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BELL, DEWAR & HALL

19 June 1982

INQUEST - LATE DR NEIL HUDSON AGGETT

CONFIDENTIAL

1. Introductory

The object of this memorandum is to provide, as far as possible, a report on the inquest in the light of the position as at 19 June 1982, when this report is being dictated.

Paragraph 3 gives a brief description of Dr Aggett. (Page 3)

Paragraph 4 summarises the salient features of the evidence collected by the police and made available to us as representatives of an interested party. It refers to the statements which Dr Aggett made to the police while under detention, his interrogation, the circumstances of his death and the fact that he did not receive the visits from a magistrate and from an inspector of detainees to which he was entitled in law. (Page 4)

Paragraph 5 deals with a complaint of an assault which Dr Aggett made to a magistrate who visited him and an affidavit which he made to a police sergeant 14 hours before his death. (Page 7)

Paragraph 6 deals with the legal representation of the parties at the inquest. (Page 7)

Paragraph 7 deals with the short formal inquest hearing on 2 March 1982. (Page 8)

Paragraph 8 deals with the inquest hearing on

13 April which was brought to an early end when an objection was made to the reference to the affidavit which Dr Aggett made 14 hours before his death. (Page 9)

Paragraph 9 deals with the abortive application made by the Minister of Law and Order to the Supreme Court for a review of the magistrate's decision to permit the affidavit to be used in cross-examination. (Page 10)

Paragraph 10 deals with the investigation and preparations which have been made by us. (Page 11)

Paragraph 11 summarises the salient features of the hearing before the magistrate from 7 June and deals with the medical evidence, the evidence of Mr Smithers who witnessed an assault on Dr Aggett and the evidence of the inspector of detainees. (Page 15)

Paragraph 12 attempts to summarise the present position at the stage when we are awaiting the ruling of the magistrate on the admissibility of the evidence contained in the affidavits which we have collected. (Page 18)

Paragraph 13 sets out our view on the importance of the case. (Page 19)

The post script sets out our further observations on the matter up to the time of despatching this memorandum. (Page 21)

2. Our clients

Our clients are Mr and Mrs J A E Aggett of 120 Upper Orange Street, Somerset West, Cape Province, the parents of Dr Aggett who died at John Vorster Square Police Station, Johannesburg, on 5 February 1982 while under detention under the Terrorism Act, 1965.

3. The late Dr Aggett

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- (a) Dr Aggett was born in Kenya on 6 October 1953. His parents were farming in Kenya but retired to South Africa some years ago. After completing his high school education at Kingswood College, Grahamstown, he studied medicine at the University of Cape Town and was, in 1973, awarded an Anglo American Group Vocational scholarship. His idealistic nature is revealed in a journal which he kept at the time and in the application which he made for his scholarship. He wrestled with questions of ideals and the purpose of life.
- (b) On qualifying, Dr Aggett elected not to enter the service of the Anglo American Corporation but rather to pay back all he had received from the Corporation, a sum of some R6 668,00.
- (c) As Dr Aggett later explained in statements which he made to the police during his detention, Dr Aggett, in serving Blacks in the hospitals in which he worked, came to the view that medical treatment alone was not sufficient for the disadvantaged people whom he was serving. It was important that their living conditions be improved and this improvement could, in his view, be best brought about by helping them to organise themselves to secure a more healthy environment. The inadequacies of the Workmen's Compensation system worried him. This led him to contact with trade unions and the Industrial Aid Society. Eventually he took the office of secretary to the African Food and Canning Workers' Union. He received no remuneration for his work for the union. To meet his modest living needs and to keep his medical connections, he did night duty at Baragwanath Hospital, a hospital serving the Black population of Johannesburg.
- (d) Because of his interest in the cause of Blacks, Dr Aggett formed friendships among people of similar interests. But, as appears from an affidavit which we subsequently obtained from the Chief Personnel Officer of a substantial industrial group, which has
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been admitted as evidence, he was respected by industrialists as an honest, sincere man, of moderate approach who performed successfully in the course of negotiations on behalf of his union. Because of his activities and the connections which he was forming, he was constantly watched and followed by the security police.

- (e) On 26 November 1981, Dr Aggett, together with his common law wife, Dr Elizabeth Floyd, was detained under section 22(1) of the Internal Security Act and kept at Pretoria Central Prison. Thereafter, from 11 December 1981, he was detained under section 6(1) of the Terrorism Act, 1967 at John Vorster Square Police Station, Johannesburg. Section 6 provides for almost indefinite detention at the behest of the police for the purposes of interrogation.
- (f) At the same time as Dr Aggett was detained, numerous others were detained in all parts of the country. The trade union movement suffered heavily as did the movement opposed to the South African Indian Council. It has subsequently appeared that the security police hoped to obtain proof that the African National Congress had infiltrated into a variety of organisations.
- (g) At 01h30 on 5 February 1982, the guard at the cells at John Vorster Square found the body of Dr Aggett hanging against the grille inside the door of his cell.

