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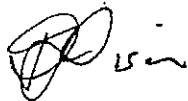
31 March 1983

To: The Supporters of the Aggett family

Further to our letter and accompanying report of 11 November 1982, we enclose the fifth and final supplement to our report of 12 July 1982.

As we are awaiting the taxation of our bill of costs incurred in the Supreme Court application, we are not presenting a final account at this stage. We will present the final account when the bill of costs has been taxed and the various accounts from counsel and others have been received.

Yours faithfully



BELL DEWAR & HALL

INQUEST - LATE N H AGGETT

FINAL REPORT, BEING THE FIFTH SUPPLEMENT TO THE REPORT
DATED 12 JULY 1982

This report is the final report on the inquest. It supplements the report of 12 July 1982 as supplemented by our further reports of 8 September, 4 October, 19 October and 11 November 1982.

1. The magistrate's finding

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The magistrate delivered his finding over a period of two days on the 20th and 21st of December. Earlier on, on the first day of the delivery of his judgment, it became clear to us that the magistrate was not treating the evidence of the detainees sympathetically. Specifically, in his treatment of the evidence of Prema Naidoo, who, in our view, was the most convincing and compelling witness, and whose treatment mirrored that of Dr Aggett to a large extent, the magistrate gave a clear indication that the evidence of detainees was suspect.

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The treatment of Mr Naidoo's evidence by the magistrate is instructive for those who want to understand the basis of the judgment as a whole. The magistrate found that Mr Naidoo answered questions directly and without hesitation. He did not criticise Mr Naidoo for his bearing or for the manner in which he conducted himself in the witness box. However, he called into question Mr Naidoo's evidence on other grounds. "... it is necessary to bear in mind that he (Naidoo) is a person serving a sentence for the type of offence alluded to in evidence, a person with strong feelings against the security police, not necessarily because of any treatment received while in detention." In effect the magistrate is saying that a political prisoner is someone whose evidence must be treated with a greater degree of suspicion than other persons. He finds that Mr Naidoo has strong feelings against the security police, although Mr Naidoo never stated that he did have strong feelings against the security police and was never questioned in this regard. The magistrate also goes on to fault Naidoo because statements which he made to the inspector of detainees and the magistrate are inconsistent with the evidence which he gave in court.

This, despite the fact that there was much evidence during the inquest, that the detainees often did not register complaints while in detention because of fear of retaliation.

Again, in regard to Mr Nanabhai, the magistrate called into question his evidence because "we cannot ignore the fact that Mr Manabhai and Mr Maidoo were convicted for the same offence." As we reported on page 2 of our fourth supplementary report, Mr Nanabhai testified that very similar circular marks on both his arms were the result of his having been given electric shock treatment. As we reported, this evidence was backed up by medical evidence. The magistrate, on his own initiative, and without basing his remarks on any submissions made by counsel for the police, held that "we cannot rule out the possibility that Mr Nanabhai expected the police and was well prepared when they arrived and perhaps equipped with the two marks on his arms."

When dealing with the evidence of Morris Smithers, the magistrate seized on minor inconsistencies between Smithers' condensed notes which he smuggled out of prison and the evidence which he gave in court. On the other hand, when the magistrate dealt with the evidence of the police officers he was inclined to find that the police officers corroborated each other on all the "material aspects". When policemen committed non-material inconsistencies in their evidence, these were glossed over.

The finding of the magistrate with regard to the evidence of Auret van Heerden was, to say the least, disconcerting. The magistrate seriously considered whether van Heerden himself, subject to the rigours of detention under section 6 of the Terrorism Act, and locked up in a cell opposite Dr Aggett, was not legally responsible for the death of Dr Aggett. The magistrate, after examining van Heerden's evidence, eventually found that van Heerden was probably only "morally responsible". He felt that van Heerden could have done something about Dr Aggett's state. The magistrate was of the view that seeing that none of the police officers had believed that Aggett was suicidal, van Heerden was under a duty to report Aggett's condition to the police. The question as to why the police officers did not recognise Aggett's condition was not answered by the magistrate.

But for us, by far the most unsettling aspect of the judgment was that the magistrate made findings regarding both van Heerden's and Dr Aggett's political affiliations, which we believe, were not backed up by the evidence. And it is from these findings that the magistrate went on to disbelieve their version of the detention experience.

