw him the last time and, and that is, if I understand your evidence correct, the last time you saw Dr Aggett, was when he was being carried to his, to wherever. Would that not have been the correct answer or... [Intervened]

20 MR NJIKELANA: What, what would have been correct, I say him the last time alive.

MR COETZEE: Certainly, if that is what you meant then I, I take it. It is correct that in your evidence, in your, in your evidence in the first inquest, you at no stage, and I have read the whole record, you at no stage informed the Court of what

you have seen, Dr Aggett being carried. I, I do not know whether you can remember that but I, I can tell you that I have read it and I am quite sure that somebody will object if I am incorrect in stating that. And the whole purpose of the inquest was to determined, to determine how did Dr Aggett die and I find it just very curious that you, that you did not inform the Court of what you have seen and with you believed to have been a procession carrying the dead Dr Aggett. Is, is there a reason that you can perhaps give as to why you would not
10 inform the Court thereof?

MR NJIKELANA: My Lord, I have reflected on that myself. So if...

COURT: Hmm.

MR NJIKELANA: First of all, the line of questioning that took place that time was more about tortures on me, what happened around me, and when I looked at the records, I do not recall being asked about that as well. Well, the question could be why did I not then voluntarily present it? Now, My Lord, we have to appreciate that it may be that we were unionists but in
20 our minds we were in a state of war. You are going to detention, you do not know whether you are going to come out. You are going to detention, you are allowed to come out and on your way home, you disappear. Yes, that happened, My Lord. So all of that comes in my mind and my judgment was that if something is not inquired with me, I am not going to

volunteer it. It may have been an error of judgment but being in a state of war, not a military war, because we were fighting apartheid, I may be found wanting in that, and remember I have already said to this Court, I withheld the truth, I withheld information about me being tortured to both Mr Mouton and the district surgeon because I knew what would happen to me. So philosophically to me, comrade Aggett was no more and all you could do was to mourn his passing on.

MR COETZEE: I understand that, Sir, I, I really do. At the
10 end of your evidence in the first inquest, after you were
questioned by all the lawyers, the magistrate at page 1588,
more or less at line 15, started to ask you certain questions
about your relationship with Dr Aggett and he, for example,
asked you, you stayed in his house and you were friends. He
asked you about your relationship with Dr Aggett and about
your feelings in this regard and then over the page on page
1589 at, at line 4, the magistrate specifically asked:

“Is there anything else you want to mention?”

And you said:

20 “No, Your Worship.”

Now bearing in mind that you, at that stage knew that the whole purpose of this inquest was to inquire about the causes of the death of Dr Aggett, you are here invited by the magistrate, after he has reminded or asked you about your friendship and relationship with Dr Aggett, and he asked you,

is there anything else to mention. I would have thought that this would have been an opportune time to mention that, yes, Your Worship, this is what I know about the death of, of, of Dr Aggett. Is there any explanation as to why that did not happen?

MR NJIKELANA: True, My Lord, with the greatest of respect, have you ever been in a room where you are expected to say the truth and with a room full of Special Branch, knowing that whatever you say, determines your relations with them in
10 future? In whatever form, not just in form of detention and that was what was going through my mind.

MR COETZEE: Do you then say that you have deliberately not informed the Court because you were scared that there would be repercussions for you?

MR NJIKELANA: Well there had been repercussions for my comrades. What was so special about me not to have the repercussions as well?

MR COETZEE: No, Sir, please, by all means, Sir, I understand the difficulty that you went through and I, and I
20 really feel terrible about the, the torture and whatever was done to you. Really, I, I do understand that, I am just trying to understand why it is not in your evidence because this is quite pertinent and quite relevant as it was then. It is also here in front of these proceedings extremely pertinent as to what your evidence is and I am just trying to understand and to, for you

to inform this Court as to why this evidence is not in your evidence in the first inquest where you did testify about your personal torture.

