IN THE HIGH COURT OF SOUTH AFRICA

GAUTENG LOCAL DIVISION, JOHANNESBURG

CASE NO: 445/2019

DATE: 2020-02-07

FORMAL INQUEST

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

into the death of the late

DR NEIL HUDSON AGGETT

BEFORE THE HONOURABLE MR JUSTICE MAKUME

ON BEHALF OF THE STATE	: ADV MLOTSHWA
	: ADV SINGH
ON BEHALF OF THE FAMILY	: ADV VARNEY
	ADV SCOTT
	ADV FAKIR
ON BEHALF OF SAPS [Previous SAPS]	: ADV COETZEE
ON BEHALF OF SAPS [Current SAPS]	: ADV AMOJEE
INTERPRETER	: [Not applicable]

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PROCEEDINGS RESUME ON 7 FEBRUARY 2020 [09:42]

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

COURT: Thank you. Dr Naidoo you are still under oath.

STEVE NAIDOO: still under oath

MR NAIDOO: Thank you very much. You may proceed.

MR VARNEY: As the court pleases.

EXAMINATION BY MR VARNEY (Continue): Dr Naidoo, before we commence with paragraph 6 of point 10 of the affidavit

10 which is where you did not set out the specific injuries of the post-mortem, I will just like to raise a few matters as we dealt with in yesterday. In paragraph 6.2.7 as well as 6.5.5 in your report you refer to a band of abrasion which was the liberty or mark and observed by the doctors at the post-mortem or it was apparently concluded that this abrasion was anti-mortem. Now I think you had sight of the affidavit of Liz Floyd.

MR NAIDOO: Yes.

MR VARNEY: Together with the drawings that she made of a body and if you recall from her affidavit she was allowed to

20 view the body on the 11th of February, that was some seven days after the death of Dr Neil Aggett, and you recall she more recently reconstructed what she saw by way of a drawing and she specified in her affidavit that she had clear sight at least of the head and the neck of the late Dr Aggett.

MR NAIDOO: Yes.

MR VARNEY: And, My Lord, just to assist the court this

drawing is an annex to the affidavit of Liz Floyd, EXHIBIT G4.

COURT: Yes.

MR VARNEY: Ms Floyd in her affidavit and in her evidence said that she saw no visible marks on the right side of the neck of the late Aggett, and in the way that the body was positioned gave her a clear view. I do not know whether you perhaps have the particular drawing at hand?

MR NAIDOO: Yes I do.

MR VARNEY: So in the light of the post-mortem report which
10 reflected the abrasion of a current anti-mortem nature. Do you have any comment to make on the observations of Dr Floyd?

MR NAIDOO: Not really. I think it might be difficult to try and establish why it was that Dr Floyd did not see then the typical ligature abrasion marks [indistinct – 09:46] underneath the jaw and at the upper part of the neck it was disguised. It is mentioned that, Dr Floyd mentions a bright white light so that might have been the harsh light of the morgue.

I am not completely sure if I can explain why it was not quite apparent. There might have been, one would expect with
20 dehydration because as the body is in the refrigeration it gets further and further dehydrated as would be apparent for all of us when we puts things into a refrigerator for long, if not in the fridge but in refrigerator it dries it out. One would expect then the band of abrasion to become a little more prominent, to the main prominent. So it is difficult to explain why this was not

seen when viewed on the 11th day.

MR VARNEY: Yes, that will be seven days later?

MR NAIDOO: Yes seven days later.

MR VARNEY: So typically with the ligature injuries of this nature, what would you have expected to have been visible. Firstly on the front of the neck and secondly over the cricoid partification?

MR NAIDOO: I note that, first of all, the first answer would be I would expect greater prominence of that liberation and as it

10 dries out it becomes almost leathery parchment so it becomes darker. So and especially in the lights can a person I will expect the liberation mark to be quite more significant and prominent.

The diagram that has been drawn of the observations at, five days later, seven days later shows the right side of the neck to have a short lineur incision. It does not show the typical post-mortem incision yes except for that on the scalp. So that might be the sight of the biopsy samplings of the tissue for histology.

20 That could be one but that also could be the site of a reconstitution of that skin where it may have been inverted, inadvertently nicked during the incision, during the dissection process. Said sometimes actually happens, it is arte factually made by the dissector.

MR VARNEY: And before you deal with what you would have

expected to see over the cricoid partification, can you just explain to us what does that term mean and where would you find it?

MR NAIDOO: The carotid hypothecation?

COURT: Sorry?

MR VARNEY: Yes.

COURT: Sorry what is on?

MR VARNEY: I have asked the witness what he would have expected to see what visible marks over the and I am not sure

10 I have the term correct but the carotid hypothecation

COURT: Carotid, how do you spell that?

MR NAIDOO: It would be carotid.

COURT: Oh carotid.

MR NAIDOO: C-A-R-O-T-I-D.

MR VARNEY: Is that different from carotid?

MR NAIDOO: There should not be anything else to confuse that word in this neck.

MR VARNEY: Okay let us run with carotid identification.

MR NAIDOO: Carotid yes. So the carotid bifurcation then is a

20 diversions where, I apologise if I am repeating [indistinct – 09:50] testified on yesterday. Is the diversion of the single carotid artery into two branches on the upper part, upper part of the neck, recessed behind the strap muscles, the big strap muscles of the neck and it covered with [indistinct – 09:50] connective tissue. So the carotid bifurcation then is a

diversions where the main carotid artery and the supplies on both sides. The diversions or branches into two, one in an external carotid and another internal carotid artery.

And it is a point of bifurcation if I may perhaps show it later [Soundtrack disruption from [09:51:29] to [09:51:43] it is at that point where you have the carotid sinus, the sinus. It is actually a slight dilatation widening of that area that it and it has pressure sensitive nerve endings or plexus of nerve endings around that area and that is that carotid sinus,

10 different slightly from the carotid body.

The carotid body is found just a little higher, that is a chemical sensitive area but we can ignore that for the moment for this pressure effect consequences we have to look at that carotid sinus area where the reflex activity begins on pressure.

MR VARNEY: Thank you doctor.

COURT: Thank you.

MR NAIDOO: And did, did the pathologist have the post-mortem noticed any injuries over that particular area?

MR NAIDOO: Yes, the right carotid sheath. So on the right

20 side, so this is a situation that you see on each side, it is bilateral. On the right side in the carotid sheath that is at around this area here there would have been areas, fairly large area of bruising. If I am not mistaken four by two something it is, if I am not mistaken. If I may just refer to that, four by 2 centimetre bruise that is under 6.4.1.1.

MR VARNEY: And that is a typical injury you would expect to see in these kinds of circumstances?

MR NAIDOO: Well amongst the other typical or so called typical injuries in inverted commas because nothing really typical, well not that, there is nothing really typical. There are some typical injuries but they are not always invariable seen. When you do see an injury in that region it would apply, it would be in keeping with distortional pressure. I use the word distortional for a specific reason, distortional pressure to that

10 area.

MR VARNEY: And what, what could have been the cause of such distortion or pressure?

MR NAIDOO: So the distortion or pressure we talk about can be simply compressive and because of the right sided gravitational tuck the constriction will be deepest, directly, diagonally opposite there on the left side but the constrictive effect can be thought would be closely upon and closely lined by a band of abrasion on the right side because that would be the area of the. The one side of the ligature struck would be

20 line.

MR VARNEY: Thank you doctor. Doctor if we could move to another topic. Yesterday we discussed in some detail about the fact that if the scenario of Dr Aggett being rendered unconscious and then hanged as in a stage hanging, that could not be excluded. So a few follow up questions. Typically

Doctor, how long must air supply be cut off before someone is typically rendered unconscious?

MR NAIDOO: Well loss of consciousness if air supply is cut of, cut of as a result of airway obstruction would be several minutes and variable on the state of fitness of the person. I use the example of a deep sea diver yesterday just to show that some people can be at such peaks of fitness that they can withstand many minutes of occlusion or lack of respiration but in a state of distress or agitation, physiological stress you are

10 going to consume and require so much oxygen that that period would be shortened. So airway obstruction would then result in unconsciousness after several minutes.

MR VARNEY: Although in, you have said that a fit person will be several minutes but a person in great distress and not in great physical shape?

MR NAIDOO: Will certainly be less than that.

MR VARNEY: Less than that?

MR NAIDOO: Yes, and if you suggested to me can it be a minute or minute and a half I would say it is possible.

20 MR VARNEY: And then a follow up question.

MR NAIDOO: But then it also can be five to six to seven minutes as well.

MR VARNEY: Yes. So it is quite variable. A follow up question is, what would the time elapse be in relation to air supply being cut of or for that matter blood supply to the brain

being cut off before some brain injuries sets in?

MR NAIDOO: Just to differentiate or clarify so that we are not confused. There is just a question one earlier than this was an airway obstruction, pure airway obstruction and I mentioned several minutes but variable. We circulate the cessation or obstruction to the brain such as when you block both carotid arteries with the constriction.

That is very much quicker and the literature says that if you cut of the blood supply to the brain between ten and

10 twenty minutes, an average of fifteen as an estimate you will lose consciousness. Some people would say even shorter within a few seconds.

One good authority uses the word immediately upon circulatory cession is stopping the blood supply to the brain, he would lose consciousness immediately. Death itself or brain damage before that, death brain damage would be, it said that by five minutes of lack of blood supply to the brain you are almost certainly going to have significant brain damage.

20 Here again it is, it is only by animal experiments that we can make such inferences and some, some of the upper limits of that time have been in one article up to eleven minutes but obviously can be very much shorter than that. So several minutes to, several to eleven minutes period of circulatory rest you are going to have brain damage, organic brain damage.

MR VARNEY: So when you talk about circulatory arrest you talking about constricting blood supply?

MR NAIDOO: You are restricting blood supply.

MR VARNEY: And restricting or cutting off air supply?

MR NAIDOO: Air supply would be then a bit more prolonged and then depending upon fitness or conditioning rather.

MR VARNEY: In relation to [indistinct – 10:00]?

MR NAIDOO: Brain consciousness and brain damage. So let us just to repeat that let us assume you have simply restriction
10 of air supply either by being smothered or the airway is being obstructed or in a little tank or room where there is no oxygen you are going to then suffocate or have the effects of lack of oxygen within several minutes.

If your fitness level is such that you could withstand it, it can be many minutes, maybe ten, fifteen minutes. Some of these divers actually can be so fit, peak conditioning. Other people like or normal people would be much lower than that and under condition the stress would the oxygen demand and the type of ventilation it can be one, two, three minutes.

20 MR VARNEY: And if I can put to you the scenario of what is often conducted in torture is that it would not simply be a once of episode?

MR NAIDOO: Yes.

MR VARNEY: Typically detainees would be interrogated for hours and we have seen this case sometimes for more than a

day or even over days.

MR NAIDOO: Yes.

MR VARNEY: So when third degree type torture is applied, it is invariable not just a once off incident.

MR NAIDOO: Yes.

MR VARNEY: So my question is if air supply and or blood supply was repeatedly interrupted over a period of time would one expect the subject in question to become progressively weaker and less resistant to dealing with such abuse?

10 MR NAIDOO: Not at the cellular organic level, one would expect the victim to be progressively more exhausted, his endurance might be limited or reduced each time, timed to exhaustion as it said, the time to exhaustion would be shorter and shorter with repetitive incidents like this. But at cellular level once you revive you have restored it to a state of normality so susceptibility will begin anew.

MR VARNEY: Yes indeed, although you also indicated a little earlier in your evidence that a subject under great mental and physical stress in terms of slipping into unconsciousness and

20 also slipping into a state of brain damage but it could be quicker for a person?

MR NAIDOO: It would be quicker for each episode, for each episode. What I am referring to is that having recovered from an episode of near asphyxiation recover it completely. The metabolic level, the cellular level is probably reset and it is re-

established. So each incident can be, I would think you know I have not contemplated this before but I would think that each incident would be not cumulative so much. But certainly on a general level of muscular strain and exhaustion and cardiovascular function that is increasing its demand for oxygen, in other word the stress and tension, certainly that would possibly be cumulative.

MR VARNEY: Moving to another topic. Yesterday in your evidence when describing the ligature you made reference to a

10 fixed double knot?

MR NAIDOO: Correct.

MR VARNEY: Now I am not a knot expert and I understand you are not a knot expert either.

MR NAIDOO: Yes.

MR VARNEY: But would you agree that a double knot does not necessarily have to be fixed it can also be a slip knot?

COURT: Could also be what, a slip?

MR VARNEY: A slip knot.

COURT: Oh.

20 MR NAIDOO: It just yes, it just depends how the one loop was fastened to the other. If the knot is secured whether by double knot or triple knot, a granny type triple knot, and if the loop simply passed through as a running loop that would be a slip knot. If the other end is incorporated into the double knot then it would be a fixed knot, so it just depends on how it was

inserted. My calling it a fix knot in this case that means it is not a slip knot is clearly because it can be seen, that knot can be seen at the apex, at the top of this inverted apex at about the right rear, upper rear of the head and you could see it clearly on the one image and off course the lose three portioned line sticking out from the right side.

MR VARNEY: Thank you doctor, let us now move the description forwarded to be injuries at the post-mortem and the difference conclusions you reached. So paragraph 6.10 you
10 offer something of a disclaimer, you said that the description of the external wounds are scanty and imprecise in the post-mortem records, why do you say that?

MR NAIDOO: Yes, the technical details of wounds and positions of ablations and ligatures and abrasions and that are very important in reconstructing and, you know corroborating its lie and its position with what was seen at the scene. And again hence the importance of the doctor attending the scene to look at the ligature and to see whether then in fact it fits, fits in with the lie and the position of the wounds. Neither the
20 ligatures, it is called an abrasion but is [indistinct – 10:08] you know no other dimensions to indicate an objective difference in angulation of the ligature for example usually more transfers lay on the right side and acutely upward on the left, well transversely on the left side and acutely upwards on the right side if it is a right sided pitching by the artillery, by the

ligature. So to be honest if there were objective measurements and precise locations from fix members, even in the absence of photographs of that ligature and the abrasion or sketches by Dr Kemp at least or Dr Botha we would have been able to reconstruct it on a picture for the court, you know objectively because you can plot it out.

So that is not there. There is also a lack of measurements of the individual wounds, precisely enough to be able to help us or the court to reconstruct what could be the
10 cause of those scars and wounds. For example the scars, the four scars or the fifth, the five lesions on the back are unusual in a patient who has no history, he was otherwise well kept, he has got no other lesions apart from the old manifestation which also was not recorded at the autopsy, the manifestation of the old femoral or tibia fracture that was according to his history from a previous childhood accident.

So that neither so the scars over the back, the four scars, each of them suggesting which I will come to later.

MR VARNEY: Yes, perhaps let us just pause for a moment
20 because we are about to get to the scars at the back. But to sum up your views on the failure to describe these external wounds in any great detail but this is, this undermines the ability to determine the nature of his injuries, their appearance, ages and locations or to determine [indistinct – 10:11] with much confidence?

MR NAIDOO: That is correct yes.

MR VARNEY: So that seems to me Doctor to be quite a massive draw back?

MR NAIDOO: Well it is a limitation definitely yes, yes.

MR VARNEY: Now let us turn to the scars at the back and you have set out your views at paragraph 6.10.2 and 3. Now before we commenced I can tell you that we, on this question we have consulted with Dr Liz Floyd former partner of Dr Aggett and she says to us and if necessary we might have to
10 get an affidavit from her to this effect that there was no scarring over Aggett's back, at least as far as she could see prior to the detention. So with that in mind what are your comments in relation to the observable scars as reflected in the post-mortem report on the back?

MR NAIDOO: Firstly Dr Botha's histology report is relevant in that he talks about hyperkeratosis and thickening of the epidermal layer okay. He uses another term if you forgive me for the moment I it just slipped my mind. So this is thickening of the most superficial layer of the skin that has in the
20 epidermis okay, where it is replicating to thicken it.

And what it suggest it is a frictional response, it is a response to repeated friction against these points on the back. They not healed bruises, they could be abrasions but one must think of chronic fictional skin irritation at that stage. There is something in those four positions where the focus of skin

irritation of some sort, it is the way I view it. It could be the healed lesion of a mechanical injury, it could be healed abrasions that I cannot exclude but obviously nothing, no further conclusion besides that.

MR VARNEY: And when you refer to mechanical what do you mean by that?

MR NAIDOO: The application of force. The application of force that scrawls of skin surface and repeatedly scores it off will create a frictional injury and that is typically an abrasion

10 and which re-heals with a scab and a callous formation. Bruises, purely bruises are found underneath the epidermis and in fact into the [indistinct – 10:14] tissue and they do not trigger of a service reaction. So what I am saying is this is not bruises this is more repetitive friction or scoring of the skin by something that was irritating the skin.

MR VARNEY: So when, when you say the mechanical injury is like application of force, presumably that is with an object of some sort?

MR NAIDOO: Correct.

20 MR VARNEY: And would you be able to adventure an opinion as to what the objects might have been or typically might have been?

MR NAIDOO: Oh that is difficult, it is difficult to venture such an opinion. You know there could be so many possibilities. But what I went on to suggest in that I do not think, I cannot

see that would be, when certainly it is not, it is by histology alone it is a scar, it is a healed injury, it cannot be from lying against the bars in that we can rule that out it is not [indistinct]... those four scars. It could be any, any irritating repetitive, chronicle repetitive irritating force. I am not sure if I can venture any other suggestion.

MR VARNEY: Okay I am not going to force your hand on that doctor.

COURT: Can I just find out. What does the post-mortem say

10 about those scars, were they fresh scars or what?

MR NAIDOO: Those four, My Lord, were scars, healed scars.

COURT: Oh healed scars.

MR NAIDOO: Yes, confirmed on the histology healed scars of that chronic repetitive surface friction. There was another triangle fresh injury on the right upper back side and that is a separate lesion from the scars we are talking about.

COURT: Okay.

MR VARNEY: Dr Naidoo, can I encourage you, whenever you feel free, wish to do so but to point out on your enlarged

20 sketch of the [indistinct – 10:17] of Dr Aggett so currently the four scars, perhaps you can point out to the courts benefit where on this sketch they allocated?

MR NAIDOO: My Lord, they are on the sketch I created, whatever I have shown is in keeping with what we are seeing on objective images such as this and off course the positions

of the bars and the ligature but these lesions over the back are arbitory, in other words they so vaguely and it is coming back to the quality of the description of these wounds.

So vaguely described as to the location that I can only say that this arbitory okay, and this two scars on the right side of the back close to the lower angle of the scapular, so about the mid, right mid back and there is two scars one set to be above the angle and one below the angle on the left back. Now in if Your Lordship will look at the triangular shape on the right scapular, the right shoulder blade, that is that fresh abrasion.

So that is fresh and those other four are scars, old scars. And then over the lower back set to be and recreated from this description on the middle line over the fourth lumber vertebra is an area which they variously call abrasion is what I believe the fifth lesion. They call an abrasion not a scar and Dr Kemp said it was fresh. Now hence I, I think we must consider the possibility of artefactual, an artefact from movement of the body because the spines processes stick out and Dr Aggett was not an overweight chap by any means so his rather slender body would be, you know lying on the mortuary trolley can cause it, lying on the autopsy can cause such pressure points.

<u>MR VARNEY</u>: Okay so that singular abrasion is potentially a post-mortem kind of injury as to anti-mortuary?

MR NAIDOO: Artifact yes.

MR VARNEY: Now since we are dealing with the back, perhaps we can then before you move to the other injuries look at the injury on the right upper back which you had earlier may drifted to?

MR NAIDOO: Yes.

MR VARNEY: That then the 3 centimetres triangular fresh bruise, can you describe that particular injury and also give us sense to the court what your views are of that particular injury

10 are?

MR NAIDOO: Yes. I have placed this triangular shape directly over the central portion of the right scapular because I have no, nowhere else to put it. It could be anywhere at the right upper back. Dr Kemp described it as fresh, he was quite firm and confident about it being fresh. He called triangular three by three by three, we can triangular, so maybe someone like equilateral triangle. He further said it was due to being a pinching type of injury.

COURT: Pinching?

20 MR NAIDOO: A pinching type of injury. Now if that was fresh and a bruise yes, it would have been very recent, it would have been just before his death. A bruise can develop within several minutes. Now it's pinching nature is what made me go further to indicate that it is hardly likely to have occurred with the body just lying against the bars, vertical bars as the body

is hanging and that would not cause a pinching nature. If, whether he was, it was self inflicted and he clambered up facing the bars, turned around and let himself down or dropped himself down being self inflicted or if he was placed into that loop by some third party and either dropped down or let down more steadily I still cannot see that the bars would cause that triangular abrasion.