4. The evidence collected by the police

In accordance with the standard procedure for inquests, the investigating officer, Cpt Victor, of the South African Police at John Vorster Square, collected information, mostly in the form of affidavits, which were made available to us as the representatives of an interested party. The salient features of the police evidence are:

- (a) Dr Aggett was questioned during December and

early January. He was made to type out a statement, a copy of which has been made available to us. In this statement he describes the whole of his life and mentions numerous people with whom he had been in contact from his school days. By civilised standards, it is an innocuous document. Even by South African standards, it is innocuous save in so far as it mentions having discussions with persons who had at some time or another found themselves at loggerheads with the South African Police on account of their political views and activities.

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- (b) In mid-January Dr Aggett was, according to the police, interrogated about certain points in his statement which were not clear.
 - (c) On about 28 January, the police came to the conclusion that he had not given full particulars of his activities and that he should therefore be interrogated "more intensively". After having been interrogated most of the day on Thursday, 28 January, he was again taken from his cell at 16h18 on that day and questioned throughout the night and throughout the two succeeding nights, eventually being returned to his cell at 03h00 on Sunday, 31 January. According to the police, even at that stage he was quite normal and did not complain.
 - (d) Each day thereafter, Dr Aggett was made to work further on a second statement, a copy of which we also have. In part the second statement consists of a rewriting of the earlier statement, with more details added. It also deals with certain matters not touched upon in the earlier statement. He does, for instance, admit to having joined in what is quite a lawful activity in South Africa, the study of "Capital" by Karl Marx.
 - (e) Interesting features of the second statement are:
 - (i) Most of it was, at some time or another, torn in half, possibly by the security police as an
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indication that they were not satisfied with it.

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- (ii) There is an introductory paragraph reading, "I support the Marxist ideology and therefore I am a communist. I am also an idealist."
 - (iii) There are statements to the effect that, "I had communistic ideas."
 - (iv) Bearing in mind the number of days and nights spent on it, it is not very long.
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- (f) According to Lt Whitehead, the chief interrogator, Dr Aggett spent the last day of his life, 4 February, writing his statement in the offices of the security branch, from 08h37 to 15h49.
 - (g) At 01h30 on 5 February, Dr Aggett was found hanging in his cell. Having originated in Kenya, he used, as pyjamas, a piece of cloth, rather like a sarong, called a kekoi. Immediately inside the door of the cell is a barricade of iron bars, to protect the warder from an attack by a prisoner. It was from this that his body was hanging.
 - (h) Although the police standing orders require that prisoners are to be visited every hour, the visits on that night had been few and the policemen in charge of the cells admit to having falsified the register to record an inspection of cells which did not take place.
 - (i) An autopsy was held in the early forenoon of 5 February, the date of his death. We were able to get a private pathologist to attend the autopsy before it had proceeded very far. It seems clear that the death was caused by hanging. There were no signs of recent assaults.
 - (j) In accordance with the provisions of the Internal Security Act, an inspector of detainees called at John Vorster Square on 4 January to visit Dr Aggett. He was told that he could not see Dr Aggett because he was

"out on investigation". In fact, Dr Aggett was upstairs being interrogated by the security police.

- (k) In terms of the provisions of the Terrorism Act, a magistrate must visit a detainee every 14 days, if this is possible. On three occasions a magistrate called to see Dr Aggett only to have the same experience as the inspector.

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5. The alleged assault

From the information originally made available to us, it appeared that:

- (a) The only successful magisterial visit to Dr Aggett at John Vorster Square took place on 18 January. He then complained that he had been assaulted on 4 January and that he had suffered a slight cut on his forearm.
- (b) On 19 January 1982 the magistrate reported this to the Director General of the Department of Justice and to various police authorities.
- (c) It is not clear when the report reached the police at John Vorster Square. What is apparent is that, when the report was received there, it was dealt with very casually so that it was only on 4 February that a woman detective sergeant, Sgt Blom, interviewed Dr Aggett while he was being interrogated on the tenth floor, and took from him an affidavit in which he mentions the assault on 4 January and also the fact that he had suffered further assaults and deprivation of sleep after the time of seeing the magistrate.