MR NJIKELANA: But I am..., I am trying to also, to illustrate the state of mind I was in and I never saw myself as just an individual. I was part of a whole. Maybe if My Lord can be allowed to, to..., you know even David Dison himself, from time to time he was quite harsh with me, saying that I was not forthcoming when I was testifying. I cannot remember whether

10 I did respond to him or whether I just spoke internally because to me, I, I, I just could feel for him when he was saying that because in his view I must say as much as I can and in my view I am measuring what I can say because I do not know what will happen to me and my conclusion or my view is that the greatest of probabilities is that whatever I say determines my future relations with the Special Branch and I knew that even in future I was still going to interact with these people. Whether through a bullet in my head down the line or whether through detention inside with more tortures in whatever form.

20 I, I hope I am trying to illustrate what was going in my mind and I do concede, I can be convinced if it was an error of judgment but that was what I, that is the decision I took at the spur of the moment and remember I am testifying and the Special Branch is sitting in the very court, looking at me. That was happening, what was happening in my mind. I can be able

to be expressive now. I fear nothing to an extent. It is not the same environment that, I mean that is the first thing I had that was, that was going through my mind, My Lord, even here that look, you know, once in a while I sit in a court and, you know, I, the only thing that is left for me is to do my best to express myself and say what I want. I do not see somewhere there, you know, a couple of people whom I know as Special Branch, who without expressing themselves, are sending out a machine, a, a, a message that you dare say whatever. And it
10 resonates with the very fact that even inside detention, we would lie and say we were not harmed when were tortured and assaulted. That is what was going in my mind.

MR COETZEE: Thank you, Sir. Thank you, My Lord, I have got not further questions.

COURT: [Indistinct – 15:52]

NO EXAMINATION BY MR AMOJEE: No questions, My Lord.

COURT: No questions. Re-examination?

RE-EXAMINATION BY MR VARNEY: My Lord, just a few questions on re-examination. I, I wish to deal with what my
20 learned friend raised as to why you were not willing disclose the piece of evidence in the first inquest, particularly when the magistrate invited you to do add anything else. Can you confirm that, and, and just, firstly, you gave testimony, I am correct in saying, in September of 1982. According to the record it does seem as if the evidence was led in, in
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September of 1982.

MR NJIKELANA: Possibly. I know it was down the line from, from, from, down the line in the year.

MR VARNEY: Am, am I correct in saying that at that stage you, you had somewhat a tenuous relationship with the law in that you were out on bail?

MR NJIKELANA: Yes.

MR VARNEY: So, so you had been charged and you were out on bail awaiting trial.

10 MR NJIKELANA: Yes.

MR VARNEY: Did that give you some pause in relation to what you were willing to say in the first inquest?

MR NJIKELANA: Can, can, can you rephrase the question?

MR VARNEY: Did, did, did you fear certain repercussions as a result of the fact that you were already, already been charged and you were out on bail? In other words you potentially could be re-arrested at any time.

MR NJIKELANA: My Lord, not only that, I mean that was going through my mind is that, well, whatever I would say, 20 would even determine the fate of the very trial I was in. I am saying over and above what you are saying.

MR VARNEY: Yes. You, you also mention in response to, to that question that South Africa was in a state of war and that the gallery of the court was filled with security branch members. Now I know this might seem obvious to you but I

think we need to unpack it. What feelings did you have as a result of the fact that you knew you were being watched by members of the security branch at all times in that court?

MR NJIKELANA:

1. At the risk of repeating, the fact that in a situation which is, which is, which is very unusual, you are supposed to speak truth to power. You find your adversaries sitting there and you know not only through personal experience but through the general experience of your own comrades
10 that you can get the wrath – it is what influenced me.
2. If My Lord can be, I can be allowed because I know this is, this is, this is pretty sensitive, you see as activists we were involved in a very complex environment. We are unionists, but we had comrades who were dying, some of my comrades died in, in detention, some were shot, some skipped the country and amongst other things, one of the things that used to be a sore point to me is that every
20 time I would be arrested, I did not know what is going to be asked because I live this complex life not just being a pure unionist. So in a sense, amongst other things, when I faced with the dilemma of divulging what I saw about Neil, but I came to a conclusion that the comrade is gone. It might be better for me not to divulge things but the comrade is gone and all we can do is to spick, to pick the spear and move on.