If at all there was something that would have been caused, sorry triangular bruise. If at all some injury would be
10 caused by something protruding or abutting or projecting out of the fairly flat area of the bars at that position it would cause possibly an abrasion because the body would in falling down or even steadily dropping being let down would be chafed against something that was obstructing.

It would hardly cause a clearly triangular lesion and it would have been an abrasion rather than a bruise or a bruised abrasion. So forgive me for the lengthy description but I would hardly reconcile that lesion were the drill cage, I call it a cage.

COURT: So it is a kind of a [indistinct – 10:24]?

20 MR NAIDOO: I cannot see how one can reconcile that wound with being against the grill cage or the whole process of hanging. It must, My Lord, have occurred earlier than that I believe.

MR VARNEY: Right. To be fair you, you have not been to the cell B15 so I am not going to put that to you but as an aspect

that we will look into further as to whether there is a possibility that the bars could have caused such an injury.

MR NAIDOO: I think on that aspect. The testimony of Prof JD Laubscher also is relevant.

MR VARNEY: He is [indistinct].

MR NAIDOO: Yes. I have had that portion transcribed by a willing colleague and I believe that it was correctly transcribed and Prof Laubscher, this is a report on his University letterhead.

10 MR VARNEY: Can we just pause for a moment. And the reason why we have to pause, you referring to the two page pathology report of Dr Laubscher?

MR NAIDOO: That is correct.

MR VARNEY: Yes. My Lord, that report is actually not part of the record so you do not have it before you and in fact yesterday I had assumed that Dr Naidoo was referring to the testimony of Dr Laubscher but if you do a search through the index you will not find any report of Dr Laubscher, in fact the report of Dr Laubscher was discovered in the files of Dr

20 Gluckman.

So currently that particular report is part of what we might regard as the missing documents, the missing record of the first inquest. Now with the courts leave I would like to hand up the documents we have discovered in the Gluckman file and there were eleven items sitting in the Gluckman file

dealing with the Aggett inquest and of the eleven items five do not appear in the inquest record as we currently have it and so that is what we would like to hand up now and we shared these documents with our colleagues. The missing items, I will just place them on record what we will be handing up now. Is the affidavit of Charles Vorster.

COURT: Yes.

MR VARNEY: The autopsy report by Dr Botha dated 21 February 1982 which is not to be confused with his later report

10 dated 25 March 1982. A letter from W Lane to Dr Gluckman, W Lane was the lead attorney for advocate firm at the time. Various materials send to Dr Gluckman and then finally the pathology report by Prof Laubscher which is the two page report that Mr Naidoo now wishes to refer to.

There was one other item that is also missing and was reflected in this file that is the SAP circular, but, My Lord, that we have already put up as EXHIBIT G11. So with the leave of the court we would like to hand up these missing documents as EXHIBIT G25. And, My Lord, we have marked the missing

20 documents G25.1 through to 25.5, so in fact the pathology report of Prof Laubscher is marked G25.1.

COURT: Yes.

MR VARNEY: So, My Lord, the pathology report of Dr Laubscher would in fact be the second last page of the bundle, I apologise for interrupting you can proceed.

COURT: Yes.

MR NAIDOO: Thank you, My Lord. Prof Laubscher's report, the one that is not part of the official record and now just handed up to you, G25.1 you mentioned. It is in Afrikaans, it is on his University letterhead and I refer to paragraph 7 in which and I read the, my English translation ...[intervened]

COURT: Paragraph 7 of this?

MR NAIDOO: The seventh paragraph.

MR VARNEY: What page?

10 MR NAIDOO: On the first page I believe. I only have my English translation here.

COURT: Is it the one that start with '*volgens'* or what?

MR NAIDOO: It will be the second page. Thank you, My Lord. On the Afrikaans text it will be the second page, first paragraph on the second page.

COURT: Okay. '*Volgens my menings'* that was *ja*?

MR NAIDOO: Yes and I read, well shall I read the Afrikaans?

MR VARNEY: I think first read the Afrikaans and then you can offer a translation.

20 MR NAIDOO: I read the Afrikaans and apologise for my pronunciation if I am incorrect.

> Volgens my menings sou die ophang ook verwys aan die, na die foto's vir die merke op die rug verantwoordelik wees. Aangesien redelike punte gehad druk deur die tralies op gedeeltes van die rug

veroorsaak kon gewees het. As in aanmerking geneem word hoe die liggaam gehang gevind was. Die meganisme van hierdie beserings kan op waarskynlikhede teruggevoer word na kompulsiewe spier sametrekkings in die acute phase van die ophang.

MR VARNEY: Dr Naidoo I can see that you grew up in Durban which is an English [indistinct].

MR NAIDOO: Absolutely thank you. Thank you, My Lord.

10 COURT: *Ja*.

MR NAIDOO: The English translation.

In my opinion the hanging refer to the (photos) would also be responsible for the marks on the back given the that a fair amount, fair amount of pressure would have been exerted by the bars on parts of the back considering the position the body was found hanging. A mechanism of these injuries can probably to be traced to convulsive muscle contractions in the acute phase of the

20 suspension/hanging.

So basically Prof Laubscher was of the opinion that all the marks, even the healed scars shown to have been healed by Dr Botha where those as a result of a convulsive spasm, set of convulsive spasms as the deceased was hanging. And that is a mistake and he also attributes all the lesions including the

fresh lesion, the fresh triangular wound to the mechanism of hanging and that is incorrect and I will explain why.

Firstly the healed scars cannot be related in terms of it is their chronological age to the hanging because that is where he died, the deceased in my opinion died as a result of the hanging or finally died. The other thing is we do know that, or actually we think it is correct that a body in hanging, nobody, a very few people have seen people hanging, those in the convulsive spasms.

10 But the only wound we must try and reconcile would be the triangular wound. And as mentioned earlier that would only really occur if there was a projection from those bars and perhaps triangular in shape if that is what were led to believe.

And a butting against the body as it was convulsing or hanging that would be the only possible way such a bruise would occur. And as I mentioned earlier it is further remotely unlikely because a body to cause such an injury by dropping to the terminal height of the hanging process one would have to strike a projection with the back that would cause an abrasion

20 or an abraded bruise and we are not seeing it as an abrasion.

The problem is that this tissue, the triangular bruise, was not sampled for histology or clearly is not in the histology report. What is, what had been sampled was the lesion of the skin of the abrasion of the neck not the lesion, not the fresh bruise over the back. Dr Botha reports on the scars of the

back, the four scars.

MR VARNEY: So because of the absence of that histology report it does make an infinitive conclusion difficult?

MR NAIDOO: Yes correct.

MR VARNEY: Dr Naidoo, I just want to hand up photos from the police album and, My Lord, this was handed up by the state.

COURT: Yes.

MR VARNEY: And this album EXHIBIT G24 and I want to refer

10 to photographs 125 and visibly 26.

COURT: Is it this one?

MR VARNEY: Yes indeed, My Lord.

COURT: It is marked G25?

MR VARNEY: G24 I believe, My Lord. So this was probably, these two pics are probably the best two close up shots we have of the bars.

COURT: What is the page?

MR VARNEY: Photo 125 and photo 126 so that would be towards the end. It does not look as if these pages are

20 numbered unfortunately. The photo numbers are at the top of each photograph on my left hand side. So I just want to point out to you Dr Naidoo that you will see the vertical bars are round in shape and then there are horizontal bars that have a, appear to be a sharper edge.

MR NAIDOO: Yes.

MR VARNEY: Would that make any difference to your conclusion?

MR NAIDOO: Yes it does help. Do we know which of the set of bars, the vertical rounded bars or the transfers square bars, square in cross section where on the side that Dr Aggett's body is lying?

MR VARNEY: Well that I can consult the picture FGK71. So that gives you a sense that there is one horizontal transfer bar that crosses approximately half way up.

10 MR NAIDOO: What can we see is that the transfers bars, the sparse transfers bars or the horizontal bars appear to be quite clearly seen on the inside of the cage, in other words on the door side of the cell, not facing the cell. I am not sure on FGK7.1 if those transfer bars were also projecting onto the inside of the cell.

MR VARNEY: I think we can, we can assume that they did project.

MR NAIDOO: The inside of this?

MR VARNEY: Or at least one looks at 125 and 126, those

20 photos were taken on the, from the inside of the cell.

MR NAIDOO: Oh yes. Yes okay, thank you for that. This is information I did not consider. It is the transfers bars also project on the outside, on the inside of the cell, in other words facing the inside of the cell on the side that Dr Aggett was lying.

It would not in my opinion make a difference to, in my view make a difference to the opinion of the described in that there is still no projection, individual discreet projections that would cause such an injury, I cannot see it. If it all you would have a body lying against transfers bars and that would be at least, at least his back there would be one transfers bar against his back.

But I cannot see that causing a single triangular three by three centimetre abrasion where there is no on these
10 photographs, there is no projection.

MR VARNEY: Yes, and certainly nothing triangular about those bars being very vertical or horizontal.

MR NAIDOO: Correct.

MR VARNEY: And additional factor is that he is wearing both a shirt and a sweater.

MR NAIDOO: Yes.

MR VARNEY: Which probably provided a measure of protection as well.

MR NAIDOO: Correct, insulation as well or yes protection.

20 MR VARNEY: So then to sum up Dr Naidoo, sum up in your view the triangular injury is more likely to be what?

MR NAIDOO: I believe the triangular injury would be more likely to be a pre-existing lesion before he was suspended. There is even another reason that I express that view if I may explain?

MR VARNEY: Yes please.

MR NAIDOO: If the court would recall, My Lord, yesterday I did mention that the onset of death, the onset of unconsciousness would be almost immediate and then also the death would be very rapid. Now for a bruise to form it must evolve into a bruise. In other words there has to be at least several minutes of survival for a bruise to evolve, the bleeding to, the blood lost to be, to extravasate or shall we say to escape out of injured blood vessels into the tissue to form a
10 well formed bruise and this is three by three centimetres, quite a large bruise.

Now you need that manner of time, nature of time. So much so that we describe a principle of examining victims for doctors that you call them again for repeat examination because a person injured and you see them, if you see a patient injured immediately after the injury call them back and see them the next morning you will find that the injury is in swelling has evolved significantly. This does apply to bruising.

So in other words let us assume and I am confident of
20 being correct that Dr Aggett died very quickly because of that position, the placements of the sub and the cardial hemorrhage. I do not think that bruise would have time to evolve that way, to develop, to manifest like that, as large as that in any event. So therefore that in my view is a pre existing, a bruise that was pre existing and anti dated to the

hanging

MR VARNEY: And indeed if we can cut to the chase at 6.10.13 of your report.

MR NAIDOO: Yes.

MR VARNEY: You say that in respect of probability it is more likely that this was an ante mortuary injury from a blunt force impact such as a fall at some time before the suspension?

MR NAIDOO: Correct.

MR VARNEY: All right.

10 MR NAIDOO: I have also advise that with due respect to my – the other pathologist at that time is still the possibility has not been excluded that it could have been a post-mortem discoloration, that I cannot exclude. In my view it is well described, I have no doubt that Dr Kemp with his experience would have recognised a bruise and therefore my view is that it was most likely a bruise and the bruise is a anti dated hanging.

MR VARNEY: Yes indeed your report you refer to that aspect in a way that Dr Kemp described that a bruise and the words he used were he said so with bold confidence.

20 MR NAIDOO: Yes, correct.

MR VARNEY: All right. I think we have explored the injury on the right upper back. Perhaps now we can move to the right forearm which you described at paragraph 6.10.4.

MR NAIDOO: Yes.

MR VARNEY: Of your affidavit.

MR NAIDOO: Yes.

MR VARNEY: And here to be precise, you are dealing with a wound that Dr Aggett said occurred on the 4th of January 1982 a month before his death which resulted in the bleeding. Can you offer a description of this injury?

MR NAIDOO: Yes. Being positioned as mentioned repeatedly in the evidence that it was five centimetres on the [indistinct – 10:47] dorsum, that is the outside of the right forearm. Five centimetres above the wrist, so it would be about there and

10 being 1.5 also equilateral triangle 1.5, 1.5, 1.5 centimetres in diameter and bleeding. So I believe the possibility it was an area of skin loss, in other words a tearing of the skin, a laceration.

And being triangular shape it could have been a flap of the skin is possible or a total skin loss there. Now bleeding from a area of injury like that would be profuse, it would be significant and therefore I believe it is, could well have caused contamination of the assailants hand or his, I am not sure what part of his body but he had, someone had to wash it off, the

20 Schalk had to wash his hand or some portion fingers may be i am not sure what it was.

And that there was at some stage there was discussion or some testimony about Dr Aggett wishing to hold on to his garment or his pants, his trousers that was contaminated by blood as evidence. So certainly that could bleed.

MR VARNEY: Yes. And let us pause there because I think it will be useful to draw the courts attention to the statement made by Dr Aggett and which is contained in EXHIBIT B8.55 of the first inquest record and just too safe time I am going to hand up two copies of that. I do not want to interrupt your flow but I will bring you back to this report because there is a paragraph which appears to be consistent with the description of the injury in question.

MR NAIDOO: Just so that we do not have to add it in later but

10 I am aware of the handed in script I believe of Sergeant Blom?

MR VARNEY: Yes.

MR NAIDOO: So the court is aware of that?

MR VARNEY: Okay.

MR NAIDOO: Okay. Because I believe that there is alterations in Dr Aggett's handwriting?

MR VARNEY: Yes indeed and we have put up the typed version of that document which somewhat easier to read.

MR NAIDOO: So, shall I go ahead?

MR VARNEY: Please proceed.

20 MR NAIDOO: So just going ahead still on the triangular wound of the right on the dorsum, the outside of the right forearm or shall we say the lower part of the forearm because it is about there and I point to the, just about my right wrist. The note that Dr Aggett made about the wrist watch of van Schalkwyk, am I correct, is that van Schalkwyk?

MR VARNEY: Yes, and perhaps, perhaps just to assist you, if you look at the fifth paragraph of Dr Aggett's statement.

MR NAIDOO: Yes.

MR VARNEY: The relevant portion on the fifth paragraph and I will read into the record.

> This Schalk wore a watch witch cut my right forearm and it was bleeding. Later this Schalk went to wash of the blood that was on him.

MR NAIDOO: Yes, that is correct, that is the portion that
10 applies. The assault as he described it and I read in the same paragraph.

> Schalk would assault me, he hit me with his open hand through my face, I fell against the table with my back and I could feel the scab on my back. He also assaulted me with his fists by hitting me on the side of my temple and my chest, he also kicked me with his knee on the right side of my thigh.

So I am assuming this is the same, I take it that it is the same possible incident in which another witness it might have been
20 Smithers described the person called Schalk using something wrapped around his hand or forearm and using it as a club. So with that declaration off that context, if the wrist watch, it could have been his left hand or his right hand we have no idea.

If a wrist watch was also worn by the assailant and the wrist watch either a buckle or the pin of the buckle or the lug

of the buckle or the crown, one that seems to adjust the date and time those could have caused such a laceration. One must, one should think of the lug because it can be fairly angular that lug that holds the strap, a metal strap as well.

So those can cause such a laceration. And it is, now the next point I come to is about the healing because the post-mortem described a wound with a pinkish tinge, a healing area with a pinkish tinge. If I may just describe the, describe it by reading the description off Dr Kemp. On Dr Kemp's post-

10 mortem report paragraph 11, number 11 on paragraph 4 on the second page.

> On the posterior aspect of the right forearm, 5 centimetres above the wrist there is a faint 1.5 centimetre triangular irregular scar which still shows a slight pink tinge of the surface.

MR VARNEY: Just pause for a moment Doctor. My Lord, that is EXHIBIT B8.5.

COURT: Yes I am there.

MR VARNEY: And he is referring to page 17.

20 COURT: Yes I am there. Can you read it again please, is that the last one, number 11?

MR NAIDOO: Number 11 yes.

COURT: Yes thank you.

MR NAIDOO: Yes. So, My Lord, he refers to it as a scar and the pink tinge. Now we are trying to correlate it with the

wound, the allegation one, it is almost exactly one month earlier, well it was exactly one month earlier, the 4th and 4th possibly, one month earlier.

Lacerations we know heal depending on the depth and it's severity because the replacement, there is lost tissue or discontinuity of tissue, it needs to heal either by first intention or second intention and depending upon whether it gets infected or not. It heals best if the edges are opposed and it is clean so the ceiling of the defected heals fastest. How long
10 does it take to heal, in my experience between one to four weeks. Very superficial once will be healed by one week, one and a half weeks and deeper once will heal by four weeks, usually ordinary minor lacerations I am not talking about mayor skin wounds and defects.

Then what happens with the laceration is that it will seal, it will close, it will reconnect but the last bit of healing which is the complete sealing by the complete epithelium [indistinct – 10:56] and the pigmentation will take much more, many weeks later, sometimes many months later.

20 So what was seen as the pink tinge was an incompletely pigmented but probably a rear [indistinct] the last pigmentation being incomplete. It was a fairly big wound, one if we can reconstruct it as a equilateral triangle 1.5 by 1.5 bar so I would say it would take time to completely disappear by the wound eventually does.

So therefore it is very likely that such wound was exactly a month old, it is in keeping and that wound would have bled and thirdly that wound would be in keeping with the nature of the assault on Dr Aggett as he described in his affidavit a month, about the incident a month earlier.

MR VARNEY: So to sum up that particular injury is entirely consistent with all fours?

MR NAIDOO: Yes.

MR VARNEY: With the complainants made in Dr Aggett's

10 statement to Sergeant Blom?

MR NAIDOO: Yes, I can confirm the entire consistency off the count and the post-mortem finding.

MR VARNEY: My Lord, the witness has referred to evidence to suggest that Schalk had wrapped some fabric around his forearm, we have found evidence of that in the first inquest record, that is that page 2662 to 3 of the inquest record and according to Auret van Heerden Neil told him that Schalk wrapped clothing around his forearm and he clubbed him on his chest and shoulder, he left a scar on Neil's

20 forearm.

Dr Naidoo let us, let us move to other injuries. You have a heading at paragraph 6.11 titled the injuries complained of in Dr Aggett's affidavit but not seen at the autopsy and you commenced with injury on the back?

MR NAIDOO: Yes. The reason I put this, My Lord, into this

section, those in, we have done with the injuries that were complained of and seen at autopsy or injuries seen at the autopsy and now we deal with injuries that were complained of in the affidavit but not seen at the autopsy.

And my attempt is, well is just to in fact a short answer to this, it is entirely reasonable that it is not seen at the autopsy and I am now explaining why it is quite possible that it was not seen at the autopsy. Now the first one was an injury of the back that Dr Aggett complained of having been fallen, having

10 fallen or being pushed against a chair, a table or a desk.

MR VARNEY: In fact are you referring to the fifth paragraph in Dr Aggett's statement as Sergeant Blom EXHIBIT B8.55?

MR NAIDOO: Yes correct. Also in that 5th paragraph

MR VARNEY: Yes, and perhaps just to remind the court when he says I was interrogated by Lieutenant Whitehead and every time that he asked me a question and I denied it he accused me of calling him a liar then this Schalk would assault me, he hit me with his open hand across my face and I fell against the

20 table with my back and I could feel a scab on my back, is that the reference you?

MR NAIDOO: That is correct yes. To, this is also if according to that affidavit occurred on the 4th of January. So it would also a month old at the time of the post-mortem as was the [indistinct] of the right forum. Now when you talk about the

scab, firstly it is not uncommon for lay persons see scab as a specific and precise definition. It means and encrust, an epithelia crust, either temporary or mature I will explain on the surface and that can actually be felt if you feel with your hand you feel a scab on this soptofelia [sic].

It could be a temporary fresh scab in which case it will be tender or it can be mature healing scab in which case in the earlier, early stages it will be someone itchy and at the late stages you will feel a scab and irregularity as it completely

10 heals.

Such a scab can only occur if it is an abrasion. So it cannot occur with a pure bruise because a pure bruise is under the skin it is nothing on the surface. Be that as it may bruises and abrasions more often coexist as abraded bruises or bruised abrasions.

So it could be either lesion with an abrasion. Now a mature scab, how long do wounds like that heal. Within a month's time you would expect that it completely and the scab actually having fallen off, My Lord. And the skin continuity

20 smooth and continuous.

So it is quite possible that one months later that there is no scab, no scab to be felt. I would expect that there would be a faint discolorations still visible but the problem is on the back of a light skin person with post-mortem liberty and blotches and freckles and shaves you may not really see a

clearly defined residue of a healed scab or a healed abrasion. So in other words it is quite possible that it was there when it was said to have been and at the post-mortem no evidence of that.

