

IN THE HIGH COURT OF SOUTH AFRICA
GAUTENG LOCAL DIVISION

Case number:

In the matter of:

REOPENED INQUEST: LATE NEIL HUDSON AGGETT

AFFIDAVIT OF DAVID DISON

I, the undersigned,

DAVID DISON

do hereby state under oath and say that:

- 1 I am an adult male employed as a legal advisor at Emoyeni Media run by Nonhlahla Mavie based 15 Jubilee Road, Parktown.
- 2 In 1982 I was an associate attorney at Bell, Dewar and Hall and was part of the legal team representing Dr Neil Aggett ("**Neil**"), Dr Elizabeth Floyd ("**Liz**") and, later, the Aggett family.
- 3 I was close with Neil and Liz for a number of years before their detention. We were all of a similar age and had all recently become professional doctors and lawyers. We shared a vision for a free South Africa in which all who lived in it would enjoy equal rights.

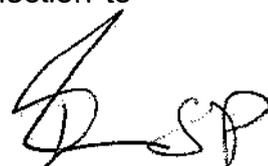


- 4 We shared a passion for assisting workers with their employment issues and did volunteer counselling at the Industrial Aids Society ("IAS") at SACTA House in Bree Street, Johannesburg. The IAS was established in the 1970s to assist black workers with employment issues like workman's compensation, dismissal and wages as well as their right to organise themselves collectively as bargaining units. It was a gathering point for black workers who were starting to flex their new found trade union rights.

- 5 Neil and I worked on cases at the IAS together. He had come up from Cape Town in 1977 and was training as a union organiser for the African Food and Canning Workers Union ("AFCWU"), today known as the Food and Allied Works Union ("FAWU"). The FCWU was rebuilding after having been targeted and weakened by the Apartheid State for its non-racial approach to organising labour in the Western Cape during the 1950s and 1960s.

- 6 Towards the end of 1981 a grouping of activists and members of various trade unions and non-governmental organisation were arrested by the Security Branch ("SB") and detained at JVS and other places. We subsequently learned that Barbara Hogan, who was reporting to the Botswana branch of the banned African National Congress, fell victim to a SB entrapment and unwittingly handed over a list of names to the SB. This list came to be known as the 'Close Comrades list'.

- 7 Neil had met with Barbara Hogan in 1981. Once she was arrested Neil had a feeling that they might be arrested by the SB as a result of his connection to

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Barbara. Aligned to this were the concerns Neil had that the SB had already been following him for some time at this point. Liz shared these concerns.

8 Neil spoke to me about this apprehension before he and Liz were detained. He maintained that he had nothing to hide and insisted that all his activities were entirely lawful and that he was ready for detention if it were to pass. His greatest apprehension was the conditions of solitary confinement which section 6 of the Terrorism Act permitted. However, Neil was strong and resolute that the work that he was doing was legitimate and lawful.

9 Indeed, on 27 November 1981, the SB arrested and detained both Neil and Liz. Neil was initially detained at Pretoria prison and, after 14 days, was transferred to John Vorster Square ("**JVS**").

10 I acted as their attorney. Neither were permitted visits from an attorney while in detention and, accordingly, I did not see them or consult with them while they were in detention. Rather, I assisted them by delivering various items from their families to their places of detention.

11 On 5 February 1982, I received a phone call from Jill Burger, Neil's sister. She advised me that a police officer had informed the Aggett family that Neil had died in detention. She requested that I assist the Aggett family in determining Neil's cause of death in the expected inquest proceedings.

12 I was prepared to assist the family, however due to the complexity and public profile of the case I advised them that the services of a senior attorney and

advocates would also be necessary. With the family's approval, I approached one of the senior attorneys at Bell, Dewar and Hall, Mr William Lane. Mr Lane agreed to assist and proceeded to brief advocates George Bizos SC and Dennis Kuny to represent the Aggett family. Junior attorney James Sutherland and advocate Mahomed Navsa also assisted in the inquest.