I hope, My Lord, I, I know I am saying a lot of things but I am trying to illustrate the complex life we led at that time. It may have been a wrong decision; however it was not the only decision because you had to make decisions in that complex set of interactions at the spur of the moment. Hence I even said to the magistrate when he said, anything else, I said, no. Because to me whatever I had said was just enough. Not that I did not want justice to be done for comrade Neil Aggett as a person, but to me I saw the just thing being, justice being done
10 for the country as a whole and comrade Aggett as one of the fallen soldiers. I, I hope I am adding to what I, I have been trying to, to illustrate and as, as the state of mind...
[Intervened]

MR VARNEY: Yes... [Intervened]

MR NJIKELANA: ...at the spur of the moment.

MR VARNEY: Yes, indeed. Thank you. But is it, is it not true that, in fact you did not keep this to yourself, you may not have disclosed it in the inquest court for the reasons you, you have now unpacked for us, but you did not keep it to yourself
20 because in fact you told your lawyers about it. Will I be right in saying that once you had told your lawyers you left it in their hands?

MR NJIKELANA: Not only that, I also discussed with my own trusted comrades. There was nothing to, to, to hide but I mean you did not make a drama out of it, you just, to illustrate that,

comrades this is what I saw.

MR VARNEY: And as, as far as you were concerned, the referring to standing on the toilet bowl in the rather convoluted and unusual unsigned statement, was in fact a reference to observing this particular incident.

MR NJIKELANA: Definitely.

MR VARNEY: No further questions, My Lord.

QUESTIONS BY THE COURT: Mr Njikelana, what I want to know is... [Intervened]

10 MR NJIKELANA: Can I stand, My Lord?

COURT: Ja, you may, you may.

MR NJIKELANA: I, I cannot see you.

COURT: Oh.

MR NJIKELANA: The, the position of the chair.

COURT: Okay.

MR NJIKELANA: The, the position of the chair, no it is fine, it is fine, I can.

COURT: Okay, you will not be long, Sir.

MR NJIKELANA: Okay.

20 COURT: It will just be one or two questions. When you saw, you first heard the cracking of the gate, the steal gate and you stood up and you peeped through the window. You see a group of police officers carrying Neil. Were you able to, the lights were on, I suppose, in the passage.

MR NJIKELANA: Yes, My Lord.

COURT: Were the lights in your room also on?

MR NJIKELANA: [No audible answer]

COURT: In your cell?

MR NJIKELANA: Yes, My Lord.

COURT: Now, now can, now you, you said about between four and six of them; now they would have been either three on each side or two on each side carrying this, this person.

MR NJIKELANA: Yes, My Lord.

COURT: Is that, is that what you, is that the picture, is that
10 the right picture?

MR NJIKELANA: That is the correct picture.

COURT: Now were you able to, to recognise any of this as the police people who were carrying there? Were their faces familiar or were you seeing those people for the first time?

MR NJIKELANA: My, my attention was drawn to the person they were carrying which I saw it was Neil. I, precisely, I did not pay attention to any of them.

COURT: Okay. Now which part of the, of the body of Neil did you see? The whole body or was it obstructed? Did you see
20 the face or what...?

MR NJIKELANA: The whole body.

COURT: You saw the whole body.

MR NJIKELANA: Yes, My Lord.

COURT: Saw... How, how was he dressed or was in his long pants, short pants or could you tell, describe how was he

dressed?

MR NJIKELANA: Well he was usually dressed and he had long pants.

COURT: Long pants. Anything particular about the top that he had on?

MR NJIKELANA: I would say he had his jacket... [Intervened]

COURT: A, a jacket?

MR NJIKELANA: I stand to correct, get corrected but he, he was clothed [indistinct – 16:02]

10 COURT: You see there is a picture that has been hand, I am not sure it has been handed up officially into the records, showing Neil hanging. I see counsel has got the picture there. I want you to, to, to show you that picture and indicate whether in fact that is how he was dressed when you saw the face, when you saw him.

MR NJIKELANA: Well, My Lord, for someone whom you jump and peep and [external noise – 16:02] and moves, I, I would not, I would not contradict this kind of clothing.