MR VARNEY: I see, thank you for that. And let us move to the next item under this head entitled left wrist scratch.

MR NAIDOO: Yes.

MR VARNEY: Now in Dr Aggett's affidavit this occurred on the 29th of January so that would be approximately one week and

10 he, his account attributes to the use of a handcuff. Whilst I was injured, now this is 6th paragraph and he reads,

> I have a scratch, it should read that then having been blindfolded off course. They made me sit down and handcuffed me behind my back. I was shocked with the handcuffs. I do not know what they used to shock me, I was shocked a few times. I had a scratch on my left pulse, regular nerve in brackets where I was injured whiles being handcuffed.

20 Now this is one week earlier and the typical handcuff injury, maybe I should start where the fact that if you cuffed, if you cuffed with your hands at the back and you cuffed and you shocked the effects of the electric shock will be involuntary contraction of the muscles of that to and you are going to be pulling away and or try and pull away your body from the cuff

or from each other.

So in other words it is very easy to cause a fine scored abrasion or actually a superficial laceration [Soundtrack disruption from [11:06:23] to [11:07:31] So it is quite possible, My Lord, it is quite possible at a post-mortem one week later to find that you cannot really make out any residue feature of a handcuffed lesion superficial injury or abrasion still there. So it is quite possible that you will not see it.

And bearing in mind the hairy hand, the freckles, the 10 post-mortem changes, the blotches, the blemishes etcetera over the back, over the hands you not going to easily make out something that is vague and almost fading. Hence, My Lord, it is quite possible that they could not see it at post-mortem but it does not rule out or that it was there when it was said to be, have been a week earlier.

MR VARNEY: Dr Naidoo before we proceed I just have to make sure that we are not cutting into tea time. My Lord, I see it is nearly 11:15 so it might be an appropriate moment to take the tea adjournment.

20 COURT: Okay.

MR VARNEY: My Lord, just to advise that I still need a little time with this witness but as discussed with Your Lordship in chambers there is agreements on the part of the legal teams to use this afternoon if we have to.

COURT: Okay, thank you.

MR VARNEY: As the court pleases.

COURT: Thanks we adjourn for tea.

COURT ADJOURNS [11:09:18]

10

20

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The late DR NEIL HUDSON AGGETT

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INQUEST HEARING ON 2020-02-07

MR VARNEY: As the Court pleases.

COURT: Yes?

DR NAIDOO (Still under oath):

EXAMINATION BY MR VARNEY: M'Lord, before we proceed, I am going to make reference to the affidavit of Ismail Momoniat who as you recall, has already testified before this Court, and has submitted an affidavit which is marked G18. I do have a copy of G18. I have a copy for the witness. And if the Court
10 prefers, I would to hand up another copy.

COURT: Okay.

MR VARNEY: I just wish to get Dr Naidoo's response to what Ismail Momoniat had said he witnessed when he saw Dr Aggett for the last time, and this he said was on Wednesday, 3rd February. Although he says that he cannot remember for sure, but it may have also been on Thursday, 4th February, and M'Lord I am currently looking at page 23 of Mr Momoniat's affidavit. Reading from paragraph 67 all the way through to 70.

20 COURT: Yes.

MR VARNEY: And perhaps I can just paraphrase essentially what he is saying, that when he saw Dr Aggett in the morning of Thursday, that is Wednesday 3 February or Thursday 4 February, when he greeted Dr Aggett he did not respond, and he found that to be really strange.

At paragraph 69 he noticed Dr Aggett was oblivious to what was going on around him, he was in a daze, just staring blankly at the wall.

In paragraph 70, perhaps I will just read this one verbatim, for Dr Naidoo's benefit:

> "I also noticed that on Dr Aggett's forehead, probably on the right hand side, above his eyebrows, there appeared to be a large mark. The mark was about ¾ of an inch in diameter and it
> 10 was circular in shape. I got the impression that it was a bruise or injury. It was darkish in colour. The mark stood out and since I saw Dr Aggett's face, I noticed that I observed him for while, of the sign out process would be completed. I will never forget this mark which I definitely saw because it proved to me that he had been beaten up."

Now Dr Naidoo, if one examines the autopsy reports, there does appear to be a reference in Dr Botha's report, if I refer to you in consultation, where he does refer to some
20 discolouration, I think he referred to as 'dark in colour'.

Then secondly, I wish to refer you to paragraph 6.2.17 of your own report. In relation to what Dr Kemp was, with response as to what dissection he had undertaken, he said that he comes at various places but referred only to the mark on the left upper cheek.

So could you offer this Court any comment on what Mr Momoniat said he saw, either on the morning of the 3rd or 4th of February, and indicate whether it is possible that there was such a mark, given the relative absence of an observation of such a mark on the deceased's forehead?

MR NAIDOO: Yes. Thank you, M'Lord. As I see it, so this is an observation made by the witness Mr Momoniat, one day before on the Thursday the 4th, or two days before on Wednesday the 3rd. So, it is either one or two days old.

10 If it was not seen at the autopsy, my impression, it could not have been a bruise or a significant bruise of any sort, because on the second, first or second day, I would have expected a bruise to be in fact fully evolved to its peak, so it would be at his most grotesque at the second day, if it is a bruise, before it starts fading into the colour changes, that we see were days and weeks later.

So, it could not have been an abrasion, as an abrasion would be manifest with a scab, as I testified earlier. So the only possibility it could be, would be an area of

20 erythema that is reddening of the skin, as one would see like in, if you rub your eyes too much, red eyes, or you come out of the hot shower and you get red cheeks, you know. Or after a spring, a marathon sprint, someone is red faced. That is a fleeting redness that passes off fairly quickly.

But then it could be, it could be a spot of dirt, okay,

that had not been washed off and had, when one does now know what sort of allowance towards ablutions or whether Dr Aggett at that point in time was so in a state of mind that he did not take care of the ablutions. Or, it could have been a spot of grease or it... or similar.

If it was a superficial blister, very superficial there might just be the possibility that it was, and if the blister had detached and dried fairly quickly in two days. There might be possibility that it might just have not have been apparent at the

10 post mortem.

So, to summarise, an area or erythema, reddening of skin, such as in a irritated reaction, to itching ...[intervened]

MR VARNEY: Just on that score. If there was this reddening, is that likely to have occurred because of something that happened in the very recent past, prior to the observation?

MR NAIDOO: Yes, it would have been more than likely, fairly recent, because if at two days later, one or two days later it had disappeared, largely disappeared, it was very fleeting. So it would have been very recent.

20 By default, something that is very recent, something that is fleeting has a short period of time so it would have been, of survival, of persistence, so it would have been very recent, as well.

MR VARNEY: Okay. I am just trying to a fact, quantitative, in the sense of what is recent, and you know, are we talking

perhaps minutes before he was seen by Mr Momoniat, or perhaps this could have occurred the day before?

MR NAIDOO: Minutes to hours, but it just could have been something that also a day before, but I would think that it was fairly fleeting. If it was a patch of erythema, that is a localised inflammation, and that would be in several hours, at least.

MR VARNEY: And could that possibly be caused by for example, a slap to the face?

10 MR NAIDOO: Yes, it could, a slap to the face.

MR VARNEY: To the side of the face, at least?

MR NAIDOO: Yes, to the side of the face, side of the forehead. It could. Or maybe a slap to the side of the head with a little bit of overlap or putting forward. That could be possible. And that would be fleeting. If it is erythema, because it is not manifesting with the bruise fully.

MR VARNEY: When you say fleeting, if it happened the day before, would the reddishness still be present the following morning?

20 MR NAIDOO: Probably not. Not the day before. So it would be shorter than that. Much more temporary than that. Erythema passes off very quickly.

MR VARNEY: Alright.

MR NAIDOO: Bear in mind, you probably would not see this in a person's pigmentation as dark, you are probably more likely

to see it in a lighter skinned person.

MR VARNEY: Okay. Then let us move to your next substantive heading, which is at paragraph 6.13 of your report and which you have titled:

> "Consequences of methods of interrogation described in testimony, including the effects of sleep deprivation as accepted as employed during the last few days of Dr Aggett's life."

And you kick off by addressing the question of sleep
10 deprivation.

MR NAIDOO: Yes.

MR VARNEY: So perhaps you can elaborate on that?

MR NAIDOO: Yes. Maybe I should declare at this stage M'Lord, is that this is the only area in my report where I extend myself come out of the enclosure of forensic pathology analysis.

I go into clinical medicine, so, and I declare that it is not my area of complete expertise, a relative acquaintance with those areas, in view of my work in injury analysis, injury
20 damage and bodily damage and effects. So I do entertain that this is, consider that this is a clinical field.

Now the issue of sleep deprivation, it might be almost like almost axiomatic, we do not have to prove this, because we all know this by experience. But sometimes well worth looking at the objective findings of research. And but what we

do know is, the facts available to us are that Dr Aggett over a period of 62 hours, there was either complete sleep deprivation or relative sleep deprivation.

There are two different bits of source of information, I am not sure and I can be corrected on this, whether it is a complete sleep deprivation of 62 hours, or whether there was a period of 14 hours of sleep only over a period of 62 hours, over this long weekend of the 28th to the 30th of January 1982, a few days before he died.

10 MR VARNEY: Yes. Which is, I suppose even mystically you referred to at least in the first inquest as 'the long weekend'.

MR NAIDOO: The 'long weekend'.

MR VARNEY: And where did you source this information from?

MR NAIDOO: Yes.

MR VARNEY: Well, perhaps just to save time, it does appear from the statement of Dr Aggett, but you ...[intervened]

MR NAIDOO: Yes.

MR VARNEY: You say in paragraph 6.13.2 that it was

20 calculated that Dr Aggett... and he slept for 14 hours over a period of 62 hours, over the long weekend of 28 to 30 January.

MR NAIDOO: Yes.

MR VARNEY: And this, at best, amounts to 5.4 hours for every 24 hours. I assume that you generated the information of some sleep over the long weekend from the evidence of the

police ...[intervened]

MR NAIDOO: Yes, it was from the police, M'Lord. I am afraid, I apologise that I did not get the page reference of the transcript, but it was definitely there and I took it as correctly as possible.

MR VARNEY: Okay. No, that is okay. My learned juniors will find that reference and we will hand that up shortly.

MR NAIDOO: Yes.

MR VARNEY: But on the evidence of the police, what is your

10 commentary?

MR NAIDOO: Even on the evidence of the police, that he had had some sleep, this would amount to 5.4 hours of sleep for every 24 hours, if the evidence is true. And my [indistinct] feeling this is obviously not enough, my personal experience is that it is definitely not enough.

I consider that there might have been sleep deprivation anyway already accumulated before this time, during the period of interrogation - we cannot exclude that. Secondly, if, in that period of time, and if there were repetitive

20 physical, episodes of physical exertion, it is now heading to the cumulative effect or the additive potentiating fact of sleep deprivation and physical exhaustion. Adding to that, the mental state.

Now what we do know is that sleep deprivation is cumulative. It just adds up. You may not know it and when

you are working, when you are fuelled by adrenaline you do not appreciate it, except when you are in a ... you are recovering and then you feel the effects of sleep deprivation.

Then the other bit of scientific research that is pertinent M'Lord, is that when you are fuelled by adrenaline, even after fuelled deprivation, it does not affect your ability to do things that require muscular effort. In other words, if I wanted to twist the lid of something, or to wrench something off, the muscular effort is there - that is according to the
10 literature - but the time to exhaustion is reduced. Several articles say that you very, very, rapidly become exhausted.

Now what you have is that rapidity of exhaustion, sleep deprivation and both possible physical injuries, we do not know if there was areas of bruising from the impacts and of course the mental strain. You have got a tremendous dissociation of normal physiology in this patient.

MR VARNEY: Okay. Let us now turn to paragraph 6 of Dr Aggett's statement that is the statement that is marked as B8.54 and the complaint.

20 MR NAIDOO: Yes.

MR VARNEY: Made to Sergeant Gnaum [indistinct - 17:50] that he signed on the morning of the 4th of February 1982.

MR NAIDOO: Yes.

MR VARNEY: And back to the 6th paragraph.

MR NAIDOO: Yes?

MR VARNEY: So now perhaps I just read it into the record:

> "I was kept awake since the morning of 28 January 1982 to the 30th January 1982."

Now, and then of course he goes on to talk about abuse and electric shocks he sustained in that period. But just focussing on what Dr Aggett is saying, he is saying that he was awake from that morning on the 28th through to the 30th, presumable until the end of his interrogation. Essentially what he is saying that he was awake.

10 MR NAIDOO: Yes.

MR VARNEY: Pretty much for a period of 62 hours over that long weekend, and Doctor, I should put... I should inform you that we have already submitted to this Court that by and large the evidence of the security branch amounts to one massive falsehood, and it will be the challenge of this Court to discern whether amongst all that evidence, there is any snippets of truth.

But we will be submitting that the evidence, the sworn statement of Dr Aggett is to be preferred over the claims of the

20 police, given that we will be demonstrating and I believe with some confidence, that the bulk of it is just straight forward deception and lies and falsehood.

MR NAIDOO: Hm.

MR VARNEY: Now assuming that Dr Aggett is correct, and that he was kept awake for this long weekend of 62 hours,

what would be the effects? As you say the cumulative effects during the course of those 62 hours?

MR NAIDOO: Let me just, before I go to the cumulative effects, the clinical effects, the subjective effects on the patient, I just need to say that I perhaps can read if he was kept awake in that time, between that 28th to the 30th, that could be roughly between 48 to ... 48 to 60 hours at least, of continuous awake state, continuous consciousness, without sleep. In other words, if we read that literally, just Dr Aggett's

10 statement, between the morning of the 28th to the 30th - we do not know morning or the afternoon - two and a half days, or two to two and a half days, this be 48 to 60 hours of continuous awake state.

MR VARNEY: Okay. Well we will shortly indicate when that interrogation ended. But it does appear as if the legal team in the first inquest came up with the calculation of 62 hours, based on 14 hours on the 28th of January and then 24 hours on the 29th and then 24 odd hours on the 30th of January.

MR NAIDOO: Sure.

20 MR VARNEY: And my learned junior draws my attention to the testimony of Dr Kemp, in response to a question put by my learned friend, Mr Bizos and that is at page 83 to 84 of the first inquest record.

And so that is why we state that, and we are putting it to you, if he had been kept awake for some 62 hours, what

would the impact have been?

MR NAIDOO: Yes. Thank you, M'Lord. To start with the area of sleep deprivation and its clinical effects, certainly is not an area of specialty. But I can reinforce what is so commonly known about sleep deprivation at a medical level.

I looked up a reference, the reference is *Hortors*. It is a 2018 reference, *Frontiers in Psychiatry*. And I read my 6.13.3 as follows:

> "The effects of sleep deprivation are reported to be
> 10 seen by the first 24 hours, of lack of sleep and progressively increase in intensity and number of disorders with time, according to that comprehensive review, which further states that its findings are that perceptual distortions, anxiety, irritability, depersonalisation and temporal disorientation stared within 24 hours to 48 hours of sleep loss, followed by complex hallucinations and disordered thinking after 48 to 90 hours and dilutions after 72 hours, after which time the
> 20 clinical picture resemble that of acute psychosis or toxic delirium."

Now I just need to point out, that that would be in a research set of volunteers that are not under the strain, their physical exhaustion, the possible assault and the stress of the context of detention and torture. Oh, and interrogation, sorry. I don't

want to say torture - interrogation.

So I would think that this would definitely be potentiated by the context that the detainee would be kept in.

MR VARNEY: And in your view, would such enforced sleep deprivation in itself, constitute an act of gross torture.

MR NAIDOO: I would think so. In my understanding of what constitutes... what torture is defined as, internationally, and even under our own laws, I would think so, yes.

MR VARNEY: Then let us move on to your paragraph dealing
10 with electric shock treatment?

MR NAIDOO: Yes?

MR VARNEY: And just to return briefly to paragraph 6 of Dr Aggett's statement. I will just read that into the record. Following on that he was kept awake. He says:

> "During the night of the 29th of January 1982, Lieutenant Whitehead and another security sergeant whose name I do not know, and another black male, also a policeman, were present when Lieutenant Whitehead blindfolded me with a towel
> 20 and made me sit down and handcuffed me behind my back. I was shocked through the handcuffs. I do not know what they used to shock me, I was shocked a few times."

And then he makes reference to the scratch on his left pulse that is on his left wrist, that we have dealt with already. So

just confining ourselves to the electric shock treatment.

MR NAIDOO: Yes.

MR VARNEY: Can you elaborate on what Dr Aggett would likely have gone through?

MR NAIDOO: Yes. From my understanding based on my reading and teaching of the use of electric shock, electric current generation, to in detention, in abuse cases and in torture, it is not live mains electricity, that is used, but usually a hand held device with a dynamo that generates a current.

10 Now the understanding and I have not got personal experience with this, is that the current strength and the voltage delivered, whilst it causes painful contractions, painful and sustained contractions of the muscles of the involved part of the body, at least to start with it is not the kind voltage and current strength that would be immediately fatal.

So it is used to be disabling - to be distressing as an effect, but not fatal. Which is what I understand. I also at the same time - I know that there may have been and I believe it is in one case that I was personally involved in - it may have

20 been a case in which electric currents applied for example, with crocodile clips to the nipples of a male, might have resulted in his death, because what the current would do, it to pass across the musculature between the two electrodes and of course the heart muscle is one that might have been involved.

Then of course, thirdly, there might be cases in which an individual with a susceptible cold mobility that means such as an already diseased heart, or severe coronary heart disease, subject to minor electrical impulses like that, may just be the trigger to fatal fatality.

So, and the other thing M'Lord, is that typically, typically electric shocks are applied in such a way that over a wide electrodes such as using a wet cloth around a particular limb, you distribute the electrode active surface over a wide
10 area, you won't get a localised burn lesion.

Because electrical injuries can cause burns or some epidermal changes, if it is not burns. So therefore you often in torture don't where the use of these devices, don't see any effects of it at post mortem, or evidence of it at post mortem.

MR VARNEY: And if those applying the electric shock treatment, perhaps do so in a clumsy way, is it possible for the victim in question to pass out?

MR NAIDOO: Yes, I believe it is possible. The shocks can cause you, the application of electricity can cause you to
20 convulse, that itself convulsions may cause a state of unconsciousness, and of course, if the strength, electric current's strength is significant enough, it can cause - and used against the chest - can cause the chest muscles to go into a state of contraction, a sustained contraction and you may stop breathing and that might also induce a state of

lowered oxygen tension, whether it would be possible to cause someone to collapse without, as a result of a faint without oxygen is possible.

I have no better - and I am just trying to analyse the science of it - no personal experience of electric shock injury itself to that degree.

MR VARNEY: I see. Okay. It might be, when I refer to put this question to you, [indistinct - 31:01] could perhaps excessive use of electric shock treatment cause the victim to
10 slip into unconsciousness perhaps for an extended period?

MR NAIDOO: I think that could be possible. I am not sure about that. I am not sure about that.

MR VARNEY: Okay. Let us then move to your next comment which deals with prolonged standing and sustained exertion. There is evidence that had already been led in this inquest, that Dr Aggett was seen not just standing for a prolonged period, but being forced to engage in vigorous exercise over an extended period of time.

MR NAIDOO: Yes. Here again, I speak from just a knowledge
20 of physiology that sustained exercise would again, would lead to that cumulative exhaustion, and also I felt that the deceased was not the kind of fully muscular build like you see in some men who do muscular building, muscle building.

He was slender. At 1.81 metres and 64 kilograms, he was lean, so that would mean that the effects of this exertion

would be felt within several hours and would continually be felt accumulatively over days.

So, and excessive exhaustion, exertion and muscular strain in those that are not conditioned, might even lead to a certain amount of pathological changes, such as muscle damage and kidney effects. Especially contributed to by dehydration. So there could have been some physiological background pathophysiological background effects on his constitution.

10 And of course, I felt that when I was reading and tried to understand what was happening, on the Sunday afternoon and when he did not eat, I believe after that long weekend, I believe that was prolonged, heavy slumber, and you probably would not have been able to arose him to have a meal because his body needed to recover from what he was going through.

MR VARNEY: Thank you. Then let us move to page 3 of your report, and at paragraph 6.13.7.

COURT: Can I just ask something before you proceed, Doctor?

20 MR VARNEY: Yes.

COURT: On the paragraph that was read now, at paragraph 5, he was made to stand during the night from the 28th of January to the 30th, two days, as you said.

MR NAIDOO: Yes, M'Lord.