THE LEGAL TEAM'S STRATEGY

- 13 Advocate Bizos SC was well respected and a very experienced advocate who had acted for the families of detainees in several inquests into deaths in detention. As the team's leader, he indicated that if we accepted the version that Neil had died by suicide, the legal team could open a wider inquiry into Neil's general treatment than if we argued that Neil was murdered. This would allow the legal team to convince the magistrate that the SB could still be held responsible for driving Neil to suicide.
- 14 The decision was made against the context in which the first inquest took place in 1982. We knew that we would face an uphill battle with an unsympathetic judiciary that routinely did the bidding of the apartheid State and which had a track record of going out of its way to exonerate the police.
- 15 Our decision was also informed by very real safety concerns for witnesses who were still in detention. If detainees had testified in support of a murder case, this would have attracted the ire of the very SB officers in whose custody and care they remained. We were concerned for the safety of detainees and did not wish to expose them to risk of further harm at the hands of their captors.

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- 16 The legal team's decision was also informed by discussions with Dr Jan Barend Christiaan Botha ("**Dr Botha**"). Dr Botha was a pathologist in private practice. He attended an autopsy performed on Neil at the government mortuary on 5 February 1982 at the request of the Aggett family. Dr Botha indicated that the probabilities, on the available medical evidence, tended to show that suicide was a distinct possibility.
- 17 When the legal team attempted to convince the Aggett family of this approach, they were met with great resistance. The Aggett family, particularly Neil's father Aubrey Aggett, refused to accept that Neil had taken his own life. They insisted this was contrary to Neil's character. However, on our advice, the Aggett family reluctantly agreed to advance a case before the inquest court based on suicide despite their reservations.

MY ROLE IN THE MATTER

- 18 My primary responsibility as the junior attorney was to obtain statements from witnesses. These were primarily detainees that were detained at JVS at the same time as Neil. Other responsibilities included attending consultations and considering all the evidence available to the legal team, such as the structure of the SB and the statements made by Neil and other detainees at JVS and other places of detention in and around Johannesburg.
- 19 We spent a lot of time investigating the various iterations of Neil's statement. The first statement had been vetted by Captain Naude. Naude was a security police officer based in the Eastern Cape who had been brought in to conduct



the first interrogation. He ultimately concluded that there was nothing particularly suspicious about Neil or his activities. This begged the question as to why Neil's interrogation did not end there.

20 Instead, after Naude's departure, Neil was handed over to Lieutenant Stephan Peter Whitehead for interrogation. Whitehead was 26 years old, an ambitious graduate of the officer's course who wanted to prove himself. He vowed to extract a confession from the man he believed to be a communist and an ANC member.

21 Whitehead assembled a team that tortured Neil and forced him to state things he would not normally say. This is evident from various iterations of his statement. The starkest example of this is the changed narrative in the first paragraph of Neil's statement. Paragraphs 1 and 2 on page 1 of the first statement (Wits Exhibit B8.73) constitute a bald statement of his family birthplace:

My father was a farmer in Nanyuki and I had one older brother Michael and one older sister Jill...

Yet in the second unsigned and undated statement (Wits Exhibit B8.74) there is an insertion above the birthplace details:

I believe in the Marxist ideology and therefore I am a communist."



22 When I took Auret van Heerden's statement he told me that Neil had told him that Whitehead had driven him through the streets of Houghton and said:

"You are a doctor you could be rich and be living here in Houghton, instead you live in poor areas like Judith's Paarl with no hot water like a poor man: you have to be a communist."

23 Our analysis was that the only reason that Aggett's interrogation continued was because the supervising officer, Major Cronwright, was desperate to use the Close Comrades list to prove a wider conspiracy beyond Barbara Hogan and her mission on behalf of the Botswana arm of the ANC. The SB had hoped that the Close Comrades list would prove this grand conspiracy.

24 However, the SB had arrested individuals who were mostly activists working to improve the lives of the working class through building credible and representative trade unions, as well as promoting literacy and health care. These activists chose to do this work outside of political organisations.

THE FIRST INQUEST

25 The inquest into Neil's death was heard over 42 days. The court room was packed with SB officers. They included Colonel Muller, Brigadier Rooi Rus Swanepoel, Major Cronwright and Lieutenant Whitehead and the various officers who were responsible for detainees at JVS. Their presence was designed to intimidate detainees and witnesses. It was a harbinger of the uphill battle we as the legal team were going to face.