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The magistrate indicated in his reasoning, that he could not discount the possibility that Auret van Heerden was an ANC member who was worried that Dr Aggett was making incriminating revelations. None of this was proved, and indeed this particular version was not even argued by counsel for the police. The magistrate went further to speculate that De Aggett had betrayed his friends and colleagues, a version which is not borne out by the writings which were made available on the court. Once the court accepted this particular version, it accepted the speculative views of the state psychiatrist Professor Plomp, whose evidence we referred to in our previous supplement. It will be remembered that professor Plomp speculated that Dr Aggett's overhearing of the composition of the telex for further arrests by Major Cronwright and Lieutenant Whitehead, was the "triggering mechanism" for his suicide.

2. The co-called "privileged documents" *Be...*

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As can be seen from the above, the magistrate effectively accepted the "betrayal theory". He accepted this theory on the basis of the evidence of the police, and not on the basis of any documentary evidence. Indeed no documentary evidence of betrayal was placed before the magistrate.

As we reported in our previous supplement, although the police have claimed that a list of names given by Dr Aggett exists, such a list was never handed in to the court. When we argued that the police should hand this list of names into court, counsel for the police stated that 'state privilege' would be claimed for the list. But, a certificate from the Minister claiming state privilege was never handed in to the inquest.

Even though our counsel criticised the police at length for the failure to hand in this certificate of privilege, the magistrate did not even raise this issue in his judgment although it is central to the proving of the betrayal theory.

3. What to do now?

It is clear that the Aggett family, their supporters, and ourselves, are not at all happy with the finding. It is possible that, at least regarding the question of the privileged documents, we could force the re-opening of the inquest. We are of the opinion that such a course of action is not advisable for reasons set out hereunder.

At the outset it must be noted that the legal representatives of the police did not request the court for complete exoneration of the police. Police counsel argued for what is referred to as an "open verdict" in which the magistrate could have held that he could make no findings of fact and referred the matter to the Attorney-General.

The court went much further than this. The judgment purports to vindicate the actions of the police entirely. The only criticism of police evidence is that of MacPherson, the security police warden of the second floor cells at John Vorster Square.

No serious observer of the inquest appears to have argued that the judgment constitutes a vindication of the actions of the police in respect of Dr Aggett in particular and detainees in general. Indeed, the general response to the inquest judgment appears to be sceptical of the findings. As the veteran South African Civil Rights campaigner, Sheena Duncan said "The public would be guided by the evidence at the inquest, rather than by the findings of the magistrate".

On the positive side, the inquest has served to highlight the evils of the detention system in South Africa. The South African public has been exposed to extensive evidence regarding the experience of detainees and their treatment in prison.

Having taken all these factors into consideration, we are of the view that no productive purpose would be served by taking the magistrate's judgment on review in the Supreme Court. From a practical point of view, even if the Supreme Court directed that the magistrate should reopen the inquest to hear more evidence regarding, for instance, the alleged betrayal, it is most probable that the magistrate would hear the evidence and then merely repeat his finding.

Our counsel, George Bizos and Dennis Kuny, agree that it would not be advisable to apply for a review of the magistrate's decision. We have briefed them to give us a written opinion in this regard.

All this does not mean that there are no other courses of action to be pursued. We feel that it is important that a detailed evaluation and critique of the evidence presented at the inquest should be done. To this end, we are assisting two independent legal institutions in South Africa with studies of the inquest. These are the Centre for Applied Legal Studies (CALs) which is run by Professor John Dugard of the University of the Witwatersrand, and the Lawyers for Human Rights (LHR), a voluntary association which has a membership of 800 lawyers throughout South Africa.

We have already provided CALs with some of the documentation from the inquest. We have met with Professor Dugard and he has indicated that his researchers might require the assistance of a member of the legal team for a short period of time in order to provide a guide to the evidence and the exhibits. We have undertaken to hold ourselves available for this task. Professor Dugard's aim is to have a publication printed in book form which will essentially be a summary and guide to the inquest proceedings, with critical commentary.

LHR are producing a report comparing the evidence given by senior police officers in South Africa to the Rabie Commission of Enquiry into the security laws, with the evidence given by police officers in the inquest. Specifically, the LHR aims to show that the assurances given to the Rabie Commission relating to safeguards for detainees were not complied with in the case of Dr Aggett. It is intended that this report will be circulated to all members of Parliament in South Africa before the closing of the present session.

4. General

It would appear that although the magistrate's findings caused the Aggett family great disappointment and anguish, the inquest has served to highlight the dangers of the detention system in South Africa. Moreover, there is evidence that the judiciary, the legislature and the executive in South Africa have taken note of the numerous allegations of police brutality which were made at the inquest.

In a number of of recent decisions in the Supreme Court in South Africa, the confessions made by detainees during detention have been held to be inadmissible because they were obtained under duress. In Parliament, opposition members of Parliament have referred a number of times to the evidence which came out at the inquest, and urged reform in the field of security laws.