COURT: But he makes no mention as to whether what effect

it had on him.

MR NAIDOO: Hmm.

COURT: Whether his feet were swollen.

MR NAIDOO: Yes.

COURT: Or something like that.

MR NAIDOO: Yes.

COURT: What would that be?

MR NAIDOO: Yes. Thank you, M'Lord. I think that was relevant. He was a young man.

10 COURT: Yes.

MR NAIDOO: He has probably had good circulation of his periphrases, his lower limbs. It is probably that the circulatory function could endure the prolonged standing, over hours repeatedly, but obviously if he was an older person where the poor vascular conditioning of his limbs and poor drainage you would expect that the limbs may swell, yes definitely. And sometimes patients are, with prolonged standing the limbs do swell.

So I think, I would think, in my opinion, Dr Aggett's

20 condition was probably such that he could have endured 48 hours of lack of sleep with intermittent standing and exertions without showing swelling of the legs.

COURT: Hm. Thank you. You may proceed.

MR VARNEY: So Dr Naidoo, moving to your next heading, which is titled "Beating (Slapping and clubbing)", and we have

heard from a few witnesses, that this was a fairly common form of abuse.

MR NAIDOO: Yes.

MR VARNEY: And indeed Dr Aggett himself complains of it. What do you have to say about this form of abuse?

MR NAIDOO: Yes. My point is that wounds, blunt injuries particularly, such as with clubbing and beating, or even with falling, that it will only manifest with visible injury when it exceeds that injury threshold. And of course, I mentioned
10 yesterday that every tissue has an injury threshold, some lesser than others.

So, firstly, so the absence of injury at the post mortem, does not exclude the allegations of injury. That is one thing. The other aspect of this, M'Lord, is that and if I draw the Court's attention to the fact that at an autopsy the lack of subcutaneous flat dissections, might have been such that it failed to detect concealed bruising under the skin. And that we must bear in mind.

MR VARNEY: Yes.

20 MR NAIDOO: Having said that, clearly the use of a hand or a forearm, wrapped in a fabric, newspaper or any other covering, will act as a club and repeated clubbing can produce pain and tenderness that will persist even without visible bruising.

MR VARNEY: If we move on, M'Lord, we promised to give you the reference to the claim by the police that he had some 14

hours rest, over the long weekend.

COURT: Hm.

MR VARNEY: And that claim is made by none other than Lieutenant Stephen Whitehead.

COURT: Hm.

MR VARNEY: And in his testimony at A6.8 that is at pages 2351 to 2352.

COURT: He said: Neil slept for 14 hours.

MR VARNEY: Lieutenant Whitehead claimed that during the

10 long weekend.

COURT: Ja.

MR VARNEY: Of some 62 hours, he had some 14 hours sleep or [indistinct - 39:21].

COURT: But he did not dispute that he was kept awake for some time?

MR VARNEY: My understanding, M'Lord, is that Whitehead is alleging that he was awake for the full period of interrogation, and by the 14 hours that he was allowed to either rest or sleep.

COURT: So does he say that we must subtract 14 hours from

20 the 62?

MR VARNEY: Effectively, yes.

COURT: Oh? Okay. Alright. No fine, let us proceed.

MR VARNEY: M'Lord, we will be asserting in argument that the evidence of Dr Aggett is to be preferred on that point.

COURT: Hm.

MR VARNEY: Dr Naidoo, moving to the next allegation of abuse and that is the squeezing of the testicles, and the wide legged walking as seen by a few of the witnesses, such as Ngwenya, and you point in the record.

MR NAIDOO: Yes.

MR VARNEY: Where he notices this.

MR NAIDOO: Yes.

MR VARNEY: What is your comment?

MR NAIDOO: Yes. First of all to start with, the hard physical
10 autopsy examination did not reveal any injuries to the testes. This is an assumption that they had exposed, removed and actually incised with due respect, incised into the testes. This is a process that we use at autopsy, to look for bruising and evidence of bruising which was the usual manifestation of blunt injury to the testes, if there is a visible manifestation.

Having said that... Sorry M'Lord, you.... Having said that, that there was no injuries seen at autopsy, it does not exclude injury. Because by far and large, in a greater number of cases of - with due respect - men will know when they are
20 kicked in between the legs, or struck with a football, or a cricket ball, they know that the injury and the pain is intensively severe but there is a rapid recovery, because of circulation, there is a rapid recovery, very sensitive area with intensive pain but fairly rapid recovery.

So, despite the absence of physical injury at the

autopsy, this may still have been due to manual constriction of the testes, squeezing of the testicles. It probably would have been painful and tender enough for a victim to have to walk with a wide legged gate, simply just to gently nurse this very sensitive area. So, of course we all know it is a sexual humiliation in a male and with rapid recovery of symptoms though.

MR VARNEY: Thank you.

MR NAIDOO: The emasculation is, the psychological
10 emasculation is much longer or is permanent.

MR VARNEY: Dr Naidoo, you mentioned in your evidence yesterday that - and you spent quite a bit of time dealing with the failure to carry out a medical examination, at the scene and you were surprised that this is something that Dr Kemp had not done. And you expressed surprise given that Dr Kemp in the earlier matter of the late Ahmed Timol, in fact had attended to the scene, and M'Lord, I wish to refer you to the judgment in the Ahmed Timol inquest, by Judge Mothle, and that is EXHIBIT G15.1. I do have a spare copy of the judgment, if you
20 need it?

COURT: No, I have it. I have got it here.

MR VARNEY: I could refer Your Lordship to page 109 and 110, at paragraph 292.

COURT: What paragraph?

MR VARNEY: 292. And perhaps let us also give the witness a

copy. Now I wish to highlight the rather extraordinary circumstances where Dr Kemp really appeared to go out of his way to attend the scene. I am reading now under the heading: "Evidence on the time of fall", at paragraph 292. Evidence of the time of injury, I left the Court with two mutually exclusive versions. Civilian eye witness evidence by Mathis, Tolkin and Adam, state that:

> "The fall occurred mid-morning on the 27th of October 1971, between 09:00 and 11:00. In fact one witness places the incident as having occurred between 10:00 and 10:30 at the time when he was on his tea break. In page 293, members of the security branch led by Rodriquez, placed the time of the fall as being between 15:45 and 16:00 on the same date. It is clear that both versions cannot be true and that only one of them would be true. Kemp who declare Timol dead at 16:00 alleges in his affidavit that he was called at about 15:55 and arrived at the scene at 16:00, whereupon he declared Timol dead and in his statement he says that Mr Timol had recently died, *hy was pas dood*."

So there you have Dr Kemp, being notified of an incident at John Vorster Square, and virtually getting there within minutes from his office. Then declaring the Ahmed Timol to be recently

dead. I can advise you Dr Naidoo, that the Court, and we have a team [indistinct - 47:00] inquest, ultimately held that the fall did not take place as being between 15h45 and 16h00 in the afternoon.

MR NAIDOO: Hm.

MR VARNEY: But that it did take place in the mid-morning, of that date, the 27th of October, 1971. Now the contrast of Dr Kemp attending this scene literally within minutes of being notified and yet not attending at the scene in the Aggett matter,

10 what... what... Do you have any comment or reaction?

MR NAIDOO: Not really. Apart from the fact that I mentioned it was commitment to duty, I do not know if being called five minutes to four in the afternoon, is more convenient to have been called at 1:30 or two o'clock in the morning. So, I am just drawing that as the only difference in the two calls. It is the time of day. So apart from that, I find it difficult to understand as I have mentioned yesterday, that in such a case of a detainee, a political detainee's death, by whatever means, that it was a choice made not to go.

20 COURT: Hm.

DR NAIDOO: You know, I find it - M'Lord, sorry if I may say that yesterday it is a callous disregard for duty to consider that a fall from a 10th floor, merited a visit to the scene, but a hanging did no - I find that difficult to understand, why that might have been, that may have been the other reason for not

coming.

MR VARNEY: Yes. And M'Lord, I wish to make, in Timol, there is references in relation to Dr Kemp and for that purpose I would like to hand up a judgment, it is the judgment in the Supreme Court of South Africa (TPD). It is in the matter of *Ishmael Essop v The Commissioner of the South African Police, and one Colonel Greyling*, and it is case 1804/71. The date of the judgment, is 25th February 1972, and M'Lord, may we mark this as EXHIBIT G26.

10 COURT: Yes. Sorry?

MR VARNEY: G26.

COURT: Yes.

MR VARNEY: M'Lord if I could draw the attention of the Court, as well as the witness to page 8 of the judgment. Perhaps about 7 or 8 lines down, you will notice the following reference, Dr Kemp Chief District Surgeon of Johannesburg and M'Lord this is on the 22nd of February 1972.

There was a call to John Vorster Square at 08:45 am on the morning, I beg your pardon, I just have to correct that, 20 on the morning of the 26th of October, 1971, in order to examine the detainee, that detainee was the son of the applicant in this case, Ishmael Essop. The son's name is Saleem Essop.

MR VARNEY: In order to examine the detainee, who was then in an apparent semi-conscious condition. M'Lord the evidence

in that matter is that the evidence given by Saleem Essop was that he was examined in a room which he referred to as a vault, which appeared to him to be a strong room, a room in which he had been tortured.

The evidence given by Dr Kemp was that he examined the young Essop on the floor in the passageway, and in due course we will provide Your Lordship with those references. After cursory examination Dr Kemp caused the removal of the detainee to Johannesburg General Hospital, and then enlisted
10 the aid of a specialist neuro surgeon, Mr Louw to examine the detainee.

And if I could then draw the attention of Dr Naidoo and the Court, to paragraph 18, and about halfway down. And to be clear, the criticism of the Court in this passage is directed against a police officer by the name of Major Viviers, among the list, Dr Kemp features here. Dr Kemp suggested that the patient should be removed to the General Hospital for better and more thorough examination.

He stated that, that it was only after he, being Major
20 Viviers of the hearing of the application on the 20th, that the witness phoned Dr Kemp to enquire about the nature of the injuries found on the detainee, and he stated Dr Kemp described all the injuries observed by him, including the bruises of the lip, and below the right eye, and the right ear, this he says, caused a great shock.

It seems to us that if the statement is true, the shock mentioned could only have been induced by his immediate realisation at that stage that these injuries could possibly be related to the assaults allegations, made by the applicant and then it goes on and I will not take it further.

But the evidence of the young Saleem Essop is that he was unconscious at the time and indeed remained unconscious and he describes it as a coma, for some time, which of course probably explains why Dr Essop [sic] arranged
10 for the immediate transfer of the young man to the Johannesburg General Hospital.

Now Dr Naidoo, what I want to put to you is this: You have described the shortcomings in the post mortem of Dr Kemp, perhaps generously and politely and I do not want to put any words in your mouth, but I think the word you did use was 'sloppy'.

MR NAIDOO: I might have, yes.

MR VARNEY: Yes.

COURT: Ja.

20 MR VARNEY: The circumstances that I have just described, Dr Kemp is called to the 10th Floor of John Vorster Square, on the date reflected, in October 1971, and on his version he finds this young man lying on the floor in the corridor, on the version of Essop on the floor of the vault, now incapacitated, and he records signs of injuries and has the man transferred

immediately to the Johannesburg General Hospital. What should a doctor do under those circumstances? Is it simply sufficient to ensure that the man is transferred to a hospital for treatment? Or should more be done?

MR NAIDOO: Well, what he should have done, is document the injuries. In other words, conduct a forensic examination. That is required. His forensic observations at the time and document it appropriately, adequately, knowing what is required.

10 The referral with a letter, or with a verbal telephonic correspondence, communication to request for specific, his reasons for .... You must transmit your reasons for the referral, that you suspect may be a [indistinct - 56:21] injury, maybe there is a head injury, to find the reasons for the state of unconsciousness, is there drugs involved, is there brain damage involved, et cetera.

So, he needs to give an indication about the seriousness that he has found the patient interest, and what further he is requesting. So the referral is in fact a transfer of 20 that responsibility but with a continuation of communication. He is not able to control what is done in the hospital, but at least a transmission, full communication of this information, what is required. What he suspects and also with the authorities he would need to put an... with the detaining authority, need to give them an appropriate report of his

suspicions, an independent report of his findings, and to alert them to the possibility of injury, unlawful injury in this case, I would think. I am not a district ... I was not involved in treating for managing prisoners and detainees, but I know it from ...[intervened]

MR VARNEY: Yes. No, I suppose my question is more to do with the future, well being ...[intervened]

MR NAIDOO: Of the detained ...[intervened]

MR VARNEY: And safety of the victim in question. Should a

10 medical doctor be raising the alarm?

MR NAIDOO: Oh, yes! Raising the alarm, calling for attention to the patient's injuries. Raising alarm not only for the purpose of the patient but also for, about the issue if this was unlawful abuse, definitely. It is inherently part of a medical, a physician's responsibilities.

MR VARNEY: Well, I can tell you that the Court in this matter, issued both an interim interdict and a final interdict, stopping the assaults against the young Mr Saleem Essop ...[intervened]

20 MS SINGH: M'Lord, before we proceed, I do not want to interrupt my learned friend, but I see it is past half past twelve. Our counsel for the police has now left. Would it be prudent for us to proceed in his absence?

COURT: Oh? What was the arrangement? I thought you said we were proceeding because of this witness?

MR VARNEY: Yes, M'Lord. I do not have much further to go. In fact, just a few minutes. My understanding with the counsel for the police was that he preferred to adjourn at 12:30, but I was hoping that he would not mind adjourning a bit later and then proceeding to Mosque. But I see that he has left. The evidence M'Lord, I do not think implicated the current police in any way, so with and with Your Lordship's permission I would like to finish.

COURT: I just... what is your ...[intervened]

10 MS SINGH: M'Lord, we are in Your Lordship's hands. My only concern it that all counsel should have been present especially in view of the fact that the allegations of assault ... I am just concerned that you know, this evidence is being led, and counsel has left.

COURT: Well, let me find out. Is it his intention to come back?

MS SINGH: I believe so, M'Lord. From the discussions it would appear that he was going to leave at half past twelve and come back at half past one. So I am not certain

20 ...[intervened]

MR VARNEY: M'Lord, I must say, I have a problem with the conduct of the counsel of the police, the least he could have done, is stood up and indicated a reason as to why he needed to excuse himself at that point in time.

COURT: Ja.

MR VARNEY: And at that point in time, we could have heard his reasons and then have taken the adjournment. But so simply leave, suggests that he was comfortable with me proceeding.

COURT: Ja. Why did he not just announce that he wants to leave, I mean, like he did last week we adjourned because of that and he just stood up and left.

MR VARNEY: And with the greatest respect, M'Lord, if the counsel feels that he needs to hear this evidence, then he

10 must stay and hear the evidence and if he wishes to leave, he must stand up and make his point.

MR NAIDOO: Is there no one from the state attorney's office? For him, to take notes for him?

MS SINGH: Not that I understand, I believe there was a colleague here, last week and this week, but I don't see her this week M'Lord.

COURT: Well, ja. You know, I think he should have made proper arrangements, we cannot ... If there is any ... if he wants to re-examine or cross-examine the witness about what

20 should have been spoken about the police, then he would have to make special arrangements for that. We cannot hold this witness further, I mean, the agreement was that he is not going to... he has got to go back to [indistinct - 01:01:24]. So, ja. And him and counsel for the police should have made arrangements to have the attorney or someone taking his place

to take notes. So I direct that the matter proceed in his absence. He will rejoin us sometime.

MR VARNEY: As the Court pleases, M'Lord.

COURT: Thank you.

MR VARNEY: And should my learned friend for the police apply for re-examination, we will oppose that strenuously.

Dr Naidoo, with the intervention, I sort of lost track, but I suppose, I think we have dealt with this issue and you have confirmed that beyond attending to the clinical needs of

10 the detainee.

MR NAIDOO: Yes.

MR VARNEY: In question.

MR NAIDOO: Yes.

MR VARNEY: As a medical doctor, and as a district surgeon.

MR NAIDOO: Yes.

MR VARNEY: Well, let me ask you this question: The detainee in question, in this matter, that we were referring to, Saleem Essop, is he effectively a patient?

MR NAIDOO: Yes.

20 MR VARNEY: Of Dr Kemp?

MR NAIDOO: Yes. Oh, yes. In all respects. I just needed to draw something to the court's attention though and in 1980... it was 1971, this was way even before my time, a lot, but I know in 1983/84 when I started my training, I know that the civil service consciousness of detainee's rights, human rights, were

not what we know it should be, or than what we know now it should be. I am not saying now it is correct, the consciousness of patients rights amongst district forensic medical officers - we do not call them district surgeons anymore, forensic medical officers and prison medical officers. I am not saying it is still the same, or it is any change, I actually do not know. But I do know that at that time there was not that degree of consciousness and I am saying it probably across the board.

So not applying it to Dr Kemp alone, you know, it

10 could have been a lack of human rights consciousness, the spirit at that time. It could be the times at that stage, it could have been other factors, you know, a learned institutional behaviour, when you get into a department, a district surgeon, you learn as a new recruit, you learn from the attitudes of others. It could be sort of learnt.

MR VARNEY: Perhaps I can put it to you this way? That kind of environment that you are describing, is one where - particularly in the context of working with the security branch - you don't rock the boat.

20 MR NAIDOO: Exactly. Exactly.

MR VARNEY: Okay. That is all. We do need to push on.

MR NAIDOO: Okay.

MR VARNEY: I am sorry, because time is short. You can now move to your conclusions, which you set out at paragraph 7.

MR NAIDOO: Yes.

MR VARNEY: And I think it will be useful if ...[intervened]

MR NAIDOO: I do.

MR VARNEY: You have something further to say?

MR NAIDOO: Yes, M'Lord, I had occasion in the brief first adjournment to look at this pictures, the police LCRC pictures in the album, and because I have not see the cell, although I have been to John Vorster Square in 2018, for the Ahmed Timol case, but I had not gone to this particular cell.

So hence I, what I see here is that I see that ... So, I

10 look at photo 115, and then I look at a section of photos where a volunteer, a youngish chap with brown pants and a very Hawaiian type colourful print shirt, he is obviously a volunteer. And what I observe M'Lord, is that - and I do not know what this means, but I just thought it is an observation for the Court - that, if it is a self inflicted hanging, the deceased would have had to clamber and reach up to the sixth bar. Now he is 1.81 metres, which is just a couple of inches taller than me. He would have... it is high enough to get to the fifth bar, which is the strong thicker bar. But he goes ...[intervenes]

20 COURT: Are you talking of the very top bar?

MR NAIDOO: No, the fifth bar.

MR VARNEY: Oh, the fifth bar. Okay.

MR NAIDOO: The one that would have been within his reach.

MR VARNEY: Yes.

MR NAIDOO: But he goes right up to the sixth bar. Now I

am saying this, as not a forensic pathologist analysis, but as a criminalistic analysis, that I found in suicidal deaths, the opportunity for the easiest access to something is taken. So, I do not know if this is relevant and maybe a criminalist, maybe a police experienced police criminal investigator should come in, that if it was a suicidal hanging, I would have liked to have thought that he would reach the closest and most easiest accessible bar. I am seeing on page, for example M'Lord, on page... on photo 119, the volunteer has to clamber up, I

10 assume the volunteer and may I be corrected, is about the same height as Dr Aggett.

MR VARNEY: Yes, indeed.

MR NAIDOO: 1.81. The volunteer has to clamber up to the second, at least the second bar on the floor to reach and to secure and to fasten and to get his neck entrapped and then turn around and allow his neck to ... allow his weight to [indistinct - 01:08:14] the body. So, it just does not... it just seems to me a strange, strange, if it was self inflicted, strange of the deceased to have got to the top bar.

20 COURT: Hm.

MR NAIDOO: I just thought I would bring that to your mind.

MR VARNEY: So he could quite easily have hung himself on the fifth bar.

MR NAIDOO: Yes.

MR VARNEY: Which would not have required those

gymnastics.

MR NAIDOO: Yes, and just to finalise that M'Lord, we know that with intended purposeful suicide people will hand themselves from anywhere, from the height of the door handle to the floor. So it is what is most accessible, what is easiest and what will succeed and that usually is what is employed.

MR VARNEY: Yes. And thanks for that observation, Dr Naidoo, I think that is an important one. If we can now move to your conclusions, I think it will be very helpful.

10 MR NAIDOO: Yes.

MR VARNEY: If you simply summarised and perhaps because they are quite punchy and short.

MR NAIDOO: Thank you, M'Lord.

MR VARNEY: If you could read those into the record, please?

MR NAIDOO: Thank you, M'Lord. I read section 7, in paragraphs 7.11 to 7.18. I put in, on page 34 and going on to 35, I put in to 8 concluding points.