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6. Legal representation

We engaged the services of Adv George Bizos, S C

and Adv Dennis Kuny, both members of the Johannesburg Bar who have considerable experience in handling security matters. Mr Bizos has been personally involved in a number of inquests into deaths in detention.

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The matter has been handled in our offices by the writer, William Lane. The writer was originally assisted by Mr David Dison who, having served articles of clerkship with this firm, is now in the process of being admitted as an attorney. Mr Dison was, however, called up for a period of military service, from which he has now returned. While he remains available to assist in this matter, he has been largely replaced by Mr James Sutherland, who has completed his articles of clerkship but has certain examinations to pass before being admitted as an attorney.

The Attorney General for the Transvaal is represented by one of his deputies, Mr A G Haasbroek, and by the senior public prosecutor of Johannesburg, Mr A de Vries. The passive role adopted by them is something upon which a separate full report could be written.

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The State Attorney has appointed Mr P J Schabort, S C and Mr A Burger to represent the Minister of Law and Order, the Minister of Transport and the various policemen involved. The Minister of Transport is concerned because one of the assailants accused by Dr Aggett in his affidavit to Sgt Blom is a member of the Railway Police, seconded for service in the security police. *MMW*

7. Inquest hearing on 2 March 1982

This was largely a formal hearing for the purpose of fixing dates. Mr Bizos gave notice that we would apply for an inspection of the cell and of the interrogation rooms. He also intimated that we would apply to the relevant Minister for permission to interview persons still in detention who might have material evidence to offer at the inquest. 13 April was then fixed for the commencement of the inquest and he undertook that we would do our best to furnish any affidavits

which we might like to place before the court by 26 March.

8. Inquest hearing on 13 April 1982

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- (a) The magistrate had summoned to his assistance a medical assessor, one Professor L S Smith, a pathologist at the University of Cape Town. He sits in a purely advisory capacity to the magistrate on medical questions.
- (b) Mr Bizos handed in an affidavit which we had taken from Mr Maurice Peter Smithers, a former detainee, describing an assault on Dr Aggett which he had witnessed on 25 January. He also mentioned the desirability of an inspection of the interrogation rooms in order to verify whether it had been possible for Mr Smithers to see what he said had occurred.
- (c) Mr Bizos also handed in the first affidavit which we had taken from Mr Tom Lodge, a political scientist from the University of the Witwatersrand. This affidavit is dealt with further below.
- (d) Certain police witnesses were called to testify to having received certain parcels for Dr Aggett. This evidence was largely formal.
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- (e) The District Surgeon, Dr V D Kemp, then testified to what he had found at the autopsy and, in particular, he testified to signs of injury found on the right forearm of Dr Aggett.
- (f) Mr Bizos commenced his cross-examination by asking Dr Kemp to comment on whether or not the injury on the right forearm which was found at the autopsy was consistent with the assault described by Dr Aggett in the affidavit which he made to Sgt Blom.
- (g) Adv P J Schabort immediately objected that the affidavit was inadmissible. When his objection was overruled, he applied for a

postponement of the hearing to afford his clients an opportunity of applying to the Supreme Court to review the decision of the magistrate. This application was, despite our objections, granted, and the proceedings were then postponed provisionally to 1 June 1982.

9. The Supreme Court application

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- (a) On 26 April we received from the State Attorney an application (by the two Ministers and the policemen accused by Dr Aggett) to the Supreme Court for the review of the magistrate's decision. The contention was that the ruling was wrong in that it would introduce inadmissible evidence. It was further contended that it was a proper case in which the Supreme Court should intervene, more particularly because it was contrary to the public interest that the interrogation methods used by the South African Police should be considered in open court.
- (b) Although we were always satisfied that this was not a case in which the Supreme Court would intervene, we had to file a lengthy affidavit to show the court that, if it was disposed towards intervention, the magistrate's ruling was, in any event, correct.
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- (c) We took considerable care in the framing of the affidavit filed by Mr Aggett in opposition to the application. We thought it desirable to illustrate to the Supreme Court all the issues involved in the matter, to summarise the salient features of the information available and to set out our legal contentions in regard to the ambit of the enquiry which the magistrate has to conduct.
- (d) The form of the review proceedings was that the magistrate was called upon to produce to the Supreme Court the record of the inquest proceedings and all the other papers which had been placed before him. Notwithstanding

this procedure, the magistrate took the extraordinary step of declining to file all the papers with the Registrar of the Supreme Court. This led to correspondence with him and with the State Attorney. Fortunately, the State Attorney agreed with our contentions and filed in the Supreme Court copies of the documents which the magistrate should have filed. The magistrate's conduct, therefore, was not of material significance but did have the effect of increasing the legal costs of the whole proceeding.