At the ministerial level, the Minister of Law and Order has issued a set of guidelines, for the information of all police station commanders, setting out requirements for the handling of security detainees. These guidelines do not provide adequate safety measures for the protection of detainees, firstly in the sense that they are not statutory regulations but merely written guidelines with no real sanction for breach, and secondly because the protective measures contained in the guidelines are just not adequate. The guidelines contain vague clauses to the effect that the police must ensure the detainees' safety, but, as lawyers have pointed out, there are no substantive and detailed protective measures that have been provided. Nevertheless, we are of the view that the evidence presented at the inquest is one of the factors that has placed pressure on the Minister to release these guidelines.

5. Financial aspects

When the procedures for collecting the legal costs of the Supreme Court application from the State Attorney have been concluded, we will be able to render a final account.

6. Conclusion

As this is the final report of this nature which we intend making to the supporters of the Aggett family, we take this opportunity, on behalf of this firm and the Aggett family, to thank all those who contributed in various ways for their assistance and interest in the inquest. We believe that the whole exercise has been well worthwhile. Time will tell whether we are correct in this belief.

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INQUEST - LATE N H AGGETT

SUMMARY OF PRESENT POSITION

Since the inquest into the death was, on 29 June 1982, postponed until 20 September 1982, we have tried to look at the matter objectively with a view to sketching, as briefly as possible, all that has been done and still remains to be done.

1. The late Dr Aggett

We have, in the course of our work on the inquest, got to know Dr Aggett fairly well. His character has been studied by our psychological and psychiatric advisers, we have met many of his friends and associates and have formed a reasonably clear view of a sensitive idealist who, after completing his medical training, decided that he could make a greater contribution towards the general health and welfare of the labouring population by applying his energies to the trade union movement than by providing ad hoc remedies for the illnesses and injuries which he encountered while working in public hospitals. Because of the connections which he formed in the course of his trade union work, he became the object of the suspicions of the security police and was eventually, on 26 November 1981, detained for interrogation. Initially the detention was effected under section 22(1) of the Internal Security Act but, as that section provided for judicial review after 14 days, he was, after the period of 14 days, detained under section 6(1) of the Terrorism Act, 1967 and brought from Pretoria to the cells at John Vorster Square.

Many others were detained at the same time. Most of them have since been released. While there had been ministerial announcements, in February 1982, that very shortly a large trial would take place to prove to the public that the detentions were

justified, there has, in fact, been no such trial. Few people have been convicted to date and few of the detainees are still awaiting trial. In short, the countrywide detentions during the latter half of 1981 have not been justified and it seems unlikely that they will ever be justified.

2. The death of Dr Aggett

At 01h30 on 5 February 1982, the guard at the cells at John Vorster Square found the body hanging against the grille inside the door of the cell. Evidence has emerged of casualness in regard to the care of detainees in the cells at John Vorster Square. That the police standing orders and also the standing instructions at John Vorster Square were not obeyed has been admitted. False entries in the cell register have been admitted and press statements made at the time by the Commissioner of Police and by the head of the security police have been proved incorrect. The medical evidence is that the findings at the autopsy are consistent with Dr Aggett's having been hung up by others while still alive. In short, there are question marks surrounding the immediate circumstances of the death of Dr Aggett. The indications point towards suicide but this has not been proved.

3. Review of the evidence

- (a) In accordance with standard procedure, an officer of the detective branch of the South African Police, Captain Victor, was appointed to collect affidavits on the circumstances surrounding the death of Dr Aggett. These affidavits were placed before the senior public prosecutor and, in due course, before the magistrate.
- (b) There were many omissions from the affidavits. Although, for example, there were up to 15 other detainees in the cells at John Vorster Square at the same time as Dr Aggett, and although the police must have

known that these fellow detainees had had an opportunity of communicating with Dr Aggett and observing his condition, no attempt appears to have been made to obtain affidavits from these fellow detainees. When we noticed this omission, we applied to the Commissioner of Police, the Minister of Justice and the Minister of Law and Order for permission to interview these detainees while they were still in detention. The applications were refused.