- 26 It became clear from an early stage that the presiding magistrate, Magistrate Kotze, was determined to exonerate the police. The Apartheid system effectively ensured that most magistrates subconsciously and sometimes consciously furthered the Apartheid agenda. Magistrates were appointed predominantly from the public service rather than the legal fraternity. They were appointed by the Minister of Justice in terms of section 9 of the Magistrates' Courts Act, 32 of 1944. The majority, like Kotze himself, were former prosecutors. Consequently, they had interacted regularly with SB members.
- 27 The legal team had attempted to rely on evidence from a number of detainees that had been detained and tortured by the SB at the same time as Neil. However, Magistrate Kotzé ruled most of the detainee statements inadmissible. He also curtailed cross-examination by the Aggett family's representatives of SB officers on relevant matters.
- 28 When detainees were called to testify, Magistrate Kotzé focused on minor details to discredit the detainees and conclude that they were unreliable witnesses. However, he ignored the reality of the traumatic conditions of detention and the effect this would have on their mental health and ability to recall. For example, Magistrate Kotzé dismissed Liz's testimony as unreliable because of 15 minutes variations in the amount of time she had to stand, between her affidavit and her oral testimony.
- 29 Magistrate Kotze also dismissed Maurice Smithers' testimony on the basis that he swore his written affidavit with the prescribed oath "help me god" but

declared in his affidavit that he was agnostic. Aligned to this Maurice had spelt his name differently in the hand-written note he had smuggled out of detention.

30 Magistrate Kotze ultimately rejected the detainees' statements that described Neil's condition in the final days of his life. We regarded Kotze's dismissal of such evidence on the basis of minor details while overlooking the faults in the police version demonstrated manifest bias and a total lack of objectivity.

31 In contrast, Magistrate Kotzé concluded that the version of the police was credible because all SB officers had unanimously stated that they did not notice any change in Neil's condition. He overlooked the obvious deceptions, inaccuracies and omissions of the police witnesses.

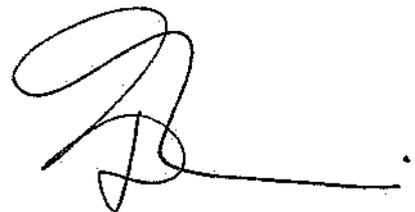
32 Magistrate Kotze's finding can in part be explained by evidence that has come to light since the first inquest. At the Truth and Reconciliation Commission ("TRC"), Paul Erasmus, a former SB officer testified in 2000 that Whitehead had ordered him to illegally enter the Aggett's family home to find evidence that showed that Aggett had emotional difficulties and suicidal tendencies.

33 Erasmus went on to testify that the SB had bugged Advocate Bizos SC's offices. This surveillance helped the SB to hold mock trials with police officers before the first inquest commenced. Officers were coached on how to stick to the false version that Dr Aggett had suicidal tendencies and accordingly had taken his own life. Witnesses were trained on using specific body language, eye contact and other indicators to bolster credibility. This was not known to us at the time.

- 34 Magistrate Kotze's finding that the evidence of the SB officers was to be accepted as credible and consistent must be rejected. Virtually all the evidence provided by the SB was fabricated.
- 35 Magistrate Kotze's judgment ultimately exonerated the police and found that Neil took his own life. He found that Neil had not been tortured and that his treatment in detention had nothing to do with Neil's death. Astonishingly, the judgment cast the blame for Neil's death on a fellow detainee, Auret van Heerden who he claimed should have informed the police immediately when he observed Neil prior to his death in a "*broken*" state.

CONCLUSION

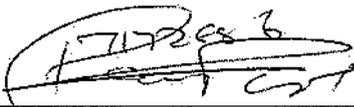
- 36 The legal representatives for the Aggett family faced an uphill battle in getting to the truth of how Neil died that fateful morning of 5 February 1982. We did our level best to demonstrate that the SB had caused Neil to take his own life as a result of his brutal treatment in detention. We adopted this approach based on strategic considerations which the Aggett family reluctantly agreed to.
- 37 However, the Apartheid State, would never allow the truth to emerge. The police engaged in the mass falsification of evidence which the Magistrate happily accepted without question.



DAVID DISON

I hereby certify that the deponent knows and understands the contents of this affidavit and that it is to the best of the deponent's knowledge both true and correct. This affidavit was signed and sworn to before me at PARERENE on this the 21 day of JANUARY 2020, and that the Regulations contained in Government Notice R.1258 of 21 July 1972, as amended by R1648 of 19 August 1977, and as further amended by R1428 of 11 July 1989, having been complied with.




COMMISSIONER OF OATHS
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