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- (e) After further affidavits had been filed by the police, in reply to Mr Aggett's affidavit, the matter was heard in the Supreme Court in Pretoria before Mr Justice Eloff and Mr Justice Goldstone.
 - (f) Although, in the course of argument on 2 June, the judges indicated that they accepted that the inquest was a far-reaching enquiry, they, in their judgment delivered on 4 June, took what could be seen as the easy way out. They simply ruled that no satisfactory case had been made out by the applicants for the intervention of the Supreme Court.
 - (g) The application was dismissed and the applicants were ordered to pay Mr Aggett's costs of the application.

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10. Our investigations

Before resuming the narrative of the progress of the inquest, it would be as well to describe, at this stage, the investigations conducted by us and our team.

- (a) It appeared to us, at an early stage, that psychological factors were important in this matter. We therefore consulted, at long range, with Dr L J West, of the Neuro Psychiatric Institute in Los Angeles. Dr West has given evidence previously in South African courts and appeared to us to be a desirable witness to describe to the court

the devastating effects of solitary confinement and his theory of the "DDD" (Debility, Dependency and Dread) syndrome. The magistrate has now, by consent, admitted an affidavit which he made at an early stage and which we filed principally for the purpose of outlining his expert approach.

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- (b) We consulted with Professor Charl Vorster, of the Rand Afrikaans University, who has strong feelings on the question of detention and who has made powerful statements to local newspapers.
- (c) We consulted with Dr Zalmon Wolf, a reputable and experienced psychiatrist in general practice in Johannesburg.
- (d) The advice of all these men was that it was necessary to conduct an investigation into the personality of Dr Aggett to eliminate, if possible, any question of a predisposition towards suicide. Both Dr Wolf and Professor Vorster consulted with members of the Aggett family and with friends and associates of Dr Aggett. Both of them found that there was no predisposition towards suicide. Professor Vorster has made an affidavit, which we have filed, describing the personality of Dr Aggett and stating with conviction that the death of such a person must be attributed to some variable factor which must have occurred in the closing stages of his life. Dr Wolf's affidavit, which has been admitted by consent, states, more simply, that there appears to have been no predisposition to suicide.
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- (e) As mentioned in 8(c) above, we also consulted with Mr Tom Lodge, a political scientist at the University of the Witwatersrand, who has made a special study of people and organisations active in the liberation struggle in South Africa during the last few decades. We have now filed no less than three separate affidavits by Mr Lodge. The first of them says:
- (i) That the words penned by Dr Aggett in his second statement are

inherently inconsistent in so far as a Marxist does not refer to Marxism as an ideology and would not couple a professed adherence to Marxism with a professed adherence to idealism.

- (ii) That a communist is unlikely to use the word "communistic" which is normally used by anti-communists.
- 8 (f) The second affidavit of Mr Lodge deals with certain papers which the investigating officer has placed before the magistrate purporting to emanate from unlawful organisations in which adherents of these organisations are urged to lay false charges against the police and to commit suicide rather than to risk betraying the brethren. Mr Lodge is of the opinion that these documents are forgeries and that they do not emanate from the organisations to which they are attributed. Immediately his affidavit was filed, counsel for the police was quick to insist that the documents had always been irrelevant and should be excluded.
- 9 (g) During the proceedings of the last two weeks, we have filed an affidavit from Mr Lodge saying that there are no sinister deductions to be drawn from the collection of books which were seized by the security police at the time Dr Aggett was detained. This was necessitated by the production of lists of books found in Dr Aggett's possession, presumably for the purpose of arguing in due course that he was a dedicated supporter of organisations which have been declared unlawful.
- (h) But our really far-reaching investigations have been into the evidence available from former detainees. A number of them, including Dr Elizabeth Floyd, were released at the end of March. They were then suffering from the effects of their detention and, in fairness to them, we had to allow them some time to recover before we pressed them for statements. They had much to say about their personal experiences and about

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their treatment at the hands of the security police, some of whose members had also been concerned in the handling of Dr Aggett. The writer, Mr Sutherland and Mr Dison (on his return from the army) have spent many days listening to them and ascertaining from them what they can say which has a bearing on the inquest. And, after hearing what the released detainees had to say, it became apparent that there were certain detainees, who have already been convicted, or who are awaiting trial, who also have something to say. And our investigations have also led to other detainees who are in custody at the behest of the Attorney General as witnesses in impending trials. Two of our witnesses are subject to banning orders under which their movements are restricted. We have, in certain instances, had to make applications to the Attorney General for access to the witnesses detained by him and, in the case of awaiting trial prisoners and convicted prisoners, applications have had to be made to the prison authorities.