- (c) Brigadier Muller, the head of the security police at John Vorster Square, has already testified at the inquest that he did not volunteer any information to assist the investigating officer.
- (d) Towards the close of the last hearing, on 28 and 29 June, both Brigadier Muller and his right hand man, Major Cronwright, stated that, in addition to statements supplied to us and referred to in 4(g) below, they had in their possession various of Dr Aggett's statements made in writing while he was under detention. They admitted that they had not disclosed the existence of these statements to the investigating officer, to the Attorney-General or to any other party. This was the first indication that these further documents existed.
- (e) Evidence has been led of casualness on the part of the police towards the question of access to detainees by the inspector of detainees, appointed under the Internal Security Act, and by the local magistrate. On no less than three occasions was a visiting magistrate told that Dr Aggett was not available for interviews because he was "out on investigation" whereas, in fact, Dr Aggett was under interrogation upstairs in the offices of the security police at John Vorster Square. The inspector of detainees had the same experience.
- (f) One of the few privileges to which a detainee is entitled during his detention is that of exercise for a period of at least one hour per day in two separate periods of half an hour. An attitude of neglect emerges from

the police evidence. Both Brig Muller and Maj Cronwright have testified to the fact that they did not study the provisions of the Prisons Regulations which were applicable to detainees and which provide that exercise must be in the open air. The warrant officer in charge of the cells testified that exercise can be taken in the cells.

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- (g) The investigating officer has placed in the magistrate's file an old document, dating back to 1972, purporting to have been issued by certain unlawful organisations advising the adherents of those organisations to lay false charges against the police, not to betray the brethren and rather to commit suicide than to give away information. Evidence has not yet established who was responsible for handing this document to the investigating officer but it would appear that the reason for the investigating officer's including it in the inquest docket is to suggest that, if Dr Aggett committed suicide, he was doing it in accordance with instructions received. When we filed an affidavit by a suitably qualified expert drawing attention to the inherent inconsistencies of this document, there was a hasty retreat on the part of the representatives of the police and it now appears that it will be excluded as irrelevant. Such a decision is probably correct save in so far as it is still relevant to the objectivity of the police investigation to ascertain who it was who considered the document to be relevant.
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- (h) Other evidence of doubtful relevance has been tendered, the sole apparent object being to smear Dr Aggett with communist interests and associations with the outlawed African National Congress. Evidence of this type is of interest to the South African Broadcasting Corporation which otherwise shows little interest in the matter. Presumably this evidence is also expected to show that Dr Aggett must have had information about subversive activity.

4. Evidence of ill treatment

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- (a) The police witnesses invariably testify to Dr Aggett's having been quite normal when he was last seen by his guardians and interrogators up to the night of his death. Indeed the expression, "gemoedelike stemming" (which could be interpreted from Afrikaans as meaning "genial disposition"), comes through as a rather monotonous refrain in the police affidavits.
- (b) We have, however, acquired quite a number of affidavits from detainees who saw Dr Aggett prior to his death and who testify to his having been in a pitiful state in the last week.
- (c) When Dr Aggett finally saw a magistrate at John Vorster Square on 18 January, he complained to the magistrate that he had been assaulted on 4 January and that he had suffered a slight cut on his forearm. An injury consistent with his description to the magistrate was found post mortem.
- (d) On 19 January the magistrate reported Dr Aggett's complaint to the Director-General of the Department of Justice and to various police authorities. The report appears to have reached John Vorster Square on 25 January. In accordance with standard procedure, Brigadier Muller caused it to be referred to one of his colleagues in the police force who, in due course, referred it to another colleague and so on. Eventually, on 4 February, a woman detective sergeant, Sergeant Blom, interviewed Dr Aggett while he was on the tenth floor and took from him an affidavit in which he mentions the assault and also that he had suffered further assaults and deprivation of sleep after the time of seeing the magistrate. In her affidavit Sergeant Blom said that she did not have him medically examined "because the security police were busy with him". In court she said that Dr Aggett declined an offer to be taken to the District Surgeon. Despite an allegation by Dr Aggett of having
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shocks, she made no search for electrical apparatus.

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- (e) The affidavits filed by the interrogators show that Dr Aggett was, during the last 10 days of his life, subjected to a merciless schedule of interrogation. In particular, after having been interrogated during the working day of Thursday, 28 January, he was taken from his cell at 16h18 and questioned throughout the night and throughout the two succeeding nights, eventually being returned to his cell at 03h00 on Sunday, 31 January. Lieutenant Whitehead, the chief interrogator, states in his affidavit that Dr Aggett was submitted to "more intensive" interrogation because he had not given full particulars of his activities. Lieutenant Whitehead still has to give evidence. When he does so, he will have to explain why Major Cronwright has already testified to the fact that there was no question of "more intensive" interrogation. Major Cronwright's version is that Dr Aggett had reached the stage where he wished to make a clean breast of things and that he volunteered to undergo these long sessions which were only interrupted by periods when he was allowed to sleep on a camp bed in the offices of his interrogators.
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- (f) Neither Lieutenant Whitehead nor any of the other interrogators, who have made affidavits, mention the existence of numerous pieces of paper written by Dr Aggett to which Brigadier Muller and Major Cronwright have now testified.
- (g) We were supplied, at quite an early stage, with three statements by Dr Aggett. The first of these was typed and signed by him on about 8 January. It would seem that, at the time, this statement of 8 January was regarded as adequate and satisfactory. Possibly because this statement, together with other statements obtained from other detainees at the same time, was not sufficient to support a criminal charge against any of the detainees, or possibly for some other reason which escapes us, it was decided later in January to extract further information from Dr Aggett. It is then that