> "1. That the deceased was alive at the initial point in time of his suspension."

20 In other words, that he was hanging.

> That the immediate mechanism of death was likely to be the effects of reflex vagal inhibition."

The carotid sinus pressure from the ligature and of course, I added the possibility of bilateral carotid occlusion. But I think first, first possibility, carotid sinus pressure and its effects and

then carotid occlusion.

> "3. That from the most derivable organic structural cause of death, from the objective medical evidence, was neck constriction by hanging.
>
> 4. That it was possible for a person in such a context, to have ascended the grill, hitched a ligature around the grill cage and his neck and caused himself to hang. He would have had to turn around."

10 And bearing in mind what I just found quite strange, is the height of the bar at which he secured the top part of the ligature.

> "5. That the medical evidence is not able to differentiate between self inflicted hanging and hanging by another individual."

That is the impartial, clean look at this. Whilst traditionally if I may just explain, whilst traditionally pathologists, especially state pathologists, they gravitate towards consistent with hanging. And that is technically correct, but M'Lord, sorry,
20 they do not go into differentiate between whether the person was conscious or unconscious. But we know that the medical evidence cannot distinguish between that two.

> "That..."

And of course:

> "7. It cannot be excluded that the deceased may have

been suspended by another person or persons, most likely person [indistinct 01:12:04] a body weight whilst in a state of unconsciousness.

7. That the injuries complained of by the deceased, in other words, all of the injuries complained of by the deceased, in his affidavit of the 4th of February, a month earlier, are consistent with the findings at the autopsy, both their absence and their presence."

10 So there is no paradox as was referred to at that original inquest. No paradox about it, it is easily explainable.

"8. It is my opinion that the..."

But this is my opinion, not from the medical evidence, but a generalistic opinion:

"... that the history of circumstances as detailed both by the deceased and other witnesses, indicate, if true, indicate both degrading and inhumane treatment and assault under physical constraints of his detention."

20 Thank you, M'Lord.

MR VARNEY: Thank you, Dr Naidoo. M'Lord, I have no further questions for this witness. M'Lord, I see it is ten to one. So perhaps this might be an appropriate time to take the lunch adjournment.

COURT: Yes. Okay.

MR NAIDOO:

MR VARNEY: M'Lord, if the Court is so inclined, perhaps we could return at one thirty?

COURT: Just find out from the other counsels first. And of course we will have to wait for counsel for the police. Mr Mlotshwa, do you want us to continue at one thirty?

MR MLOTSHWA: My colleagues are of the opinion that we may continue now, M'Lord.

COURT: Now?

10 MR MLOTSHWA: Yes, as it is.

COURT: Okay. Alright. And then we stop when? And not go for lunch?

MR COETZEE: Until we are finished. I do not know? M'Lord it is a... This witness obviously and I do not blame my learned colleague, he took much longer than any one of us has anticipated.

I think speaking for myself, and maybe for some of my colleagues as well, we anticipated obviously that as was the rule earlier in this inquest, that we would not sit on Friday

20 afternoons and for that reason I have made appointments with attorneys and also with clients for consultations for this afternoon.

I hear what my learned colleague said, is that we kind of undertook to finish this witness today, which obviously is my problem not the Court's problem that I have other work

engagements. For that reason I would suggest that if the Court is amenable thereto that we try and push as far as we can, before we break to try and see if we can finish this.

COURT: Okay.

MR COETZEE: M'Lord, in normal circumstances ...[intervened].

COURT: I thought you had discussed this afternoon's position today. I thought you had agreed amongst yourselves, I am sorry ...[intervened]

10 MR COETZEE: We continued, M'Lord. I am not asking for an adjournment.

COURT: Ja.

MR COETZEE: I am not asking for the matter to be postponed.

COURT: Okay.

MR COETZEE: I am just saying that in the light of time constraints that the... if the Court is amenable thereto, then let us try and finish ...[intervened]

COURT: Let me find out. How long do you think? Do you

20 have a lot of questions to ask?

MR COETZEE: I do, M'Lord

COURT: Ja. So? You see, there are also staff members who need to go for lunch, so I cannot deprive them of their ...[intervened]

MR COETZEE: Well, I am in the hands of Your Lordship.

COURT: Of their regulated lunch hours, it would not be fair. So, the least I can do is to say that let us come back at one thirty and see what will happen.

MR COETZEE: I am in the hands of the Court, M'Lord.

COURT: You may have to phone counsel for your attorneys to please wait for...

MR COETZEE: I will phone them, M'Lord.

COURT: Phone them, to [indistinct - 01:16:03] a little better. Ja.

10 MR COETZEE: [Indistinct]

COURT: Ja. Sorry about that. Let us...

MR MLOTSHWA: Let us stand for adjournment, M'Lord.

COURT: Okay. Alright. No, let us adjourn. Let us meet at one thirty. One thirty. I hope they will open the doors for you to come in.

MR VARNEY: Yes, they always do, M'Lord.

COURT: Ja. Please just come at one thirty. I am sorry, we will have to take 30 minutes of your lunch off. Thanks. The Court adjourns.

20 COURT ADJOURNS [12:49]

[13:31] COURT RESUMES

COURT: Thank you.

MR MLOTSHWA: Thank you, M'Lord.

COURT: Alright. Mr Mlotshwa?

QUESTIONS BY MR MLOTSHWA: Thank you, M'Lord. Doctor,

if you may have a look at the photo album that is EXHIBIT G24 that you spoke about just before we adjourned for lunch.

MR NAIDOO: Yes.

MR MLOTSHWA: Have a look at photograph 119.

MR NAIDOO: Thank you. Yes, I have it.

MR MLOTSHWA: Yes. Do you observe that this young man, the volunteer that you spoke about, is being held up to climb that, or to support him to ...[intervened]

MR NAIDOO: Yes. To hoist him.

10 MR MLOTSHWA: Ja.

MR NAIDOO: Yes, yes.

MR MLOTSHWA: That is right. And I would imagine that this exercise, it needs an energetic or a person who is full of energy to do, to climb up the stairs... the steps?

MR NAIDOO: Yes. Yes.

MR MLOTSHWA: Yes.

MR NAIDOO: Yes.

MR MLOTSHWA: Or the rafters.

MR NAIDOO: Yes.

20 MR MLOTSHWA: And taking into account the circumstances, the sleep deprivation, the assaults and the exercises that were allegedly inflicted on Dr Aggett, what would be your view on climbing this grill?

MR NAIDOO: Yes. Thank you for that. M'Lord, it is not impossible for him to have done it, if you will remember my

earlier testimony about what sleep deprivation does, it rapidly decreases the time that you would get to exhaustion, so you would get to exhaustion very quickly, but muscular effort can be maintained. So if there is the will of the deceased to clamber up those bars and it is possible, it would take quite a bit of effort, because it would mean secured time and also testing to make sure that the ligature will hold, the securement will hold.

MR MLOTSHWA: Yes.

10 MR NAIDOO: And then having to get oneself into a loop, into the noose, if I may use that term.

MR MLOTSHWA: Yes.

MR NAIDOO: Noose. Fix the noose in position and into a position where it would not slip out and that means it would be to purposefully flex the head and then turn around and then allow the suspension to occur.

MR MLOTSHWA: Yes.

MR NAIDOO: So, whilst a clear answer is not possible, muscular effort is possible to get to do that, but obviously the

20 effects of the substantial strain, physiological, physical mental on the deceased, must be taken into account.

MR MLOTSHWA: I am with you, Doctor.

MR NAIDOO: Yes.

MR MLOTSHWA: And Doctor, the evidence that has been led in this Court is that there is at least the deceased's family, Ms

Jill Burger.

MR NAIDOO: Yes.

MR MLOTSHWA: Was advised on the morning.

MR NAIDOO: Yes.

MR MLOTSHWA: Morning of the 5th of February 1982, that the deceased has passed on.

MR NAIDOO: Yes.

MR MLOTSHWA: At about six in the morning. And taking that into account, would you agree with me that it was very

10 insensitive of whoever, ordered the autopsy to be done at eight?

MR NAIDOO: Exactly! Without a doubt, I agree it was very insensitive, and a violation of basic rights, for people to be well informed to allow such substantial serious grave news of a death, to sink in, and to make reasonable decisions, further from that. Yes.

MR MLOTSHWA: Ja. And the further evidence is that the deceased's parents were still alive and in Somerset West, that is the Western Cape. That would make it more insensitive, to

20 have an autopsy done two hours after the family had been advised.

MR NAIDOO: Very much. It would be only an expression of, not just decorum, but simple consideration to be able to wait for a family, at least to do the formal identification process.

MR MLOTSHWA: Yes.

MR NAIDOO: And to wait for the parents if not the siblings.

MR MLOTSHWA: Yes.

MR NAIDOO: To wait for the parents to arrive. I believe that was definitely insensitive.

MR MLOTSHWA: Yes. And under normal circumstances, one would have expected the family members to have come and identified the body of the deceased and then thereafter the autopsy done.

MR NAIDOO: That is correct. That is correct.

10 MR MLOTSHWA: And Doctor, this is more so in that the evidence is that the family were willing to have their own pathologist to attend to the autopsy.

MR NAIDOO: Yes.

MR MLOTSHWA: And as a result he had to rush.

MR NAIDOO: Yes.

MR MLOTSHWA: To the room where the autopsy was done.

MR NAIDOO: That is correct. Yes.

MR MLOTSHWA: And you still agree that this was really not necessary for the rush.

20 MR NAIDOO: Yes. It was an unrequired scrambling for, to get things in place. It was certainly not required.

MR MLOTSHWA: Yes. And would you agree with me that out of a humanitarian perspective, the doctor could have refused even if ordered by the police, to have performed this autopsy, in such a short period of time, after the death of this

deceased?

MR NAIDOO: That is correct. A physician independence in this respect has always been there, or should have always been there.

MR MLOTSHWA: Yes.

MR NAIDOO: It has always been a principle that prevailed, it is just that bad habits and practices, that tended to mould the thinking and the attitudes of persons.

MR MLOTSHWA: Hm. And then further Doctor, the rush to do
10 this autopsy, we see it in the fact that at a later stage, these two doctors had to come back to redo some of the exercise?

MR NAIDOO: Precisely.

MR MLOTSHWA: Ja. And as you have alluded in your evidence in chief, you strongly criticise the manner in which the autopsy was done and then also the results of the autopsy as well?

MR NAIDOO: Yes, just the pure medical aspects.

MR MLOTSHWA: Yes.

MR NAIDOO: I have criticised, yes.

20 MR MLOTSHWA: Yes. And Doctor you would agree with me that Dr Aggett with respect to all other detainees, was not an ordinary detainee. He was a doctor?

MR NAIDOO: Yes.

MR MLOTSHWA: And according to the available evidence, he was a first white person to die in detention?

MR NAIDOO: Yes. That was pertinent to me, in that there was extra media and attention on this. So, in other words, it amounted to a high profile case. Political detainee.

MR MLOTSHWA: Yes.

MR NAIDOO: Death in custody, a white person.

MR MLOTSHWA: Yes.

MR NAIDOO: In that time, it was not quite easy to digest that white person would be involved in this way. So, purely on the medical aspects, the high profile nature of the case, I would
10 have thought that much more attention and focus and preparation and allowance of things to fall into place.

MR MLOTSHWA: Yes. Yes.

MR NAIDOO: Should have been, you know, executed.

MR MLOTSHWA: That is right. And further that more detail should have been given to, the minor details of the whole process.

MR NAIDOO: Yes. There is only one chance in an autopsy and to do it well, and that is the first time.

MR MLOTSHWA: Yes.

20 MR NAIDOO: So, whilst every autopsy, every medical autopsy should enjoy the same kind of attention, this fell into a pretty high profile nature. There would be lots of resultant, the inquest, criminal trials.

MR MLOTSHWA: Yes.

MR NAIDOO: The issues that would come about.

MR MLOTSHWA: Yes.

MR NAIDOO: The political interest, the political perplexities of this entire incident, would be the resultant. So you know, all that was overlooked.

MR MLOTSHWA: Ja. And moreover, it was only three or four years after the death of Steve Biko in detention.

MR NAIDOO: That is correct. Correct.

MR MLOTSHWA: And in which inquest the doctors involved were heavily criticised for the manner in which they conducted

10 themselves.

MR NAIDOO: Correct.

MR MLOTSHWA: And in fact, even one of the doctors was convicted of conduct an... and... a disgraceful conduct and unbecoming of a professional.

MR NAIDOO: Yes.

MR MLOTSHWA: Of a doctor.

MR NAIDOO: I believe so.

MR MLOTSHWA: Yes. And in your opinion, you say that the doctor should have visited the dead, or the scene.

20 MR NAIDOO: Yes.

MR MLOTSHWA: Of the hanging?

MR NAIDOO: Yes. That is right.

MR MLOTSHWA: Yes. And because of the fact that the doctor did not... I mean, attend the scene, the whole scene was then left to the police themselves that is the security

police officers?

MR NAIDOO: That is right. That is correct. Because, there is that gap of information, factual and solid medical information that was needed from the scene.

MR MLOTSHWA: Yes.

MR NAIDOO: To the autopsy and that gap, can be quite substantial, so it leaves gaps in our resolution of what actually happened.

MR MLOTSHWA: That is right. And in fact the pathologist

10 had to rely entirely on 90% of what was being told to them as the history of the cause of death.

MR NAIDOO: Yes. That is correct, and I did mention the importance of that solid history, and not to be that an independent medical person should not be unduly swayed by the history, and should make a medical finding, based on fact first.

MR MLOTSHWA: Yes.

MR NAIDOO: And not be swayed by the history. So, in other words, adopt a process of independence and neutrality.

20 MR MLOTSHWA: Yes.

MR NAIDOO: That is very important.

MR MLOTSHWA: That is right. And then, this autopsy was conducted in a government mortuary. Is that so?

MR NAIDOO: Yes, and run by the police at that stage.

MR MLOTSHWA: By the police at that stage, yes. And at that

stage, this mortuary as you said, was under the SAPS, the police?

MR NAIDOO: That is correct.

MR MLOTSHWA: Which is a government organ.

MR NAIDOO: Yes. That is correct.

MR MLOTSHWA: That is right. And the doctor was also employed, or the pathologists were also employed by the government.

MR NAIDOO: By the government, through the Department of

10 Health.

MR MLOTSHWA: Through the Department of Health.

MR NAIDOO: Yes.

MR MLOTSHWA: Yes. M'Lord, if I may just confer with my learned colleague?

COURT: Hm.

MR MLOTSHWA: Thank you, M'Lord. Doctor, according to the post mortem, Dr Aggett's stomach contents contained of mucus only.

MR NAIDOO: Yes.

20 MR MLOTSHWA: Does this tell you something?

MR NAIDOO: What it tells you, is that at the time of the autopsy, there was no food in the stomach. Semi digested, or undigested, partly digested food. That is basically all it tells you.

MR MLOTSHWA: Yes.

MR NAIDOO: That his stomach was empty.

MR MLOTSHWA: Yes.

MR NAIDOO: As to exactly how long since the last meal, there is extreme variability.

MR MLOTSHWA: Ja?

MR NAIDOO: We often use four hours M'Lord, before the stomach is able to empty off the previous meal. But it is very variable. It could be much longer and it could by much shorter.

MR MLOTSHWA: Yes, and depending on the type of food one

10 takes.

MR NAIDOO: Depending on the type of food.

MR MLOTSHWA: Ja.

MR NAIDOO: And on the constitution of the person, and the circumstances.

MR MLOTSHWA: Okay. Yes. And Doctor, you have read the record and according to what Dr Kemp told the inquest in 1982, is that at one stage he did some work with the police personally, the security police officers, about 20 years prior to him being appointed the chief district surgeon of the

20 Johannesburg District... I mean, Health Department.

MR NAIDOO: I might have not ...[intervened]

MR MLOTSHWA: That is at page 84 of the record.

MR NAIDOO: Okay.

MR MLOTSHWA: You will not ...[intervened]

MR NAIDOO: I might have ... I cannot recall that particular

aspect.

MR MLOTSHWA: Yes?

MR NAIDOO: The passage. May I ask with respect, is that working with the police in the employ of the police? Or working aside, together with the police, jointly?

MR MLOTSHWA: Working together with the police jointly.

MR NAIDOO: Okay. Well, at the time of the autopsy, it was what he was doing. Chief District Surgeon, employed by the Department of Health.

10 MR MLOTSHWA: Yes.

MR NAIDOO: For the Government.

MR MLOTSHWA: Yes.

MR NAIDOO: And working together with the police and in a joint operation in doing the autopsies.

MR MLOTSHWA: Yes.

MR NAIDOO: What happened at that time, it was that the police managed the facility, were the custodians of the body, and provided all the resources, and the assistants and the staff, while the doctor simply came and did the autopsy.

20 MR MLOTSHWA: Yes.

MR NAIDOO: Took the necessary specimens and completed his report and went off, that was the way it operated.

MR MLOTSHWA: That is right.

MR NAIDOO: In occasional facilities, they would even have an office for the doctor.

MR MLOTSHWA: Ja.

MR NAIDOO: Hm.

MR MLOTSHWA: Yes. So his independence was compromised, in some way?

MR NAIDOO: That would allow for such compromise. Not overtly, but subtle sometimes,

MR MLOTSHWA: Ja.

MR NAIDOO: Because you are working with colleagues and you establish relationships.

10 MR MLOTSHWA: Yes.

MR NAIDOO: And in that relationships that you have with colleagues, your independence can be compromised.

MR MLOTSHWA: Yes.

MR NAIDOO: Sometimes without you knowing.

MR MLOTSHWA: Ja. I have no further questions M'Lord. Thank you.

COURT: Thank you. Advocate Coetzee?

QUESTIONS BY MR COETZEE: Thank you, M'Lord. Doctor, Dr Botha, when he was appointed by the family.

20 MR NAIDOO: Yes?

MR COETZEE: Would have had a specific instruction as to why to attend the post mortem.

MR NAIDOO: Yes.

COURT: Is that Dr Botha?

MR COETZEE: Dr Botha.

COURT: Okay.

MR COETZEE: You personally, also as an independent pathologist.

MR NAIDOO: Yes.

MR COETZEE: You most certainly, you have attended autopsies on behalf of families?

MR NAIDOO: Yes.

MR COETZEE: And Dr Botha was from a practice where Dr Gluckman was also involved. Is that correct?

10 MR NAIDOO: That is correct.

MR COETZEE: Yes. Would I be correct to say that at that stage, there were not many doctors that would be prepared to take on the government, in forensic work?

MR NAIDOO: That is quite right.

MR COETZEE: And is there any reason that you might have seen which would have compromised Dr Botha's independence in this instance?

MR NAIDOO: Not that I could see.

MR COETZEE: And is there any reason to say that Dr Botha

20 did not with the expected diligence, took part in this post mortem proceedings, or these autopsy proceedings?

MR NAIDOO: No, what I think he was limited by the constraints of having to make the compromises of rushing to the autopsy, with the autopsy semi-completed and as I mentioned yesterday, not having the optimal state of first to

which view the body and make the observations, though those could be possible compromises.

MR COETZEE: Yes. But his examination which he did, he did thoroughly?

MR NAIDOO: Yes, I cannot see any ...[intervened]

MR COETZEE: And the conclusions that he reached, was based on professionalism.

MR NAIDOO: Based on factual, factual medical evidence, yes.

10 MR COETZEE: Yes. Dr Kemp, the way in which he conducted this autopsy, would it have been different from what was the standard or the norms at the time of the day?

MR NAIDOO: No, surprisingly it is possible that it was not different from that. Because the district surgeons of those days, did work under those specific constraints, the limitations as I mentioned in my earlier evidence.

MR COETZEE: And the noting for example of the injuries on the post mortem report, that is as it was done in those early days.

20 MR NAIDOO: Well, I differ there, because I think that ... well, I would agree in that he was not a pathologist, he was a district surgeon. With due respect to him.

MR COETZEE: Yes.

MR NAIDOO: But I differ in that this was a particularly important case. And I think that a lot more attention... I did

mention earlier everybody undergoing a medical legal autopsy, should enjoy that same attention.

MR COETZEE: Yes.

MR NAIDOO: But that this was particularly different circumstances, and therefore my criticism of the quality of the documentation still stands.

MR COETZEE: If Dr Botha then, in his evidence, and I refer to on page 188, at line 10 of his evidence, makes the remark that there was no evidence another cause of death, and no

10 evidence of recent assault, and by then he clarifies 'recent' as meaning 'within a few days before death'. Dr Botha, made that remark in his evidence. That would have been his observation as he has ascertained during his examination of the body.