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- (i) The result of all these efforts is that we now have what we consider to be an impressive set of some 12 affidavits made by people who have had, in most instances, no opportunity of consulting with each other which testify to:
- (i) A pattern of cruelty, humiliation and threats to detainees.
 - (ii) Interrogation conducted under inhuman circumstances.
 - (iii) Dr Aggett having been, during the last week of his life, in a state of complete unresponsiveness.
 - (iv) Dr Aggett having been in manifest pain.
 - (v) Dr Aggett having had, on at least one occasion, his limited privileges, in the way of books and food, removed.

- (vi) Lack of concern about complaints made, inducements to withdraw complaints made and casualness in the investigation of complaints which were not withdrawn.
- (vii) Knowledge, at quite a high level in the security police, of the cruelty and torture inflicted.

11. Inquest hearing from 7 June 1982

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- (a) Because the Supreme Court application had not yet been heard, the inquest was, on 1 June, postponed to 7 June on which day the proceedings commenced.
 - (b) The hearing of the medical evidence was resumed and the affidavit by Dr Aggett was put to the District Surgeon who testified to the fact that the injury on the right forearm, which he found at the autopsy, was consistent with the injury described by Dr Aggett in his affidavit.
 - (c) The private pathologist, Dr Botha, whom we had engaged to attend the autopsy, and a Professor Loubser, of the University of Pretoria, testified on matters relating to the autopsy and the cause of death.
 - (d) Extracts from a book by Mr Gordon Winter, an alleged former member of the South African Bureau of State Security, were put to the medical witnesses. Mr Winter describes, in his book, a technique which he says is used by the security police whereby a towel is put around a detainee's neck and tightened so that the detainee may lose consciousness. Winter says that this method of torture has, on occasions in the past, gone wrong and that the security police have, in an attempt to cover up their tracks, thereafter 'strung up' the unconscious detainee so as to produce a case of suicide. The doctors appeared to be in agreement that the finding at the autopsy were not inconsistent with Dr Aggett's having
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been strung up while still alive, but unconscious.

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- (e) On 9 and 10 June 1982, the proceedings in the inquest court were disrupted by the unfortunate fact that Mr Bizos had to attend at the Supreme Court in connection with another criminal matter in which he had been involved and which had extended beyond its allotted span.
- (f) On Friday, 11 June 1982, Sgt Blom, who had taken the affidavit from Dr Aggett, was called upon to testify. It was clear, from what she said, that she reported to the security police both before and after she took statements from complainants and that her investigation was a sham. When cross-examination of her was continued on Monday, 14 June, Mr Bizos enquired of her what she had done in connection with complaints made by other detainees. Objection was taken on the grounds that this was irrelevant. The magistrate then ruled that he was not prepared to permit the cross-examination to continue unless affidavits were placed before him to justify it. We undertook to do our best to produce these further affidavits by the following morning. Acting under pressure, we did produce a number of affidavits of the type described in 10(i) above but we knew, at that stage, of further affidavits which we could obtain.
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- (g) The magistrate then called as a witness Mr Smithers, referred to in 8(b) above, to testify to what he had seen of Dr Aggett being assaulted.
- (h) The story of Mr Smithers was, one might say, incredible. He said that on 25 January he had been made to wait in an office adjoining one in which Dr Aggett was being interrogated. He could see through the glass partitioning how Dr Aggett was made to do exercises while being beaten with what appeared to be a rolled up newspaper and thereafter made to run on the spot with his hands outstretched while being interrogated all the time. A Black policeman who was in charge of him saw
- Sgt Blom

all that was taking place without comment. We believe that Mr Smithers is an honest witness and that he stood up well to cross-examination.

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- (i) Then a number of police witnesses were called in an attempt to contradict what Mr Smithers had said but we believe that they were effectively destroyed by the cross-examination of Mr Bizos. Indeed, their evidence may be seen as confirming that of Mr Smithers in so far as they testified to the fact that, even if they had seen assaults taking place, they would have done nothing about it. They did not even tell Mr Smithers the time, as Smithers says they did, because detainees are not entitled to be told the time.
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- (j) On 16 June the inspector of detainees was called. He denied the correctness of what one of the police witnesses had said to the effect that, when he called to see Dr Aggett on 4 January 1982, he had been in too much of a hurry to get away and had therefore not troubled to enquire whether Dr Aggett was not perhaps available on the tenth floor. The inspector was then questioned about his experience with detainees in general and about their reluctance to make complaints about their handling in detention. Objection was once again taken to this line of questioning. The magistrate then ruled, finally, that he was not prepared to proceed with the inquest at all or to make any further ruling on the admissibility of evidence or on the question of the permissibility of lines of cross-examination until he knew that all the available affidavits were before him. We then undertook that we would see that such further affidavits as we chose to put before him were available by 10.00 a.m. on Friday, 18 June 1982.
- (k) A further furious spate of activity proceeded. Further affidavits were taken and efforts were made to gain access to certain other detainees and prisoners. In two instances, the Deputy Attorney General in Johannesburg himself took affidavits from detainees, access to whom was denied to us,

whose affidavits substantially confirmed the other affidavits which we had taken.