20 COURT: So... No, what I want to know is when you see this body, they are moving a bit fast, you could see the whole body. Is that how he was dressed?

MR NJIKELANA: He had his, he had something on, on the top side and he also had his trousers on.

COURT: Okay. Thank you. Now at what time the following day did you hear that, or was it the following day that you

heard about his death or was it many days after you have seen him being carried?

MR NJIKELANA: It was the following day.

COURT: Following day. How did you come to know about it?

MR NJIKELANA: I was taken to the interrogation room, one of the interrogation rooms.

COURT: In 10th floor?

MR NJIKELANA: My Lord, if I can plead... [Intervened]

COURT: Alright.

10 MR NJIKELANA: I, I, I would not be accurate because...
[Intervened]

COURT: Okay.

MR NJIKELANA: We either used the second floor in the interrogation side, either 10th floor or second floor. I cannot remember which, where I met Captain Olivier whom I knew pretty well because he was from East London.

COURT: *Ja*? Yes. Yes, you met him and then?

MR NJIKELANA: *Ja*, and he said, how are things? Have you heard what happened, what has happened? I, I cannot
20 remember exactly but he then informed me about Neil's death.

COURT: He informed you?

MR NJIKELANA: Yes.

COURT: He was the first person to tell you about the incident?

MR NJIKELANA: Formally.

COURT: Well... Okay. So you say, 'formally', had you heard informally, somebody speaking informally about it or not, prior to you meeting van Niekerk? Is it van Niekerk? Sorry, Olivier.

MR NJIKELANA: Well, I would say so because of what I saw. Remember I saw him, Neil... [Intervened]

COURT: Yes.

MR NJIKELANA: So when Captain Olivier says this, then he confirms what I saw the previous night.

COURT: I see. Did you ask him how, what happened?

10 MR NJIKELANA: My Lord, ask the Special Branch?

COURT: No... [Intervened]

MR NJIKELANA: We had a special relation with those people, My Lord...

COURT: *Ja*.

MR NJIKELANA: We did not ask a lot of things. In fact when we were talking, he was asking how do I feel, how am I, something like that and with some daring, I do not know how I got it, I said, 'Well, Captain Olivier, anything can happen here'. He said, 'Yes, Sisa, you are very right, anything can happened
20 [*sic*] here'. I mean that is just one of the few things that are still very glaring to me because my interpretation was that he was saying that, look, be careful it might happen to you as well. He said, 'No, yes, Sisa, anything can happen here'.

COURT: Did you get the..., did you get the sense that he was blaming at some people about his death or not?

MR NJIKELANA: You know, I, my interpretation of that 'anything can happen here' was a warning to me.

COURT: Oh.

MR NJIKELANA: And the, the conversation was not that long. It was that and he released me.

COURT: So you had specifically going to, for interrogation?

MR NJIKELANA: My Lord, the, the only interpretation I can give for, he was just, it was for him to tell me about Neil's death and then give this funny comment which I interpreted as
10 a warning that anything can happen.

COURT: Yes. I promised you not to be too long but I just need to clear up all the [indistinct – 16:07]. No, thank you.

Are there any other questions from, arising from my questions?

NO FURTHER QUESTIONS BY MS SINGH: None, My Lord.

COURT: No questions?

NO FURTHER QUESTIONS BY MR VARNEY: Same, My Lord, no further questions.

COURT: No questions. Mr Njikelana, thank you very much.
20 You are excused now.

MR NJIKELANA: Thank you, My Lord.

COURT: Thank you very much.

NO FURTHER QUESTIONS

COURT: I see it is almost four o'clock, or we have passed four o'clock already. Is it time to adjourn?

MR VARNEY: My, My Lord, we, we have no further witnesses. They... As far as we are concerned, unless my colleagues have anything to add, it is time to adjourn.

COURT: Yes. Okay. Anything else?

MS SINGH: None, My Lord.

COURT: Okay. We adjourn till tomorrow, the 5th nè, tomorrow?

MS SINGH: Yes, My Lord.

COURT: Thank you. Thank you.

10 MATTER POSTPONED TO 5 FEBRUARY 2020

COURT ADJOURNS

[16:09]

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