the pressure really started. A second statement in manuscript, but incomplete, has within it cogent internal evidence that portions of it may have been dictated by the interrogators. In particular, a paragraph is inserted, at the commencement of the statement, and out of any logical order, reading, "I support the Marxist ideology and I am therefore a communist. I am also an idealist." Reference is also made by Dr Aggett to his having "communistic ideas".

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- (h) According to the police affidavits, a warrant officer was busy typing over Dr Aggett's second statement while he was writing it. This warrant officer will still have to explain in court how it comes about that the typed version, which was first given to us, omits the important words, "I am also an idealist".
 - (i) The manuscript statement has been torn in half. This has still to be explained.
 - (j) Another piece of surprise evidence which came out towards the end of the last hearing was Major Cronwright's testimony that, on the strength of information supplied by Dr Aggett, he and Lieutenant Whitehead, on the day before Dr Aggett's death, set about composing a telex message to police headquarters in Pretoria requesting permission for other arrests. The inference which the court will be asked to draw is that Dr Aggett overheard discussion about the telex and, realising that he had betrayed his associates, decided to commit suicide. Major Cronwright went on to say that permission to make the arrests was refused.
 - (k) Mr Maurice Smithers, a fellow detainee, shortly after the death of Dr Aggett, smuggled out of prison a note describing how he saw Dr Aggett being assaulted and forced to perform exercises while undergoing interrogation at John Vorster Square on 25 January. Mr Smithers has now given his evidence in court and, strange though his story may be, we believe it to be convincing.
 - (l) The conclusions of ill treatment to be drawn
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from the catalogue set out above are substantially confirmed by a number of affidavits which we have obtained from other detainees who were detained at John Vorster Square or who were interrogated and tortured at other police stations by personnel from the security branch at John Vorster Square. What is particularly impressive about the affidavits of the other former detainees is that they corroborate each other in many respects, notwithstanding the fact that the various witnesses have, by reason of their imprisonment, not had opportunities to meet and to discuss with each other the evidence which they can give. From their evidence emerges a pattern of cruelty, humiliation, threats and torture to detainees. (There is also evidence that certain detainees were treated reasonably well.) We believe that the evidence of cruelty is sufficiently consistent to enable us to ask the court to draw the inference that Dr Aggett was the recipient of treatment similar to that received by these other detainees.

5. Work done to date

- (a) We have briefed Advocate George Bizos S C and Advocate D Kuny to represent the Aggett family at the inquest. The writer, Mr W Lane, has taken charge of the matter but has been assisted by Mr David Dison and Mr James Sutherland, the latter having had to come into the case on short notice when Mr Dison was called up for military service.
- (b) It is difficult to summarise briefly all the work which we have done. We have done our best to apply ourselves to the detail of the inquest but, in order to do so, we have had to maintain close touch with a variety of people who have material information to offer or who are perhaps able to put us in touch with others who may have that information.
- (c) When we first received the available statements from the public prosecutor, our

attention was focussed on persuading him to extract further information from the police. We also, immediately, took psychiatric / psychological advice from practitioners in Johannesburg and from a professor in Los Angeles.

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- (d) Initially, too, we made repeated approaches by telex and by letter to the relevant authorities in the hope of being able to interview detainees. All our applications were refused but, ultimately, towards the end of March, detainees were released. We had to apply ourselves to interviewing these detainees and ascertaining from them what they had to say about their experiences which might have a bearing on the inquest. And then we had to cast the relevant information obtained from these detainees into the form of affidavits for presentation to the magistrate.
- (e) At the same time we pursued the psychological enquiries and also obtained expert advice on such matters as the interpretation of Dr Aggett's statements made while in detention and the value to be attached to the leaflets of unknown origin referred to in paragraph 3(g) on page 4 above. We have also filed an expert's affidavit drawing attention to inconsistencies inherent in the alleged admission of communist and Marxist leanings.
- (f) 13 April 1982 was fixed for the commencement of the hearing of evidence. The magistrate had then invoked the assistance, as an assessor, of a pathologist, Professor L Smith of Cape Town. Shortly after the District Surgeon, Dr V D Kemp, had commenced his testimony, Mr Bizos asked him to comment on whether an injury found on Dr Aggett's right forearm at the post mortem was consistent with an injury which Dr Aggett had described in his affidavit to Sergeant Blom. When the magistrate ruled that the question was permissible, counsel for the police applied for a postponement of the hearing to enable the magistrate's ruling to be brought before the Supreme Court on review. These review proceedings resulted in a judgment being given on 4 June 1982 upholding the ruling of
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the magistrate. Although the Minister of Law and Order was ordered to pay costs of opposing the application, the payment will be in accordance with the tariff on a basis that we did no more work than was absolutely necessary. The Taxing Master of the Supreme Court will assume that it was possible for us to draft Mr Aggett's replying affidavit "once off". No heed will be taken of the fact that it did, indeed, go through many drafts to ensure the success of the opposition to the Minister's application.