MR NAIDOO: Yes. Yes, I do agree with him and I concur with it as in my report, the cause of death.

MR COETZEE: Yes.

MR NAIDOO: Which I described. The cause of death is related to the constrictive effect of a ligature, borne by the full body weight upon the [indistinct - 00:22:51]. That I do agree.

20 I would differ to an extent about the fact that the body at the time of the autopsy, did not show injuries that were fresh, in that the description by Dr Kemp of the fresh bruise on the back, if that was indeed a bruise. That would be fresh and that would be in keeping with a few days.

MR COETZEE: Yes. Just to be fair, he did not say there was

no injuries that were fresh, he said that there was no evidence of recent assault.

MR NAIDOO: Yes. By the timing I was taking it that an injury whatever that may be, may itself be evidence of assault.

MR COETZEE: But it is not necessarily so.

MR NAIDOO: Not... does not... It could be not necessarily so, it could be a fall. But it could be assault.

MR COETZEE: Yes.

MR NAIDOO: Just to complete that, the other thing is that it
10 is very important to understand that absence of injuries does not rule out assault.

MR COETZEE: Yes, just as the presence of an injury does not prove assault.

MR NAIDOO: That is correct.

MR COETZEE: Yes. If I can go to the issue of one of your big criticisms in relation to Dr Kemp, is that he did not attend the scene, the death scene.

MR NAIDOO: Well that is if he was the doctor on call, and he was the one that was called out.

20 MR COETZEE: But you use it as an indication of his sloppy actions.

MR NAIDOO: Just to continue. The Brigadier talks about the chief government pathologist, so I'm not sure whether that was really Dr Kemp, or the chief government pathologist of Johannesburg at that time, which was Professor Scheepers.

So we're not really sure who was called out, who was telephoned at that time.

MR COETZEE: But we are. Doctor I wish to refer you to EXHIBIT B1.39, which is in fact the statement by Muller, in which he indicated that he called Dr Nielsen, who was a district surgeon as well as Professor Scheepers, who was the chief pathologist, before he removed the body from the mortuary. He did call them.

MR NAIDOO: Okay. Thank you.

10 MR COETZEE: So it was not Dr Kemp.

MR NAIDOO: So it was not Dr Kemp alone?

MR COETZEE: It was not Dr Kemp that was called.

MR NAIDOO: So it was a Dr Nielsen.

MR COETZEE: Dr Nielsen and Professor Scheepers. And they informed him that he can move the body to the state mortuary.

MR NAIDOO: Yes. Okay. Thank you for that.

MR COETZEE: You cannot really blame Dr Kemp for that.

MR NAIDOO: Sure. Thank you.

20 MR COETZEE: And on that issue of blaming Dr Kemp, it is very unfortunate that he is not here to explain himself, or to give his reasons for his actions.

However, what should be noted, is that during the cross-examination by the lawyers on behalf of the Aggett family, which included, obviously Adv Bizos

MR NAIDOO: Yes.

MR COETZEE: He was not criticised for the way in which he conducted, he was criticised for things, for certain evidence, but not for the way in which he conducted the autopsy.

MR NAIDOO: Yes. That may be so.

MR COETZEE: Do you also read it like that?

MR NAIDOO: Yes.

MR COETZEE: Yes.

MR NAIDOO: That is correct.

10 MR COETZEE: Now just to put that into perspective, Bizos was also the advocate that acted on behalf of the family, in the Biko inquest.

MR NAIDOO: Yes.

MR COETZEE: It was a few years prior and in which the doctors in fact were criticised for the way in which they conducted their part of this examination. And the reason I say this doctor, with great respect, it is... We are sitting here 38 years later, and we want to criticise a doctor, the district surgeon for sloppy work, whilst in the day and in that stage, in

20 the context of what it was done, it seems there was not any such criticism levelled against him, for him to answer to.

MR NAIDOO: Certainly.

MR COETZEE: And by that sir, I think you must be careful, and I don't want to criticise you now, because I am a lay person, but we should be careful in criticising him for doing

something untoward, or that he was lackadaisical in this instance of Dr Aggett.

MR NAIDOO: Yes sir, no, that is certainly correct. I am not criticising Dr Kemp for any untoward action, I am drawing the Court's attention to what I think would have compromised the examination and the investigation of his death in many ways. It is not a criticism of Dr Kemp himself, but of the sequence of events.

MR COETZEE: The system at that stage.

10 MR NAIDOO: Yes. That was in 1982, I think I recall in mid 1983, towards it, I entered forensic training. And I believe, at that time, that the importance of proper procedure, protocols and independence was already known by then. I'm simply saying that, drawing attention to the fact that a physician, a district surgeon allowed circumstances to dictate the pace of events, rather than guide the pace of events himself.

MR COETZEE: Yes.

MR NAIDOO: That's very important, that forensic doctors must themselves, in their investigations, control and guide the

20 pace of the events of the circumstances. The work that they are doing within that sphere of their work.

MR COETZEE: If we can get to the haste and the rush that you refer to, sir, doctor. This is, with great respect, a bit of a two-inch sword. Because there would've been quite an urgency about finding out what happened to Dr Aggett, due to

the fact of the political situation and his profile. Do you agree with that?

MR NAIDOO: Yes, there is an urgency, but my own feeling, and always been, is that urgency should be held aside, and not influence a proper forensic medical legal investigation.

MR COETZEE: I agree with you sir. Urgency should never overrule medical practice, that should stand.

MR NAIDOO: Absolutely.

MR COETZEE: But if I remember your evidence also

10 correctly, you said that this type of haste was not uncommon in that day. That was more or less the norm that it would be done immediately, 'to clean the slate' I think was the words that you used.

MR NAIDOO: Yes, that is correct.

MR COETZEE: The further criticism that you have of Dr Kemp's work, is the fact that there was no photographs taken during the autopsy.

However sir, if I look at Dr Botha's evidence, and more particularly on page 176, I see that he actually makes

20 reference to photographs that was, and he was asked do you want to look at the photograph and he declined to look at the photograph. He said I looked at them yesterday. So there were photographs.

MR NAIDOO: There may have been, but there were minimal references to them in the testimony and the transcript.

MR COETZEE: Also, I have perused the evidence of the statement of Mostert at B8.5. He was the official photographer at the mortuary, in which he said, at page 24 of B8.5, in which he says that he did take photographs of Dr Aggett's body. He even put onto it the reference number of the body reference number.

MR NAIDOO: Yes.

MR COETZEE: So, what I claim [?][01:35][11] to you, is that we unfortunately don't have that photographs. We also don't
10 know how many photographs there were taken, and we don't know what was photographed. So to criticise Dr Kemp to say that there was not photographs taken, would be rather unfair, because there was. We just don't know how many, and of what.

MR NAIDOO: Yes. Certainly, that is correct.

MR COETZEE: Yes.

MR NAIDOO: I just wish to respond, to say, I maybe at risk of being criticised as being pedantic, M'Lord, but taking of photographs at an autopsy, in a case that is important,
20 especially important if you consider some cases are high profile - I don't like to use the term generally, more high-profile than others – should have been done under the direction of the pathologist doing the autopsy, at the autopsy.

Now, even in today, I know it is practice, because the policemen don't reach there in time when the autopsy is being

done, coming later on and take photographs of a body after the autopsy and in the absence of the pathologist or district surgeon. So that is certainly not the ideal.

MR COETZEE: Not the ideal, I agree with you sir. To have the perfect autopsy, the perfect post-mortem would be nice, obviously.

But practice, in general terms in practice, it just simply not happened. I believe any autopsy that has been done in any post-mortem will be open for criticism if you start

10 to really look at things.

MR NAIDOO: Yes, except that it would've been a simple matter to request and get an instruction from a higher police official to have a photographer present by 8h45 when the post-mortem was being done.

MR COETZEE: Well, we don't know when this photographer arrived at the scene when he took the photographs, whether it was during the post-mortem or it was afterwards or what, we just simply don't know.

MR NAIDOO: Sure.

20 MR COETZEE: So then, your evidence in relation to the cloth that was used in the hanging process and I understand your evidence that on your visual inspection of photograph FGK7.1 you dispute that it was a striped cloth that was used as the ligature?

MR NAIDOO: Yes well, declaring though that I'm no

photography expert, no textile expert, it seems that it doesn't match, but I'm not sure of that.

MR COETZEE: At the inquest that was held hours after the incident, and I'm referring to page 17 of document B8.5. Dr Kemp indicate that it is a, the cloth that was removed from the neck, is described as a length of striped material.

In the evidence later of Dr Botha, he confirms that he saw the striped material when he arrived there, and that he in fact took a sample from the material, that he cut off from the

10 material, from the striped material. To conclude that later in the evidence of Dr Kemp, and that is his evidence at page 24, he specifically referred to EXHIBIT 1, which was handed in at Court, which exhibit was the actual striped cloth.

What I'm for this long introduction getting at, sir, is that in all probabilities, the cloth that was handed in at Court, was the cloth that was at the post-mortem hours after the death of Dr Aggett, and that that was in fact a striped cloth.

MR NAIDOO: Yes, I'm not disputing that at all. That may well at be, I'm not disputing that.

20 MR COETZEE: Yes. Doctor then, an issue in relation, and here you must please excuse my layman-ship here, I know I said I should get pathology for dummies, because it is not that easy for me as a layman person.

But I wish to refer you to a document, and this was handed in as EXHIBIT G25(2), which is a subsequent report

by Dr Botha, and is dated... Let me see if there is a date on there. I don't see actually a date on it of the report.

But this is a further autopsy report by Dr Botha. Oh, date of report is the 21st of February. Sorry M'Lord, my learned colleague shows me the 25th of February 1982 is the date of the report. And what I wish to refer to in this report and to ask you about, sir, is that you say that there was lack of investigation of the dermis, by flaying the dermis...

MR NAIDOO: Yes.

10 MR COETZEE: The skin, basically. If you look on page 2, the last paragraph, and this is specifically now first related to the scalp. And it says here the scalp...[intervened]

COURT: Where are you?

MR COETZEE: M'Lord, on the second page of document G25(2)

COURT: G25?

MR COETZEE: G25(2).

COURT: Is it this document?

MR COETZEE: Yes, it is that document, but if you go on to

20 G25(2), it is a document that started off with, on page 3 of the index.

COURT: Yes.

MR COETZEE: And the next page, over the page at page 2, it says here 'the scalp has been incised and the skull has been opened in a conventional manner.'

COURT: What paragraph are you reading?

MR COETZEE: The last one, M'Lord. On page 2, which starts with 'the scalp has been incised'.

COURT: Is it in English?

MR COETZEE: Yes sir. Sir, if I may, it is a document in this bundle that you refer to, is marked, it's the third document and it is marked 25.2...[intervened]

COURT: Okay, now I see it. Yes

MR COETZEE: Okay. Thank you, M'Lord. I go to the second

10 table of the: 'then the scalp has been incised and the skull has been opened in a conventional manner.' Then 'no scalp lesions were detected and there was no evidence of a...'

MR NAIDOO: A pneumatic.

MR COETZEE: Yes, sir... And a subdural bleeding ...[intervened]

COURT: The last paragraph says the scalp has been incised. Is it that one?

MR COETZEE: Yes sir.

COURT: And the skull has been opened in the conventional

20 manner.

MR COETZEE: Yes sir, and then further on, the scalp lesion. Perhaps you can just read that to the end there for yourself, sir.

MR NAIDOO: Yes.

MR COETZEE: And perhaps you can just explain what is

referred to here. What does the doctor mean by this?

MR NAIDOO: Yes. I'll just read sentence by sentence.

MR COETZEE: Yes please sir.

MR NAIDOO:

> "The scalp had been incised and the skull opened in the conventional manner and, forgive me for the gruesome description."

So the incision is run between just behind the ear on one side, across the top of the scalp and behind the ear on the

10 other side.

So that allows the back portion of the scalp to be exposed, we lift it up as a flap, and the front portion of the scalp should be lifted up as a flap, exposing that bony calvaria, which is then incised almost as a skull cap around, from side to side and around, to allow the skull top, the skull cap or the calvaria to be opened as a flap, and then the brain removed.

So, that's the incision, so when he says in the [indistinct – 14:14:04] no scalp lesions, the two flaps of skin,

20 thickish top flaps of skin,

no scalp lesions, lesions mean anything, any pathological findings, which is bruises or braises, or any other finding.

MR COETZEE: Any abnormality.

MR NAIDOO: Any abnormality, thank you.

> "And no evidence of sub apnoea neurotic, that is

within the scalp, within the scalp layer, in the middle of the thickness of that scalp layer as you lift it up. And no subdural bleeding, that means inside the cranial box, but covering the brain. So there's no scalp, no subdural bleeding. The dura had been stripped and the bones of the skull were intact."

Must I go on?

MR COETZEE: Yes, I think it's clear there. There was no

10 damage of the skull. It was not fractured. And then it says there was no evidence of any haemorrhage within either or of the cranial cavities and the foramen magnum.

MR NAIDOO: Yes.

MR COETZEE: Is this a proper investigation of his head and his brain?

MR NAIDOO: It's the conventional manner, as he, Dr Botha put it, of opening the skull, and the scalp skull and examining the brains.

MR COETZEE: And just to, the doctor continued on over the

20 page, I don't think we need to read anything else, but the last sentence where he says there was no evidence of disruption of blood vessels, extra...

MR NAIDOO: Extravasation.

MR COETZEE: Extravasation, and horrific... Information of the neurons and neurological cells appeared to be normal.

MR NAIDOO: That's the histology, that's under the microscope. Yes.

MR COETZEE: Yes. Now doctor, should there have been a trauma to the head? Would it not have been picked up here?

MR NAIDOO: If there was trauma to the head, that manifested, that resulted in bleeding, scalp bruising, bleeding around the brain, bruising of the brain and bleeding into the surface of the brain, or bleeding and bruising inside the brain, then it would have manifested.

10 MR COETZEE: Yes. And a head force trauma, or whatever trauma to the head, that will lead to unconsciousness. Not always, but more than likely, would've shown some disturbance or abnormality in this investigation?

MR NAIDOO: Well there are impacts to the head that have minimal or no manifestations visibly of injury that can give you a said concussion.

MR COETZEE: Is that not rather the exception than the norm?

MR NAIDOO: It is difficult for us as pathologists to reflect
20 upon it, because we see most of the fatal severe cases. But we know it does exist. It can exist.

MR COETZEE: Okay. Doctor, if we can then get to page 7 of that same report. And, may I first ask, did you have this report when you made your report, was this available to you?

MR NAIDOO: Yes, I did.

MR COETZEE: Thank you, sir. At the, first of all, the last sentence of the second last paragraph, which you have referred to that there was no evidence of a reason to a past injury to the penis or the scrotum, but you have explained that. So it's not necessary there.

But in the next paragraph, the doctor goes in a relation to the faint roughly triangular scar and he examined needle marks. If I read this whole paragraph, it seems to me that the doctor then did consider various issues that would've

10 or could've caused any abnormalities with Dr Aggett.

For example the needle marks, there was no needle marks found, lacerations, contusions of the upper limbs. There was no blisters or ulcers over the page. And he refers to a small scab. And what I want to say, doctor, it seems that Dr Botha applied his mind in looking for any form of abnormality on the body of Dr Aggett. Would you agree with that?

MR NAIDOO: Yes, I would. It would appear he did apply his mind to the exclusion of any other injury, but I still believe

20 that the subcutaneous flap dissection procedure, to look for concealed bruises, was not being done, was a shortcoming. Yes.

MR COETZEE: Page 8, the bottom paragraph. It seems here, Dr Botha went and he specifically considered various issues that might have led to the death of Dr Aggett. He

deals with, in this first row in 1, he deals with a possibility of a homicide and post-mortem suspension to simulate suicide. He says here, number 2, homicide by hanging is lynching, for example, 3: Accidental hanging and 4: Suicidal hanging.

And it seems like Dr Botha actually considered various possibilities other than suicide in his report.

MR NAIDOO: Yes.

MR COETZEE: Then over the page he concludes: There was no evidence at the autopsy to suggest that the deceased had

10 been murdered, and then suspended. Would you agree with that?

MR NAIDOO: Yes.

MR COETZEE: That there was no evidence of that?

MR NAIDOO: Yes, I also concur with that.

MR COETZEE: He says further, the second part, that there is no reason externally or internal injuries were demonstrable other than those around the neck and the presence of vital reaction of soft tissue of the neck including this possibility. Do you agree with what he wrote there?

20 MR NAIDOO: Well I see what he has written there. He’s just made an overall statement that has internal injuries, recent internal and external injuries demonstrable, other than those around the neck.

But that doesn’t apply itself to be the issue that the lack of a more elaborate subcutaneous field dissection to look

for injuries, was not done.

MR COETZEE: On the second paragraph on the last sentence of the second paragraph on page 9, he says:

> "Here an alternative method would be to induce a near-comatose state prior to hanging, but no drugs were demonstrable in the blood sample, nor were any needle marks found in the body."

Now, obviously that is his finding. He doesn't exclude anything else, but he says what his finding was at that stage,

10 that he did consider that there was a near-comatose state that might have been induced through a chemical or any something else. It was considered at that stage.

MR NAIDOO: He entertained it in this discussion.

MR COETZEE: Yes.

MR NAIDOO: But he only applied himself to the possible reams of toxicological substances causing that.

MR COETZEE: Yes, of course today we have a much wider awareness of these type of toxicological material that might induce a coma or any kind of altered state.

20 In 1982, would this have been a reasonable assumption by him, considering these factors, that there was not an induced coma?

MR NAIDOO: It would be reasonable within the limits of his observations and he thought was pertinent at that time. It would be reasonable.

MR COETZEE: Yes, he did then also consider accidental hanging. I don't think that it is relevant here. And then at the last sentence on this page 9, he says:

> "The post-mortem finding in this case, are entirely consistent with those of a suicidal hanging."

Would you agree with that?

MR NAIDOO: Yes, I would agree with that in that the sentence makes a statement. It's not a statement that excludes anything else. I have got an open mind about this.

10 Yes it could be consistent with suicidal hanging, but then again, it is possible that it couldn't or it wasn't.

MR COETZEE: I see there on page 10 in the last paragraph, he considers a further possible mechanism:

> "A cardio-arrhythmia, resulting from illegal inhibition due to pressure on the carotid bodies, however this possible mechanism can neither be proven nor disproven under the present circumstances."

I think that falls very much within the purview of your

20 evidence.

MR NAIDOO: Correct. Thank you.

MR COETZEE: Doctor, obviously anything is possible in life. Anything is possible. But for you to give an expert opinion, it must be based on facts.

MR NAIDOO: Yes.

MR COETZEE: Otherwise it is speculation. It might be a qualified speculation, it might be a very expert speculation, but it remains speculation unless it is based in fact.

MR NAIDOO: Yes.

MR COETZEE: Then a further issue. Initially in your evidence as I understood it, you said the fact that there were no protrusions in the bars of the cell, into the cell side..

MR NAIDOO: Yes.

MR COETZEE: Cannot cause any injuries to the body, if

10 there was no protrusions on the grill.

MR NAIDOO: The parallel transfers, horizontal bars, were to an extent slight protrusion, but they were long, long and continuous. They simply did not amount to the kind of protrusion that I would've expected to be present if I were to relate it to the triangular bruise on the back of Dr Aggett.

MR COETZEE: If one look at, and I wish to here look at the photograph, for example photograph 102 in EXHIBIT G24, this is an indication, quite a good indication as to the flat bar, horizontal bar...[intervened]

20 COURT: What's your number?

MR COETZEE: Photo number 102, M'Lord. And even over the page, number 103 as well. It's perhaps even better on number 103. Which indicate quite a protrusion form the round bar with the flat horizontal bar.

MR NAIDOO: Yes, but it's continuous. Now overlooking

there appears to be glass or Perspex.

MR COETZEE: It wasn't there at that stage.

MR NAIDOO: Yes, later applied.

MR COETZEE: Yes.

MR NAIDOO: So we can ignore that.

MR COETZEE: Yes. You can ignore the Perspex in this instance.

MR NAIDOO: Yes. So the protrusion, a continuous panel of bars that are transfers.

10 MR COETZEE: Now if I understand the reference that you have made to Professor Laubscher's evidence. His conclusion is that it is the contraction of the body on the grill where he was hanging afterwards, in other words, that might have caused such an injury. That was his conclusion if I understood it, your evidence correctly, as I read it as well.

MR NAIDOO: Yes.

MR COETZEE: Yes. Now if there was such a contraction of the body, lets for example, hypothetically say, on hanging that the body was contracting and convulsing.