12. The present position

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- (a) We are, at present, heavily engaged in preparing argument on the question of the admissibility of the evidence reflected in our further affidavits. We are also preparing argument to counter the request, which will, in all probability, be made for a postponement of the hearing to enable the police to deal with these further affidavits, in the event of the magistrate deciding that evidence of that type is admissible.
- (b) The present position is extraordinary. The Inquests Act envisages that the police collect all the information. It is not for an interested member of the public to produce information. It is also not competent for the magistrate to give the type of ruling which he has given. It is for him to conduct an investigation into the cause of death and he may not, in our opinion, say that he is not prepared to consider information which is made available after the expiry of some arbitrary time limit.
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- (c) But, on the other hand, the ruling of the magistrate can be understood. He has to try to keep the investigation within some proper limits and it is not totally unreasonable for him to take a robust line and to require that information be placed before him on oath to satisfy him that a particular line of cross-examination is justified and that it does not simply constitute a 'fishing' expedition.
- (d) While it is not impossible that he may rule that evidence will not be accepted in regard to the treatment of other detainees, he cannot, in our opinion, exclude the evidence which we have tendered in so far as it relates to the observations of detainees on the condition of Dr Aggett.

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- (e) But, whatever the magistrate's ruling may be, it is apparent that the enquiry is of a more far-reaching nature than we ever envisaged. Any estimates of time and of costs which we may previously have given are hopelessly inadequate.
 - (f) The inquest has not yet really got under way. We still have to hear the interrogators and many of the policemen who came to the cell on the night of the death.
 - (g) Our present view is that we will not call Dr West from Los Angeles. What we originally thought was a case dealing with the psychological effects of detention now appears to be one dealing with common brutality.
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13. The importance of the case

We have previously said how important we consider the case to be. The further information becoming available underlines what we have said. Mr Bizos, possibly more experienced than anyone else in this field, considers the matter to be the most important case ever heard concerning our detention laws.

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- (a) The first object of the enquiry must always be to enquire how it comes about that, in a professedly Christian country, a young man of high ideals and purpose in life, against whom no case of criminal conduct has been made, comes to die in mysterious circumstances in the cells at John Vorster Square.
 - (b) We have not investigated in the same depth the background of the other detainees. But there is room for the view that those who have been so mercilessly treated are of the type that many other countries would see as their hope for the future.
 - (c) The methods of interrogation used by the security police have been the subject of evidence in many South African cases. But in

those other cases, the question has been simply one of whether or not a particular statement is admissible in evidence. The present enquiry does not relate simply to admissibility of evidence or the credibility of witnesses. It deals with the harsh effects on human life of the methods used.

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- (d) The Commission, under the chairmanship of Mr Justice Rabie of the Appeal Court, who will soon take office as the Chief Justice of South Africa, recently purported to investigate the operation of security laws in the Republic. The Commission has been criticised for its failure to pay proper regard to the case of detainees. This criticism appears to be supported by the evidence to be given at the inquest.
 - (e) The cause of the detainees has, during the last wave of detentions, been effectively pleaded by an active Detainees' Parents Support Committee. Their activities and protests have kept public interest alive. Informed members of the public should, therefore, be in a better position than ever to evaluate the import of the daily press reports on the progress of the inquest.
 - (f) This inquest demonstrates the ineffectiveness of the provisions relating to inspections by magistrates and inspectors. Not only are magistrates and inspectors frustrated but no effective heed is taken of their reports. On the contrary, the making of a complaint may well result in further pressure of the complainant.
 - (g) The question of the inadequacy of the procedures for investigating complaints against the police has also been a matter of public concern. The inadequacy of these procedures is illustrated.
 - (h) The inadequacy of the controls against abuses of power by the security police is illustrated.
 - (i) The inadequacy of the Inquests Act to deal with cases where the police are involved is demonstrated. If the investigating officer
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is casual about collecting evidence, the Attorney General seems incapable of breathing some fire into him.

But perhaps we are too close to the detail of the case to assess its real importance.