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- (g) The significant feature of the application is that Gen Coetzee, the head of the security police, testifying on behalf of the Minister of Law and Order, contended in his affidavit that the inquest court should not receive the affidavit of Dr Aggett on the ground that, if it were admitted in evidence, the secret interrogation methods used by the security branch would be made known to the public and, of course, to the enemies of the State.

6. The present position

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- (a) The court has heard the evidence of the pathologists, the custodians of the cells, the inspector of detainees, Sergeant Blom who took the affidavit from Dr Aggett about the assault, Mr Smithers who witnessed the assault on Dr Aggett on 25 January, certain witnesses called to contradict the evidence of Mr Smithers, Brigadier Muller and Major Cronwright.
 - (b) We understand that, when the hearing resumes on 20 September, the next witness to be called will be Captain Naude who was in charge of the taking of Dr Aggett's first statement which was signed on 8 January. Then, we understand, Lieutenant Whitehead, the chief interrogator, will give evidence.
 - (c) Whether or not other interrogators will give evidence at that stage is not clear. In all probability, a start will then be made with

the hearing of evidence of the seven witnesses whose affidavits we have filed in court and who testify in a greater or lesser degree to:

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- (i) personal experiences of torture, humiliation and threats received from the same group of policemen who were involved in the interrogation of Dr Aggett;
 - (ii) their observations of Dr Aggett during his period of detention;
 - (iii) their personal experiences of a lack of concern about complaints made about assaults, whether these complaints were made to the magistrate, the inspector, the District Surgeon or to their custodians and also of pressure by the security police to withdraw complaints made.
- (d) Presumably the police will summon up numbers of witnesses in an attempt to prove the former detainees to be perjurers. That the police have information on these detainees which will embarrass them is a possibility that must be faced.
- (e) Then we expect to hear the evidence the interrogators who are accused of assaults or who assisted with Dr Aggett..
- (f) Mr Wessels, the magistrate who was on sundry occasions denied access to Dr Aggett on the ground of his being out on investigation, will, no doubt, testify at some convenient time to rebut the statement made by a policeman to the effect that, when Mr Wessels called to see Dr Aggett, he was in too much of a hurry and was not ready to wait.
- (g) When all the above evidence has been led, the court will consider the psychiatric and psychological evidence. Professor Charl Vorster, of the Rand Afrikaans University, will be called upon to be examined on an
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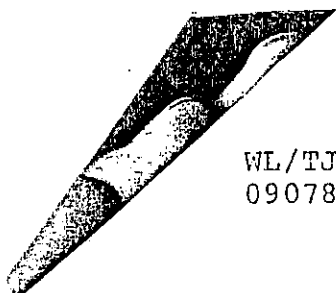
affidavit which he made for us in which he states his conclusion, in Afrikaans, as follows:

"Within the total context of the unfolding of Dr Aggett's life, as it appears out of the available information, the alleged suicide comes as an apparently ultimate contradiction. If Dr Aggett did indeed commit suicide, there arises a serious question mark over the nature and the impact of the variable or variables which must have worked upon him so drastically that they drove him to an act of self destruction, apparently totally in conflict with a person who appears intelligent, sensitive and empathic with a dedicated involvement in service to his neighbour and love to his neighbour."

- (h) There will also be called a Professor Plomp of the University of Pretoria. He occupies a senior government position and has been in attendance as part of the police team at all the inquest proceedings. The affidavit outlining his testimony appears to lay stress upon the fact that prisoners in all countries have a statistically greater predisposition towards suicide. He appears to seek to find as the factor which precipitated any suicide some adverse turn in events towards the very end of Dr Aggett's life. It would appear that he is referring to the evidence of Brigadier Muller and Major Cronwright that, in his last few days, Dr Aggett was busy incriminating all his friends and associates and that Dr Aggett overheard the compiling of a telex message in regard to further arrests.