20 MR NAIDOO: Yes.

MR COETZEE: First of all, is that something that one would've expected in a suicidal hanging?

MR NAIDOO: Look, not ruled out Professor Laubscher's view or opinion, I am saying that when I'm reconciling it to the pattern on the bars, it just doesn't seem to align.

MR COETZEE: If we look at photograph FGK7.1, it seems that the flat horizontal bar is more or less in the region as to where the triangular injury was. And granted you said that you could not precisely pinpoint the triangular due to non-description.

But the general idea as to the level in the body where that injury was, is more or less in line with that bar?

MR NAIDOO: It could be. I think it might be splitting hairs, but it is important to split hairs in this sort of enquiry. But the

10 transfers, the triangular nature of that bruise, and being a bruise, is difficult to reconcile.

MR COETZEE: Even on your sketch of the body...

MR NAIDOO: Yes.

MR COETZEE: You put the fourth bar at the back. It's a very close proximity to where that triangular shaped injury is.

MR NAIDOO: Correct.

MR COETZEE: Okay, can I just for my own understanding. At the back where you have drawn to broken line issues, that is the position of the lungs?

20 MR NAIDOO: No, the scapulae, the shoulder blades.

MR COETZEE: Oh, the scapula. Thank you.

MR NAIDOO: So that is sketched interrupted lines of two shoulder blades at the back.

MR COETZEE: Yes, thank you. So that was just to give the position. Is that correct?

MR NAIDOO: Yes.

MR COETZEE: Thank you. I was not sure if it was part of the injuries. I'm with you sir.

MR NAIDOO: If we can just agree that it is in line, but it's in line what I think is surely a random and arbitrary depiction of where that bruise might have been.

MR COETZEE: Yes.

MR NAIDOO: But bear in mind that I'm reconciling my opinion, also that I would be surprised that a bruise like this

10 was fully evolved because the deceased died, in my opinion, so rapidly.

MR COETZEE: Although Professor Laubscher thinks that at that stage in his assessment of that injury that it could have been.

MR NAIDOO: Sure, I respect that.

MR COETZEE: Ja. Doctor, electric shocks, and even as you have described by the dynamo. Electric shocks, does that burn the skin?

MR NAIDOO: No generally, both the current intensity,

20 voltage intensity and the method of application sometimes, both help to prevent a burn. A specific burn.

No, I'm not too sure, I'm not an expert on the technical aspect of the intensity, the current and voltage. But I do know that it's rare to find an electrical burn, a typical electrical burn, where electric shocks were used in

interrogation or torture.

MR COETZEE: And it will not then form scabs?

DR NAIDOO: Well, it will only form scabs where there is a physical injury and a discontinuity of skin or a shedding of the top layer, yes.

MR COETZEE: Ja. So one would not normally, and is it your experience, it seems to me, that according to your evidence, you have some experience of people in detention that were perhaps tortured, that you had the post mortem ...[intervened]

10 MR NAIDOO: I have particularly electrical torture we have seen very little. I mean, I have seen very little of it. But I have had a fair amount of experience of people detained and interrogated, tortured, abused, in other ways.

MR COETZEE: Yes.

MR NAIDOO: Mainly by physical injury.

MR COETZEE: Yes. And then one does not necessarily see any scabs or burns on the skin?

MR NAIDOO: Not from anything else... not from physical blunt injury, no, you do not get burns. Unless of course,

20 cigarettes. Cigarette butts were used to ...[intervened]

MR COETZEE: Of course.

MR NAIDOO: Yes.

MR COETZEE: Of course. Doctor then in the effect of sleep deprivation, if for example and as the evidence is here in the statement of Dr Aggett, that he was awake until the 30th of the

month, at least, the 28, 29 and 30th, that he was awake.

MR NAIDOO: Yes?

MR COETZEE: By the 3rd or the 4th of February, would he had recovered from that sleep deprivation, you know, what I am actually asking is does the body recover from sleep deprivation after rest?

MR NAIDOO: If he was given adequate and optimal allowance or restoration of his sleep and his rest, it is possible. I am not too sure of the time sequences after the 30th, what happened

10 on the 1st and what happened on the 2nd, the 3rd and the 4th.

MR COETZEE: Yes.

MR NAIDOO: Yes, so it is possible. It takes some time. I am no expert on that, in how quickly will you restore your state of mind, state of your body. But it would depend on how good and restorative his sleep and his nutrition in rest in is.

MR COETZEE: If I look at this statement by Dr Aggett, which we have as B8.55 and you were referred to some of these paragraphs.

MR NAIDOO: Yes?

20 MR COETZEE: They are unfortunately not numbered. But on the page, it looks to me as if it is the ... just bear with me M'Lord.

MR NAIDOO: Sure.

MR COETZEE: My computer is now... It seems to be the third last paragraph that was, where Dr Aggett stated and perhaps

before I go to this, Dr Aggett corrected the statement as you have indicated, when it was a written statement, he corrected it, so he was fairly satisfied with the statement.

So he brought corrections to the statement, and we must accept that he did say in this statement what he wanted to say. And in this paragraph, the third last page, he says:

> "The scab on my back and the scar on my pulse as well as the scar on my forearm were the only injuries that I received as a result of this assault."

10 And he refers to the assault by Whitehead, which was then on the 29th of January. If I read his evidence correctly.

So, and not to minimise what he had gone through, and that is not what I am trying to do, but the injuries that he has there noted, as a result of that night's assault, are not serious injuries.

Would you agree with that? The physical injuries. And I limit myself to the physical injuries.

MR NAIDOO: So the totality of it? Am I being ...[intervened]

MR COETZEE: Doctor, I can only read what is written here.

20 He is referring to the assault on the 29th by Whitehead and other persons. And he says here:

> "The scab on my back and the scar on my pulse as well as the scar on my forearm were the only injuries that I received as a result of this assault."

MR NAIDOO: Well, yes. I am reading the scab on the back,

would refer to the assault a month earlier.

MR COETZEE: Yes.

MR NAIDOO: Whilst the injury on the forearm, would be referring to ...[intervened]

MR COETZEE: [Indistinct - 01:05:16] his watch.

MR NAIDOO: Would be a week.

MR COETZEE: Yes.

MR NAIDOO: A week old.

MR COETZEE: Yes.

10 MR NAIDOO: So there would be two ...[intervened]

MR COETZEE: You are quite right.

MR NAIDOO: Two dates.

MR COETZEE: You are quite right.

MR NAIDOO: Yes.

MR COETZEE: Quite right.

MR NAIDOO: In terms of... Yes, from a forensic pathology viewpoint in terms of seriousness, I would say that this is not serious. Because it is not life threatening.

MR COETZEE: Yes. And Dr Aggett as a doctor and we have

20 heard that he is a doctor that has worked in the emergency ward, he would know how to describe injuries.

MR NAIDOO: Well not necessarily so, Sir, because first of all my English is correct, he as practising emergency medicine part time two sessions a week, night or day I am not too sure. And he was aspiring to do that as a speciality.

MR COETZEE: Ja.

MR NAIDOO: He enjoyed it, so he is finding his passion.

MR COETZEE: Yes.

MR NAIDOO: Now that is a young emergency doctor.

MR COETZEE: Ja.

MR NAIDOO: And a lot of the emergency doctors might still need a lot of training in terms of, from the forensic viewpoint, documentation, description of injuries.

MR COETZEE: Ja.

10 MR NAIDOO: Clearly accurately defining and describing injuries for legal purposes. I am talking about for legal purposes.

MR COETZEE: I see.

MR NAIDOO: Therapeutically they are the best that we have.

MR COETZEE: Yes. No, I am not... I am not at all suggesting that he should have noted a forensic account of injuries.

MR NAIDOO: Yes.

MR COETZEE: I think that would not be reasonable to expect that.

20 MR NAIDOO: Sure.

MR COETZEE: But he was a little better than a lay person in realising what happened to him and what was the injuries that he experienced.

MR NAIDOO: So, yes Sir. I would agree.

MR COETZEE: Doctor, your evidence that it would be difficult

for him to climb up the wall, up the grill, to commit suicide, and it is difficult for me even to discuss this with you, but it will all depend on his determination as to what he wanted to achieve.

MR NAIDOO: Yes, I am ...[intervened]

MR COETZEE: In other words, it might be hard, but being hard, it does not exclude it being possible.

MR NAIDOO: Yes. No, no, no. I am not too sure if I might have been misread, I did not say it was difficult to clamber up and ascend up the grill.

10 MR COETZEE: Yes?

MR NAIDOO: I did mention that even in extreme exhaustion or extreme sleep deprivation.

MR COETZEE: Ja.

MR NAIDOO: The literature shows what muscular effort is possible. It is just time to exhaustion that is very shortened. So, I am not excluding.

MR COETZEE: Doctor, if you look at the photograph FGK7.1, the photograph of the hanging.

MR NAIDOO: Yes?

20 MR COETZEE: From your observation here, is the feet, are they on the ground or are they dangling?

MR NAIDOO: No, my ...[intervened]

MR COETZEE: Suspended?

MR NAIDOO: My view, my thought ... My observation is that the feet were above the ground several centimetres.

MR COETZEE: Yes.

MR NAIDOO: With the toes bent downwards.

MR COETZEE: Yes. But it appears to be suspended.

MR NAIDOO: Yes.

MR COETZEE: Ja.

MR NAIDOO: Fully suspended.

MR COETZEE: Thank you.

MR NAIDOO: May I ask? It just occurred to me. Sorry, M'Lord.

10 COURT: Yes?

MR COETZEE:

MR NAIDOO: And I am just asking, this photograph or these photographs, were not inverted by any chance? In other words, what we are seeing on the right side, is in fact on the right side and not the left. Vice versa?

MR COETZEE: We would not know. I do not know. I would not know. But I do not think it is.

MR NAIDOO: I am just ...[intervened]

MR COETZEE: I think it is as it is.

20 MR NAIDOO: Okay. Thank you.

MR COETZEE: The last issue Doctor that I have. If there ... There was some evidence about what is sometimes referred to as 'choking' where some kind of a material, usually a plastic unbreathable, sometimes a tube of a tyre of a car or something like that, is placed over the face and it is pulled back.

MR NAIDOO: Yes?

MR COETZEE: If a person suffocates to the extent of passing out through this method, once you remove the restriction and they can breathe again, they fairly quickly - if I understood you correctly - they will regain consciousness.

MR NAIDOO: Yes. From just trying to work out the physiology, if there is no structural damage.

MR COETZEE: Yes?

MR NAIDOO: They should regain consciousness.

10 MR COETZEE: However, if a person is held like that to the extent that he does not recover, that will mean that there was a suffocation that had taken place. In other words, the person ...[intervened]

MR NAIDOO: Yes.

MR COETZEE: ... will suffocate.

MR NAIDOO: That is correct.

MR COETZEE: Even if he does not die then and he might have brain damage due to the lack of oxygen to the brain, and he gets some kind of a comatose state would that not be

20 determinable on an [indistinct - 01:11:16], that a person basically has suffocated due to a lack of oxygen?

MR NAIDOO: I think I need to explain that, what we have seen in our experience, if I may just answer this question in this way.

What we have see now in experience, is that, and

particularly from the accounts of people, who have been subjected to this form or torture, dry submarine if I may call it, applying a plastic bag over the head and tying it around the neck, or applying a tube across the face, those that have survived, have described it, so this is how we know.

MR COETZEE: Ja.

MR NAIDOO: Now, those that have not survived, because there is a fine line. You either survive, or you die. And if you survive, you survive usually completely well, eventually

10 biological recovery, not psychological, biological recovery, is either complete hundred percent, or you die completely. So it is a fine line that asphyxiation plays, that either you cross it or not.

And those fatal cases, were those that when the safety mechanism was not employed in time.

MR COETZEE: Doctor, just to understand that from my perspective. Different from when it is the corrupted arteries that are closed, a person will not get brain damage due to a lack of oxygen. In other words, that he will survive, but in a

20 comatose state.

MR NAIDOO: Sorry, was that a question?

MR COETZEE: I am asking you, Sir.

MR NAIDOO: Yes, yes?

MR COETZEE: We know and your evidence has been, with the closure of a carotid arteries, that a person within a couple

of seconds will pass out and will within a couple of ... and can then get brain damaged, if I understand, because of the lack of oxygen to the brain?

MR NAIDOO: If sustained for a period of time.

MR COETZEE: Yes.

MR NAIDOO: The occlusion or the cessation or the blockage to the circulation ...[intervened]

MR COETZEE: Yes.

MR NAIDOO: Must be there for that period of time.

10 MR COETZEE: And that can lead to permanent brain damage, or a comatose state?

MR NAIDOO: It can lead to, yes.

MR COETZEE: Yes. And what I am actually asking you, what I was asking in my inapt way, is if I restrict oxygen by for example applying a plastic over the mouth and the nose, will that also, or can that also lead to a comatose state?

MR NAIDOO: Well, if the airway restriction or the impediment of breathing is removed quickly, as it usually is, it usually allows for spontaneous recovery.

20 MR COETZEE: Yes. But if it is not?

MR NAIDOO: If it is not ...[intervened]

MR COETZEE: If it is overstated... in other words, if they go too long on with it?

MR NAIDOO: If it is not and it is kept sustained over several minutes, yes, there can be significant brain damage.

MR COETZEE: Brain damage.

MR NAIDOO: Yes.

MR COETZEE: And what I am asking you Sir, if it is that kind of suffocation, will that be picked up? Is that something that you can see? In other words, that there was a lack of oxygen to the brain?

MR NAIDOO: Where the person dies immediately or survives?

MR COETZEE: Ja, if you do an autopsy later on. Let us deal with... Let us deal with it. Let us say Dr Aggett was so

10 constrained, that he has not come to after it was released, in other words, that he has brain damage and he was in a comatose state, and now he was taken up and he was hung, because I think that is more or less ...[intervened]

MR NAIDOO: Okay.

MR COETZEE: The submissions that will be made here. In that instance, will one ... would that not be too long after the suffocation?

MR NAIDOO: Okay.

MR COETZEE: Would one see indication of a starvation of

20 the brain from oxygen?

MR NAIDOO: Okay. Thank you. Thanks for clarifying. The answer would be not usually if that is so rapid. For a pathologist to see, at least by naked eye, if not by histology, the manifestation of oxygen deprivation damage to the brain, there has to be several hours, in fact six to twelve, some

people would say 12 hours, some would be 12 to 24, some would argue 6 to 12 hours of survival, in a live state. So, and the related answer would be, what would a pathologist see with the naked eye, in a short... after, at autopsy, the earliest evidence in my view of naked eye manifestations of oxygen deprivation damage, that is hypoxic brain damage, would be brain swelling.

MR COETZEE: Okay. Doctor, what one would have been able to see ...[intervened]

10 MR NAIDOO: In the early stage.

MR COETZEE: Would have some... There would have been some form of injury to the face. Because it would, if that kind of pressure for an extended period, will have to leave some marking on the face. Would you agree with that?

MR NAIDOO: I think the words 'will have to leave' will probably not be appropriate. It could have.

MR COETZEE: Yes.

MR NAIDOO: And at the same time, it could not have

MR COETZEE: Would one not expect it? If a person was

20 forcefully deprived of oxygen?

MR NAIDOO: I would expect ...[intervened]

MR COETZEE: For an extended period of time, would it not be... it is... it obviously it will not be easy to do that. And would one not have expected a physical reaction by the body, in fighting that? Which would most likely have led to injury?

MR NAIDOO: One wants to expect to find something, but the answer is not invariably.

MR COETZEE: Yes.

MR NAIDOO: Not invariably.

MR COETZEE: It seems to me in the medical field and specifically in the pathology, for every rule there is an exceptions, and for every exception there is rules.

MR NAIDOO: Yes.

MR COETZEE: There is no way that one can conclusively say
10 if you see A, then it means B.

MR NAIDOO: Yes. One approaches forensic pathology diagnosis from the perspective of exclusion. You confidently exclude what you can exclude.

MR COETZEE: Yes.

MR NAIDOO: And then you, it narrows the focus down to several possibilities and you put it in the best order of frequency or likelihood.

MR COETZEE: Yes.

MR NAIDOO: And that is about the best you can do with
20 forensic diagnosis.

MR COETZEE: And Doctor, if you were to have done this autopsy, the finding as to the death and the mechanism of death, would have been the same?

MR NAIDOO: I think if I were to do the... had done this autopsy, and made the same findings, I would have reached my

conclusions as I did.

MR COETZEE: I see.

MR NAIDOO: Yes, yes.

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

COURT: Thank you. Counsel, questions for the witness?

NO QUESTIONS BY MR MOHAMED: I have no questions for the witness, M'Lord

QUESTIONS BY MR VARNEY: M'Lord, just a few questions

10 on re-examination.

COURT: Yes?

MR VARNEY: Dr Naidoo, seven questions were put to you by my learned friend before, Mr Venter and Mr Deetlefs, on the report of Dr Botha. And that of course is the report that was handed up as part of G25 and you confirm you did have prior access to that report?

MR NAIDOO: Yes.

MR VARNEY: Am I correct in saying that at the time of Dr Botha's involvement in this case, he was not a very

20 experienced pathologist, it appears that at that point in time he had approximately 12 years experience.

MR NAIDOO: Yes, I am not completely sure, I would think, I recall a portion of his evidence, that he was in practice for 12 years. I am not too sure if it is 12 years since qualification as doctor, or 12 years since acquiring specialist qualifications.

MR VARNEY: Yes, just to inform you that actually that is his evidence from page 176 in the record, in terms of his experience, of 12 years.

MR NAIDOO: Yes. I think 12 years is substantial as a pathologist, if it is as a pathologist. But if it is including his training, then that reduces it somewhat. It is substantially experience, at that stage.

MR VARNEY: Right. But certainly, he was not in the league of the first choice of the family, which was Dr Gluckman.

10 MR NAIDOO: I would believe, yes. It would... Dr Gluckman was a senior and more experienced partner at that time. Certainly the most experienced.

MR VARNEY: And of course we have dealt with in some depth, the fact that he was placed at some disadvantage, having arrived approximately one hour after the commencement of the post mortem.

MR NAIDOO: Yes. But bear in mind that I say I am not too sure of Dr Botha considered it a disadvantage, but for the reasons that I have mentioned, I would think that is a distinct

20 disadvantage.

MR VARNEY: Yes, and then I am not asking you for Dr Botha's views, I am only asking for your views.

MR NAIDOO: Yes.

MR VARNEY: In terms of what Dr Botha could possibly have done but did not appear to do, we have already accepted that

he was in no position to attend the medical examination, for obvious reasons, so he cannot be criticised for that.

MR NAIDOO: Yes.

MR VARNEY: But as the family's medical examiner at the post mortem, if he had wanted to do what you have set out, in your report at paragraph 6.2.1.5 and that is in suspicious deaths, that one examines for deep bruises, you say it is necessary that post mortem examination could include comprehensive and wide subcutaneous skin flap dissections,

10 under the skin of a trunk and limbs, to look for concealed bruising, he could have done so, would he have been prevented from doing so?

MR NAIDOO: I am not too sure under what specific constraints he was at that time, I would think that he could have suggested to - remember the independent pathologist is the observer, but not the director of the procedure - he could have suggested that it be done. So I am not too sure if that came into his mind at that time.

MR VARNEY: I see. You mentioned during the course of your

20 evidence in chief, that what you would sometimes do is stay behind after the conclusion of the post mortem, to the further examination if you deemed it necessary?

MR NAIDOO: Yes. I am not too sure if that may have still been done in this case. But that would be, what I would do because I did not ... I was not afforded the optimal opportunity

for that extended examination, so I would remain behind and re-examine the external surface of the body afterwards.

MR VARNEY: But he least he could have done, would be to ask and perhaps place on record, that these procedures be done? To the district surgeon, Dr Kemp?

MR NAIDOO: Yes. Yes, I suppose for one thing, you do not know how much had [indistinct - 01:24:03 soundtrack disruption] not on the record. Because it is sometimes difficult to have a totally comprehensive record. I mean, it will go for

10 hundreds of pages or so.

So, but I do agree with you, in my position and I speak from my perspective, I would have suggested that option, and asked for the opportunity to continue to examine the body after the actual cutting up and stitching procedure, was completed. And until I was satisfied. I would certainly look at that.

MR VARNEY: And would he have been in a position if he felt that things were being conducted in some undue haste, to again make the request that the process slow down, and it can be more comprehensive?

20 MR NAIDOO: Well, first of all, he could not reverse the fact that, remember, that the ... I just noticed it earlier as well, that not only was the head open and the brain removed, and the rest of the organs were removed, only the neck was unexamined. But the brain was already sectioned, according to Dr Botha. So, he could not reverse those events.