W LANE
BELL DEWAR & HALL
19 June 1982

Post Script

- (a) The magistrate has now ruled that the evidence of seven of the other detainees may be heard and he has directed that they be called upon to testify.
- (b) He has ruled that the evidence of the remaining detainees is irrelevant in that the affidavits do not disclose a sufficient nexus between the facts deposed to in their affidavits and the treatment of Dr Aggett. There is much to be said for his ruling in certain instances. An unfortunate flaw in some of the affidavits was that some of our witnesses were not, largely for fear of reprisals, ready to mention the names of those who were involved in their maltreatment. It may well be that, now that these witnesses see how many others have been prepared to testify, they may supplement their affidavits. It may also be possible, in the course of cross-examination of the police witnesses, to establish a nexus.
- (c) The magistrate has ruled that, provided that we receive from Dr West a curriculum vitae, duly attested upon affidavit, his affidavit will be admitted, without his being called upon to testify.
- (d) The magistrate has ruled that the affidavit of Dr Wolf may be admitted, subject to the right of any

of the parties to require that he be called upon to testify.

- (e) The magistrate has directed that Professor Vorster be called upon to testify.
- (f) The affidavit from the personnel officer has been ruled irrelevant and inadmissible.
- (g) The decision on the admissibility of the first affidavit by Mr Tom Lodge, dealing with the expressions used in Dr Aggett's statements, will stand over for the time being.
- (h) The pamphlets referred to in paragraph 10(f) on page 13 have been ruled inadmissible and consequently the affidavit of Mr Lodge dealing with the pamphlets has been ruled inadmissible.
- (i) The affidavit of Mr Lodge referred to in paragraph 10(g) on page 13, dealing with the books in the possession of Dr Aggett, has been accepted.
- (j) The whole proceeding now takes on an extra dimension. The seven former detainees who are to be called will probably be cross-examined at length. The police will, no doubt, produce affidavits accusing the detainees of perjury. These police witnesses will, in due course, be called and have to be cross-examined.
- (k) The intention appears to be that the police witnesses who have already made affidavits will now be called and the proceedings will continue until 30 June at which stage there will be a long postponement. Neither Mr Bizos nor Mr Schabert is available during July. During August Mr Bizos and Mr Kuny will be engaged in a long trial. The proceedings will, therefore, probably recommence at some time in September. We estimate that they will then continue for a period of six weeks, possibly longer.
- (l) The possibility of the police choosing to bring criminal charges of perjury against persons who have made affidavits is something which, in the long term, must not be left out of account.

INQUEST - LATE DR NEIL HUDSON AGGETT

CONFIDENTIAL

1. Introductory

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This report is to supplement the report of 19 June 1982 and the post script which dealt with the ruling of the magistrate.

2. Further evidence of Sgt Blom and of the inspector

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Being able to put to Sgt Blom and the inspector particulars of the experiences of a further limited number of detainees, a clearer picture emerged of inadequate action taken on reports and complaints of assaults. Indeed, a pattern emerged that 14 days normally elapsed between the receipt by the police of a complaint of an assault and the taking of an affidavit by the detective allocated to obtain particulars.

3. The evidence of Brig Muller

Brig Muller, the head of the security police at John Vorster Square, attempted to show how he gave clear instructions to his men on the careful

handling of detainees. However, it emerged in the course of cross-examination that:

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- (a) His actions were dictated entirely by reports which were made to him by Maj Cronwright and Maj Cronwright, in turn, relied entirely upon reports which were made to him by the interrogators. If, therefore, an interrogator reported that Dr Aggett was refusing to talk or that he was withholding information, appropriate action would be taken to continue the detention and the interrogation without any effective check on the correctness or otherwise of what the interrogator reported.
- (b) As regards the investigation of complaints, it was clear that the brigadier adopted a bureaucratic view. He was satisfied that he had done enough if, on receipt of notice of a complaint, he sent off a letter to the appropriate police authority requesting an investigation.
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- (c) Similarly, as regards the conditions of detention, the brigadier was prepared to rely upon his subordinates. Although the warrant authorising Dr Aggett's detention incorporated by reference the provisions of the prison regulations relating to awaiting trial prisoners, the brigadier had not troubled to read the prison regulations.

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- (d) Also, in regard to visits by inspectors and magistrates, the brigadier was satisfied to leave it to the inspectors and the magistrates to see that they got access to detainees.
 - (e) Needless to say, the brigadier, like all the other policemen, testifies that he saw Dr Aggett shortly before his death and found him to be in reasonably good trim.
 - (f) It was in the course of the brigadier's evidence that we heard, for the first time, that the reason for Dr Aggett's lengthy interrogation of some 60 hours in the week prior to his death was probably that he was keen to talk and did not wish to delay in making a complete breast of things. This point and the question of further statements by Dr Aggett are dealt with more fully in the discussion of Maj Cronwright's evidence.