7. Official attitudes towards the inquest

- (a) There is room for the view that the



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application to the Supreme Court was made in order to ensure that the inquest did not proceed until the Parliamentary session, at which the new Internal Security Act was debated, was completed. There has, therefore, been no Parliamentary or public debate about the inquest and we can only gauge official attitudes from the circumstances set out below.

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- (b) Soon after Dr Aggett's death, the Minister of Justice stated in Parliament that an inquest would be held soon. Similar statements were made by Embassies overseas in which it was emphasised that the inquest would be in accordance with the best accepted judicial standards.
- (c) As we have mentioned above, we did, at an early stage, take up with the Ministers of Justice and of Law and Order and also with the Commissioner of Police the question of access to other detainees for the purposes of obtaining statements from them. The answers were consistent in their lack of co-operation. We were told that, if we thought that material evidence was available, it was our duty to give this to the investigating officer who would then take the necessary steps. The Minister of Justice went so far as to indicate that the provisions of the Terrorism Act precluded him from granting permission to us to interview detainees. There was no indication from these Ministers that they would give instructions to ensure that all the available evidence was collected and made available to the magistrate.
- (d) The passive attitude displayed by the senior public prosecutor in Johannesburg and by the office of the Attorney-General of the Transvaal is a matter upon which much could be said. One would have thought that, by virtue of their offices, the Attorney-General and the senior public prosecutor would have displayed a desire to ensure a thorough investigation into the possibility of whether or not the death of Dr Aggett had been due to a criminal act or omission on the part of any person. No such desire has been evident.
- OP

When, at the inquest, counsel for the police contended that the affidavit of Dr Aggett was inadmissible, the representative of the Attorney-General supported his application. The application for a postponement of the hearing in order to test the magistrate's ruling was likewise supported by the representative of the Attorney-General. In the Supreme Court proceedings, the representative of the Attorney-General had nothing to say. As a result of this attitude, the proceedings in the inquest court have now begun to resemble an ordinary civil case in which the only interested parties are the Aggett family and the police. The investigating officer, whom one would normally expect to find seated beside the prosecutor feeding him with information and advice, is, as often as not, seen to be sitting amongst the representatives of the police.

- (e) The Attorney-General of the Transvaal comes into the picture also because certain of the detainees whom we have wished to interview are detained at his behest under section 12B of the Internal Security Act as witnesses in forthcoming trials. Applications to interview these witnesses have had to be made in writing to the office of the Attorney-General in Pretoria. The Attorney-General's representative at the inquest has declined to use his good offices in expediting the handling of our applications to the Attorney-General. The outcome of all our applications has been that permission to interview the section 12B detainees has been refused. In certain instances he has directed that the section 12B detainee be interviewed by his own legal representatives and that any affidavit be taken by that legal representative. In other instances he has required that the Deputy Attorney-General in Johannesburg attend such discussions and he has also simply instructed the Deputy Attorney-General in Johannesburg to interview the witness and obtain a statement from him. Although we regard this strange approach of the Attorney-General as being unacceptable and possibly a reflection on our integrity, the end result has not been bad. There has,

indeed, been a remarkable similarity between the affidavits taken by others, including the Deputy Attorney-General, and the affidavits which we have taken ourselves in so far as these detained witnesses have deposed to the poor condition of Dr Aggett prior to his death, a lack of concern about complaints which they have made and also to assaults at the hands of persons who are also accused of assault by the witnesses whom we have ourselves interviewed. The affidavits taken by others certainly show that there is no question of the detainees having been urged to give false testimony.

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- (f) The investigating officer, Captain Victor, has still to testify. It will be for him to explain what appears to have been a biased approach to the investigation and also how it comes about that a mere captain is deputed to investigate complaints where persons of the rank of major and above are implicated. He can perhaps also explain why Sergeant Blom was appointed to investigate complaints against men of rank higher than hers.
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- (g) The attitude of the government is also, to some extent, manifested by the approach adopted in the Supreme Court proceedings by the head of the security police acting in the name of the Minister. The Minister appears to have been satisfied to permit him to give to the Supreme Court and to the general public an impression of a readiness to withhold material evidence from the inquest court on the specious grounds that the disclosing of this evidence will make available to organisations hostile to the present regime confidential information in regard to police interrogation methods. In the context it appeared that the confidential information to be withheld was the information about assaults.
- (h) The attitude of the police at John Vorster Square, as reflected in the evidence of Brigadier Muller and of Major Cronwright, seems to be that the inquest is just another one of the problems which they have to endure in the course of their heroic struggle to

protect South Africa from the forces of darkness. They contend that they did what was required of them in accordance with police standing orders. They constantly warn their men against assaulting detainees. They trust their men. When they heard of complaints of assault, they sent off letters in the appropriate directions and allowed matters to take their course. They answered questions put to them by the investigating officer in the course of his investigation but did not see it as their duty to assist in the investigations. They are the custodians, in the public interest, of masses of confidential information all of which is privileged and protected from disclosure. It can only be extracted from them, bit by bit, by the proper legal processes.