Certainly I can only speak from my perspective, I would have suggested okay, we do the best and rescue the situation or the best that we can under the circumstances, and complete the examination in as greatest detail as possible and then remain later on, to catch up or to fill in the missing observations as best we could.

MR VARNEY: Yes. Now my learned friend has helpfully pointed out that the criticism in relation to not conducting a medical examination at the scene, should not be directed at

10 Dr Kemp, but perhaps rather at his superiors.

MR NAIDOO: Yes.

MR VARNEY: Dr Nielson and Professor Scheepers.

MR NAIDOO: Yes.

MR VARNEY: And that is evident from the statement of Brigadier Muller, at EXHIBIT B1.3.9. So my question to you, Dr Naidoo is, does this make it any better?

Does the fact that the superiors authorised the removal of the body without an unseen medical examination, does this somehow excuse the decision not to do such a

20 medical examination?

MR NAIDOO: No, it does not, because as I mentioned it is more an institutional attitude and approach to things rather than an individual and where one works in an institution where the attitude is this the way you do it, you comply and you fall in line. So it certainly does not excuse this limitation, or this

shortcoming.

MR VARNEY: And on that score, I want to put it to you that it actually makes a worse. Because here an institutional level the leadership was saying, effectively saying to remove the body and take it away.

MR NAIDOO: Yes.

MR VARNEY: And there will be no medical examination at the scene.

MR NAIDOO: Yes. We must remember that the individual

10 practitioner is sometimes just the pawn, with an institutional attitude, towards this. And the institutional practice, in a certain manner, which differed slightly from big centre to big centre, Cape Town to Durban, to Johannesburg and Pretoria, Bloemfontein. So, yes, one cannot... it does not diminish the seriousness of that deficiency.

MR VARNEY: Yes. Well, I think we are going to submit that it exacerbates it, if it was simply a question of Dr Kemp making that call, who is only the district surgeon, and not a pathologist as you pointed out.

20 You know, it is justifiable to level such a criticism, but now it is in fact a decision that has been made by the leadership, namely Dr Nielsen and the chief state pathologist, Prof Scheepers. Having said that, and it is not clear to us whether Dr Kemp was even aware at the time that Dr Nielsen and Prof Scheepers made that decision, could he have piped

up and said, well actually I do want to attend at the scene, and I insist on doing so?

MR NAIDOO: If he was informed in time.

MR VARNEY: If he was informed in time.

MR NAIDOO: And it is unlikely that at whatever time in the morning, 02:30, 01:30, 02:30, 03:30 that he would have been aware that this case will be allocated to him the next day. So, the answer to that must be qualified by if he was aware at that same time.

10 MR VARNEY: Yes.

MR NAIDOO: If there was an opportunity for the three senior doctors, or three or several senior doctors, to discuss together on the telephone at three or four in the morning, yes, that opportunity might have presented itself.

MR VARNEY: Right. Yes, we can take that no further. On the question of photos, you have labelled the lack of photographs as a shortcoming and it was put to you that this is not a valid criticism of Dr Kemp - after all he is not a photographer.

MR NAIDOO: Yes.

20 MR VARNEY: But correct me if I am wrong, your criticism was that there was no evidence that Dr Kemp directed the taking of photographs.

MR NAIDOO: Yes. That is right. Correct. Or oversaw or supervised it directly under his presence, yes.

MR VARNEY: Yes. But the fact that, it does appear that

photographs as per the evidence of Mostert, that photographs were taken, we simply do not know under whose direction ...[intervened]

MR NAIDOO: Yes.

MR VARNEY: ...those photos were taken.

MR NAIDOO: Correct.

MR VARNEY: I will not spend too much time on this question, but you have confirmed in your evidence in chief, that when it comes to hypoxia brain injury, that this would not be noticeable

10 in a deceased who dies shortly thereafter the brain injury is perpetrated.

MR NAIDOO: Yes.

MR VARNEY: And you also mentioned that the way to normally detect such injury, is through brain swelling.

MR NAIDOO: Well, that would the first observation. Not specific to hypoxic brain damage, but that would be the first observation, by naked eye, that I can think of, but which would have required still that same significant period of survival, after the incident and before the death.

20 MR VARNEY: Yes.

MR NAIDOO: So, I am not sure ...[intervened]

MR VARNEY: Yes, no, indeed. I do not want to belabour the point, but you have said in order to detect that swelling.

MR NAIDOO: Yes.

MR VARNEY: That the victim would have needed to be alive.

MR NAIDOO: Yes.

MR VARNEY: And in your words, between 6, 12, and even 24 hours.

MR NAIDOO: That is right.

MR VARNEY: Now, my learned friend has put it to you that in resisting the constriction of air and perhaps blood supply to the brain, that one should detect some kind of injury perhaps somewhere on the face.

Dr Kemp, in the record at page 118, says that in such

10 a situation if the person does not struggle violently, then you will not find injuries in the face, arms and legs, when a person is so restrained. But before you answer that, I must check with my learned colleague.

Right, it has been confirmed that Dr Kemp was referring to restriction of the face as in breathing. M'Lord that is in the record at page 118. So Dr Kemp is in fact saying that if a person does not struggle violently, you will not find any injuries on the face, arms and legs, et cetera. Now presumable when this is happening, the person is being restrained.

20 MR NAIDOO: Yes.

MR VARNEY: I would imagine?

MR NAIDOO: Yes.

MR VARNEY: And if the person is being restrained, and as Dr Kemp asserts, you are not likely to find injuries.

MR NAIDOO: Yes. That is right, and as counsel for ... is it

Ms Venter, has mentioned that you will always have exceptions. When you look at injuries, you ... Or let me just rephrase that. If the possibility or the incident or the development of an injury is consequent and dependent upon the activity, this restraint, in this context, so if there is struggle, if there is greater struggle you will want to expect to finding more injuries, more likely.

But if there is no absolutes, in other words, it could be possible for a light struggle, with a light struggle including
10 that, that you could get a state of unconsciousness occurring without injury.

So, it is not always an absolute. So lack of injuries does not exclude struggle, a light struggle and finding injuries only adds to the confidence that you would use in your diagnosis.

MR VARNEY: Yes. And while on this score, you were referred to page 8 of Dr Botha's report.

MR NAIDOO: Yes?

MR VARNEY: Where he concludes that the most likely
20 scenario was that of suicidal hanging.

MR NAIDOO: Yes.

MR VARNEY: Or perhaps before I get to that point, because that actually is somewhat different. Your conclusion that one cannot exclude the possibility of the hanging staged in an unconscious or semi-conscious state, is that not a novel

conclusion in these proceedings.

MR NAIDOO: Yes. I actually do believe that both Dr Botha and Dr Kemp allowed for that possibility.

MR VARNEY: Yes and ...[intervened]

MR NAIDOO: They did not exclude it completely. And my evidence is no forensic pathologist can really confidently exclude, make such exclusions.

MR VARNEY: Well, let me put to you what Dr Kemp himself said, at pages 95 to 96 of the record. He said:

10 "One cannot distinguish hanging and ligature strangulation or hanging in an alive or semi-conscious state."

MR NAIDOO: Yes.

MR VARNEY: That is his evidence at page 95.

MR NAIDOO: Yes.

COURT: Was that in the first inquest?

MR NAIDOO: In the first inquest.

MR VARNEY: And then at page 96, the following page, Dr Kemp accepts that there is nothing in his report that is shown

20 that:

"Dr Aggett was not unconsciousness or semi-conscious shortly before death."

MR NAIDOO: Yes.

MR VARNEY: And then if we turn to Dr Botha, well M'Lord at page 190 of the record of the first inquest, hand script [?], he

says he is unable to say whether Dr Aggett was hung, whether he was alive or semi-conscious or in a low conscious state at the time of hanging.

MR NAIDOO: Yes. Yes, both Dr Botha and Dr Kemp... Sorry, may I M'Lord?

MR VARNEY: Yes, please?

MR NAIDOO: Did allude to that possibility, although they gravitated each one to the possibility of suicide and that is where pathologists gets dangerous, it gets dangerous for

10 pathologists to talk about manner, suicide or homicide, you should refrain from that, at least in our South African situation. But yes, it is to summarise, they did both allude to that possibility being present.

MR VARNEY: Well let's... let... let us talk about the gravitation of both doctors in relation to their view on suicidal hanging, and we have been pointed to page 8 of Dr Botha's report, that is attached to the EXHIBIT G25, where he does make that conclusion, in his view that it was suicidal hanging.

So what I wish to put to you is something that you

20 have raised in your evidence and also in your report, the unfortunate fact that pathologists and district surgeons often operated in silence.

MR NAIDOO: Very much so.

MR VARNEY: They were not looking at the wider context. They were not looking at the comprehensive picture in history.

MR NAIDOO: Yes.

MR VARNEY: They tell you to accept things at face value. And it seems to me that Dr Botha, which I suppose was not uncharacteristic for the time was simply applying his mind to the clinical facts as he saw them at the post mortem.

MR NAIDOO: Correct.

MR VARNEY: But at that time, I believe his report was dated the 22nd of February, 1982, so not long after the death of Dr Aggett. Do you agree that it is unlikely that he had
10 considered the nature and practice of what the Security Branch were doing in John Vorster Square?

For example, he did not necessarily know that the Security Branch practiced torture on a routine basis and operated in a manner to cover up torture. In other words, apply torture so as not to reveal marks. He simply was not looking out for those kinds of issues.

MR NAIDOO: Yes. Well, may I just respond by saying where, in this version of Dr Botha's report of the 21st of February, in which he entertains and discusses the four possibilities, clearly
20 there is the possibility put to him in the form of an inquiry.

Now the second part of that, is that often as a matter of personal belief, whether things occur, with due respect, often it is a matter of personal belief, whether abuses, atrocities do occur, that sometimes a personal view may be clouded because one does not know, one has not explored

beyond the borders of what your usual sphere of work and influence is.

But abuses do occur and if I may say, the truth of what actually happened, is stranger, is stranger than fiction. The reality is even more widely variant and possible than the fiction or the imaginations that you can have, if you do not know. Truth is stranger than fiction. Yes.

MR VARNEY: Yes. So, let us... let... let us... let... let us move on. You were also shown the photograph 103 from the

10 police photo album. I believe it is EXHIBIT G24. And I simply want to point out something that you are already acutely aware of, that the horizontal bars, granted there is a sharp edge to those bars, and of course there was no Perspex in those days.

MR NAIDOO: Yes.

MR VARNEY: But let us just assume for the moment that perhaps Dr Aggett did, you know, fall against those bars, or perhaps he was engaged in some kind of violent spasm, while suspended against those bars, if he did incur an injury against the horizontal bar, what would you expect to see?

20 MR NAIDOO: The truth is I would have expected to see nothing. That is the first possibility. Simply because I do not know if the convulsive spasms exceed the injury threshold at the back.

These are narrow bars, and certainly, even if they did cause anything, not by precipitance drop of the body against

the bars, but by slamming against the bars in the thrushes of convulsive spasms, right?

So, even if there was bruising, I would not expect the bruising to be fully evolved as I mentioned, to fully developed. You need a little bit of time for bruising to occur. If death occurs very quickly, you might well see no bruising. So, the first thing I would expect to see nothing. That is the first.

Secondly, if I were to expect to see bruises, let us assume that his death was prolonged, I would expect to see
10 somewhat transverse or horizontal bruises of, if for that matter, bruises with abrasions, rather than focal discrete lesions.

MR VARNEY: So, given that evidence, would it be, could one simply and safely exclude the possibility of the back injuries arising from the bars altogether? Or let... let... let me... let me... let me put it more... more... more... more reasonably to you, Doctor.

MR NAIDOO: Yes?

MR VARNEY: Is it the greater likelihood the greater probability that the back injuries were not caused by the bars,
20 the horizontal bars ... [intervened]

MR NAIDOO: That is correct. I believe the greater likelihood is that the back injuries with the scars, of course clearly the scars, there are scars and the fresh bruise was not caused by the impact of the body against the bars.

MR VARNEY: Indeed. There simple was not enough time for

those injuries to form, given that the death occurred so rapidly.

MR NAIDOO: That is correct. Yes.

MR VARNEY: And there simply is not any evidence on hand to show that the death was not rapid.

MR NAIDOO: Yes. Correct.

MR VARNEY: Then finally, there was the question of the scab on the back and you were referred to paragraph 7 of the statement of Dr Aggett.

MR NAIDOO: Yes?

10 MR VARNEY: BA.55. Obviously he was aware that he had injuries on his back. And it just occurs to me that he would not have been in a great position to examine his own back.

MR NAIDOO: Yes, that is very difficult to do. You can really only feel your back, you know the point of tenderness, or scab or the irritation. Unless there was a mirror in the cell, he would not have been able to see it.

MR VARNEY: Yes. And since we have heard evidence that the second floor cells were not the Ritz, there are no evidence of any mirrors.

20 MR NAIDOO: Yes.

MR VARNEY: On the second floor.

MR NAIDOO: Certainly.

MR VARNEY: No further questions, M'Lord.

QUESTIONS BY THE COURT: Yes. Doctor, I just have one question.

MR NAIDOO: Thank you.

COURT: And it relates to the hanging position as appears on FGK7.1.

MR NAIDOO: Yes, M'Lord?

COURT: Now, you were also referred or directed to certain pictures which were taken by the photograph when he went for an inspection in loco, and where we see that the volunteer there is being propped up by two people, in order to reach the sixth bar.

10 MR NAIDOO: Yes, M'Lord.

COURT: Now, and he is facing the grill door itself?

MR NAIDOO: Yes, M'Lord.

COURT: But Dr Aggett he has got his back against the grill.

MR NAIDOO: Yes, M'Lord.

COURT: Now how would he have managed to climb up, fasten the towel or whatever, and still manage to turn his body around?

MR NAIDOO: Yes.

COURT: So that he faced the other way around? After
20 having witnessed the difficulty with which the volunteer went up those.

MR NAIDOO: Yes.

COURT: Would he have done it that way or would he have been able to tie the cloth from behind?

MR NAIDOO: Yes?

COURT: From behind. Is that... would that have been possible?

MR NAIDOO: M'Lord, I would obviously be ... I am speaking as a doctor, and a pathologist.

COURT: Yes.

MR NAIDOO: But not with, you know, any special knowledge of this, but I would think that it would be difficult, that one would have to spin inside the noose, to turn around, one would ... it is a matter of spinning, and repositioning one's feet, to
10 keep your support first, spin around and then, when you are in position, then you will let yourself steadily fall or drop, et cetera. So it is difficult.

I am just looking, the issue of exactly that height of securement of that ligature, was one that bothered me and I thought it wise to draw it to the court's attention, that I find it strange that if someone were to be - and I know I am talking about suicide versus homicide - but I have to draw the court's attention that it be strange, in most suicide cases, you look for the easiest opportunity to afford yourself a noose. So that is
20 my difficulty with that.

I am saying - just to answer - it is not impossible for a person to contrive, to place oneself and to suspend oneself in that manner. But it is difficult.

COURT: Mm.

MR NAIDOO: It is. That is the best I actually can help the

Court with that.

COURT: And just ... [intervened]

MR VARNEY: M'Lord, if I just may bring something to Your Lordship's attention. Because I was actually one of the individuals in that photograph.

COURT: Ja?

MR VARNEY: Let me just be clear M'Lord. If there is any suggestion that we were propping up or pushing the volunteer, we were simply holding up our hands to prevent the volunteer

10 ...[intervened]

COURT: Him from falling?

MR VARNEY: ... from falling, because we obviously wanted to avoid the same fate to the falling volunteer, so we were simply holding up our hands, but we were not pushing or propping him up.

COURT: Oh? He managed to climb himself, by himself, up there?

MR VARNEY: So he used his own strength.

COURT: His hands. Ja.

20 MR VARNEY: To hang on and do his manoeuvre.

COURT: But at the time, at the time when he had to try to fasten this scarf, he had to help not to fall down?

MR VARNEY: M'Lord, that is a good point, and I might have to confer with my colleagues, but I do recall that when he first got up, we were concerned that he might just slip, and so we

were there as a sort of back up, M'Lord.

COURT: Ja. If we look at photo 120.

MR NAIDOO: Yes, M'Lord?

COURT: We see that the volunteer is up there, but when we look at photo 119, before that.

MR NAIDOO: Yes, M'Lord.

COURT: He is being held up but he has got his feet on the second bar, but he is busy trying to tie, to put, to pull the scarf through his neck.

10 MR NAIDOO: Around his neck.

COURT: So what I am saying is, after that, that he would have had to turn himself around?

MR NAIDOO: Then, then do the careful repositioning of himself, and turn himself around. Yes. So the sequence would be, if I may correct the way I see it is, first securing a good tie to, at the top to hold the weight.

Well, creating the noose first at the bottom, then securing the tie very strongly to hold and then ascend up the bars and positions oneself into the noose, so that it is slung 20 around the neck and then do the turn and allow oneself to drop, to fall or to ... to drop.

COURT: Ja. I thank you. Are there any questions arising out of the gentleman's?

QUESTIONS BY MR MLOTSHWA: Yes, M'Lord. Sir, if he did not turn around after putting the noose around his neck, what

would have happened?

MR NAIDOO: Sorry, could you just repeat that?

MR MLOTSHWA: If he did not turn himself around, to say that his back faced the grill, what would have happened?

MR NAIDOO: Okay. So what we would have had, in that case, is the scenario of rearward slung ligature, not common. But it is possible to lead to a fatality, those rearward slung ligatures, it is not common, because it is not producing the kind of constriction of the vital portion of the neck.

10 So, I do not know about the crime scenes where this is found, but generally they will not work. They will not work, and there is a strong possibility that the ligature will slip and the body, the person will fall down to his feet. I mean, it may not hold. So the kind of vertical alignment of the body, will not support easily a rearward slung noose.

COURT: Hm.

MR NAIDOO: You would see it in other scenarios where people hang themselves, the same body suspension, partial weight or full weight from door knobs and from wardrobe knobs

20 and from other contraptions, down staircases et cetera.

There is lots of possibilities. So the vertical slung body it is usually not enough to ... the rear slung noose is not enough to support a body in vertical full weight suspension.

MR MLOTSHWA: But if you sort of brought the noose that is the noose of the sling.

MR NAIDOO: Yes.

MR MLOTSHWA: In his neck but still facing that side, will it have made a difference?

MR NAIDOO: Oh, sorry. So you are saying that the normal anterior sling of the noose.

MR MLOTSHWA: Yes.

MR NAIDOO: But still facing ...[intervened]

MR MLOTSHWA: The grill.

MR NAIDOO: The door. No, he would have definitely still
10 succumbed to the same nature... same or similar death. He certainly would. The full weight of the body, even if he was facing the bars, it would have been the cause of his death.

MR MLOTSHWA: Yes. And I would imagine, if you want to die, you would want to die, you would not choose in which way to die, whether facing that way or facing the other way. You agree?

MR NAIDOO: I would think so.

MR MLOTSHWA: And you would agree with me that the turning around would have been a conscious act?

20 MR NAIDOO: If self inflicted?

MR MLOTSHWA: Ja, if self inflicted.

MR NAIDOO: Oh, it would have to be a conscious act. Yes.

MR MLOTSHWA: Ja.

MR NAIDOO: If self inflicted.

MR MLOTSHWA: Ja. So, in other words, he would have

chosen.

MR NAIDOO: Yes.

MR MLOTSHWA: To die facing his back, his back facing the grill.

MR NAIDOO: Yes. Correct.

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

COURT: Thank you.

MR VARNEY: No, nothing further M'Lord.

COURT: Is that all. Thank you.

10 MR MLOTSHWA: Thank you.

COURT: Doctor, thank you very much.

MR NAIDOO: Thank you, M'Lord.

COURT: Ja. You are excused now.

MR NAIDOO: Thank you so much.

NO FURTHER QUESTIONS

COURT: Yes, does this bring us to the end of the proceedings for today?

MR VARNEY: Yes, M'Lord. And just on behalf of the family, we are grateful for the extended sitting of today.

20 COURT: Thank you. Yes. So, this matter is now postponed to Monday. What is the date on Monday?

The 10th. To Monday the 10th of February, at half past nine again, as usual. Thank you. The Court adjourns.

COURT ADJOURNS [15:29]

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The inquest into the death of the late:

DR NEIL HUDSON AGGETT

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TRANSCRIBER'S NOTES

1. This is a verbatim transcription of court proceedings.
2. Indistinct words and or phrases are indicated with audio system time stamps.
3. Where no clear annotations are furnished, those names are transcribed phonetically

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