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4. The evidence of Maj Cronwright

- (a) Maj Cronwright confirmed that he was in immediate charge of the whole investigation. It was thus possible to elicit from him that certain other witnesses, from whom we have affidavits but whose affidavits have not been accepted by the magistrate, were interrogated by men under his command. We hope, arising out of this evidence, to be able to apply successfully for their affidavits to be

admitted so that they may be called as witnesses.

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- (b) The major, like Brig Muller, emphasised that he, in accordance with instructions, did not interfere in investigations made by the CID into assaults or into the death of Dr Aggett. Despite this, when he heard of Dr Aggett's complaint to the magistrate on 18 January, he summoned the men responsible into his office and satisfied himself that the complaint was without foundation.
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- (c) The major said that, in the ordinary course of events, he would not have agreed to the 60 hour period of interrogation. The only reason why he did agree to it was that he was told by Lt Whitehead that Dr Aggett was keen to talk and that Dr Aggett had consented to a long session in the interrogation room. He said that he informed Brig Muller of this but the brigadier had previously said that he only heard of the long period after the death had occurred. This long period of interrogation could not, according to the major, be described as "intensive interrogation" as described by Lt Whitehead. There is, therefore, a direct conflict between the affidavit of Lt Whitehead and the evidence of Maj Cronwright.
- (d) Brig Muller had mentioned that, in the last few days of his life, Dr Aggett had written on a piece of paper the names of four

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co-conspirators. He claimed privilege in regard to this document and refused to produce it. Maj Cronwright went a great deal further. He said that there were dozens of short statements written by Dr Aggett in his own handwriting. These statements implicated many people including "a respected person present in the court". He had not mentioned the existence of these statements to the investigating officer or to the Attorney General. In this regard it might be mentioned that, in none of the police affidavits which have been filed is any mention made of this further material.

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(e) The major also testified that, on the last day of Dr Aggett's life, he and Lt Whitehead were engaged in drafting a telex application to the Commissioner of Police for permission to arrest the further four persons mentioned by Dr Aggett. He believes that Dr Aggett was in an adjoining room and probably overheard the conversation between him and Lt Whitehead.

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(f) The object, presumably, of all this further evidence is to suggest that Dr Aggett had betrayed many other people and that this had probably contributed to his decision to take his life.

5. The question of police privilege

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The reference by Brig Muller and Maj Cronwright to further statements by Dr Aggett comes as a complete surprise. We have objected to evidence being given about these statements without their being produced and have called for their production. Counsel for the police has undertaken to take the matter up with the Ministry of Police and to ascertain whether the head office persists in the claim of privilege. The whole question will be argued in due course. It might be observed that our law recognises that the police are not obliged to produce information given by informers and judges have, in the past, made some rather loose statements to the effect that it is contrary to the public interest that information in the hands of the police relating to the investigation of crimes be produced in court without the consent of the police.

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6. Professor Plomp's affidavit

Counsel for the police have had, from the commencement of the inquest, a Professor Plomp, of Pretoria University, in attendance to advise on psychiatric aspects. Shortly before Maj Cronwright gave evidence, an affidavit by Professor Plomp was produced. This affidavit discusses, very authoritatively, the question of predisposition towards suicide and comes to the conclusion that Dr Aggett was not predisposed towards suicide. It then goes on to discuss the

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additional factors bearing upon Dr Aggett as a prisoner in the light of statistical evidence from a number of sources indicating that prisoners are greater suicide risks. Finally, Professor Plomp discusses the question of the kind of event which could trigger off a suicide. He mentions, in particular, the possibility of Dr Aggett's having come to a realisation that he might have committed treason against his comrades. The appearance of this affidavit, at about the same time as the new surprise twist in the evidence, is, therefore, a most interesting coincidence.

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7. Postponement

On Tuesday, 29 June, after Maj Cronwright had given evidence, the matter was postponed until 20 September 1982. The reason for the length of the postponement is that counsel are not available during July. During August Mr Bizos and Mr Kuny will be engaged in the defence of Barbara Hogan who is being charged with treason. There were certain tenuous links between her and Dr Aggett. Certain of the detainees whom we have seen and whom we wish to see will give evidence in her trial. When it is disposed of, further witnesses may, therefore, be available to give evidence.

A further reason for the length of the postponement is that, during early September, the medical assessor will not be available.