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- OP
- (i) We have considered obtaining an affidavit from the psychiatrist who attended Dr Aggett's friend, Dr Elizabeth Floyd, and certain other detainees at the Johannesburg Hospital. We were informed by him that it was a formal hospital requirement that the permission of the Medical Superintendent be sought. The outcome of our application to the Medical Superintendent was that, after a delay of some two months, the matter was referred to the Director of Hospital Services in Pretoria who informed us that our application was refused. No reasons were given.
 - (j) While Mr and Mrs Aggett were in Johannesburg, their home in Somerset West was entered by persons in search of information about Dr Aggett. The local police were initially quite sympathetic, but suddenly became unhelpful, probably when they found that they were investigating activities of colleagues. The detail of the matter is probably not legally relevant to the inquest.
 - (k) One government department which has been co-operative is the Department of Prisons. To date no impediment has been placed in our way and we have been able, with a minimum of difficulty, to interview and take statements from former detainees at present in the care of the Department of Prisons, either as

convicted prisoners or as awaiting trial prisoners.

Generally, a picture emerges which, at its most favourable, is one of our having to fight a constant battle against the dead hand of bureaucracy.

8. Principal legal issues

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- OP
- (a) The duty of the magistrate is to investigate the circumstances of the death and to make a finding as to whether or not the death was due to an act or omission on the part of any person which amounts to a criminal offence. The magistrate is not obliged to give any reasons for his finding and, it will be recalled, no reason was given for the magistrate's finding at the Biko inquest. It is our intention, however, to argue the matter at length to the magistrate and to request him to give a detailed judgment.
 - (b) The basic legal contentions of the Aggett family are set out in the replying affidavit of Mr Aggett which was filed in the Supreme Court proceedings. What is set out below is a summary of the law on the subject as expressed in a number of decided cases.
 - (c) The rights available to the police to detain and interrogate a person do not embrace a right to impair his mental or physical health. The police were obliged to maintain Dr Aggett in good health, both in mind and body, and to ensure that, at the end of his detention, he would be released with his physical and mental health unimpaired.
 - (d) The police are the custodians of detainees who must protect prisoners in their charge and not allow their diligence in this respect to flag for a moment. A circular instruction issued by the Commissioner of Police during 1978 stressed that an exceptionally high duty of care rested upon the police in regard to detainees.

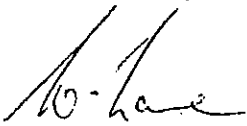
- 3
- (e) If it is found that one or other of the persons who were in charge of Dr Aggett whilst he was in detention failed in their responsibilities towards him and that this led to his death, those persons may be guilty, at least, of the crime of culpable homicide. They could even be guilty of murder.
 - (f) Having regard to the concern which has been expressed about the well-being of detainees in the light of the history of the number of deaths which have occurred in detention, the magistrate must enquire whether the police took such precautions as were necessary to prevent Dr Aggett from injuring himself or from committing suicide.

9. Forecasts of time

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- (a) There are so many imponderables in what we have said above that it is difficult to forecast how much longer the inquest can last. Up till now, there has been a degree of casualness about adhering to strict court times and the magistrate has each day adjourned the court somewhat earlier than he need. We hope that, at the next hearing, he can be persuaded to extend the sitting hours slightly so as to make a concerted effort to get the case completed. But regard must be had to the fact that the police found five witnesses to contradict the evidence of Mr Smithers. If, therefore, they find five witnesses to contradict each of the seven former detainees, we have a total of 42 witnesses, including the detainees, to be examined. And, as still more detainees become released, the prospect of more witnesses being available becomes very real.
 - (b) At the resumed hearing, there are likely to be arguments on the question of admissibility of evidence, particularly in regard to the further statements which Maj Cronwright says he has. He is probably correct in claiming that he cannot be forced to produce the statements which are privileged police

information. But we will contend, as we have already contended, that he cannot refer in his evidence to written material if he does not produce that written material.

- (c) Presentation of the final argument will also require care. More than 1 000 pages of transcribed evidence at present exist. At the end of the proceedings, the record will comprise some 4 000 to 6 000 pages of transcript.

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W LANE
BELL DEWAR & HALL
12 July 1982

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