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IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF JOHANNESBURG

HELD AT JOHANNESBURG

ENQUIRY NO 139/82

DECEASED NEIL HUDSON AGGETT

PRESIDING OFFICER	:	Mr P A J Kotze
ASSESSOR	:	Prof L S Smith
APPEARING FOR THE STATE	:	Adv P G Haasbroek SC Adv A de Vries
APPEARING FOR THE MINISTER OF POLICE AND SOUTH AFRICAN TRANSPORT SERVICES	:	Adv P J Schabort SC Adv S Burger Instructed by Deputy State Attorney
APPEARING FOR THE FAMILY OF THE DECEASED	:	Adv G Bizos SC Adv D Kuny Instructed by Bell Dewar & Hall

MAIN HEADS OF ARGUMENT PRESENTED ON BEHALF OF THE
FAMILY OF THE DECEASED

INTRODUCTION - THE DECEASED

1. 1.1 Neil Hudson Aggett (hereinafter referred to as 'Dr Aggett') was born in Kenya in 1953. His parents subsequently immigrated to South Africa and eventually Dr Aggett, after undergoing his schooling in South Africa qualified as a medical practitioner at the University of Cape Town in 1976. He did his housemanship in the Transkei and at Tembisa Hospital in the Transvaal during 1977 and in 1978 he settled in Johannesburg where he was engaged as a full time casualty officer at Baragwanath Hospital. During this time he also worked in a part-time capacity for the Industrial Aid Society.

- 1.2 In about August 1979 Dr Aggett commenced working for the newly formed Transvaal branch of the African Food & Canning Workers Union ('AFCWU') in a full-time capacity and he continued to work in that capacity until the time of his detention on 27 November 1981. Dr Aggett was initially an organiser for the union but subsequently became the secretary.

During the time that Dr Aggett worked at the union he continued to do part-time sessions as a casualty officer at Baragwanath Hospital and this situation also continued until the time of his detention.

- 1.3 On 27 November 1981, Dr Aggett and his companion Dr Elizabeth Floyd were detained by members of the security police from John Vorster Square and taken, initially, to John Vorster Square. Thereafter Dr Aggett was transferred to Pretoria prison where he remained as a section 22 (Act No 62 of 1966) detainee for a period of 14 days. Dr Floyd was taken to Bronkhorstspuit where she remained in detention until approximately the end of December.
- 1.4 On 11 December 1981 Dr Aggett was transferred back to the cells at John Vorster Square where he remained in detention in terms of section 6(1) of the Terrorism Act 83 of 1967 until 4 February 1982.

2. 2.1 During the early hours of the morning of 5 February 1982 the body of Dr Aggett was found hanging from the bars of the steel grille in his cell. It appeared that he had committed suicide by hanging himself from a horizontal bar on the grille using a piece of cloth which he had with him in his cell called a 'kukoi', for use as night attire.
- 2.2 A postmortem examination was conducted on the body of the late Dr Aggett on the day of his death and according to the report on the postmortem examination furnished by the chief district surgeon of Johannesburg Dr Vernon Kemp, the death was caused by 'hanging'².
- 2.3 The postmortem also lists on page 2 thereof 11 observations as to the external appearance of the body and the condition of the limbs. One of these observations relates to an injury on the posterior aspect of the right forearm described as "a 1,5 cm triangular irregular scar" which, according to Dr Kemp's evidence at the hearing, was recently healed. The significance of this injury is that it is consistent with an injury which Dr Aggett

describes having sustained as a result of an assault committed on him on 4 January 1982 by Sgt Van Schalkwyk³.

2.4 Although extensive medical evidence was given at the inquest by Drs Kemp, Loubser and Botha, and the question was fully investigated as to whether Dr Aggett's death could have resulted from a cause other than hanging and whether it was possible that he might have been dead or in an unconscious or semi-conscious state prior to being hung from the horizontal bar by some person other than himself, it is conceded that this hypothesis was not established. Indeed the evidence of Auret van Heerden which only became available some months after the commencement of the enquiry (because he himself was detained in terms of section 6 and not available to us) shows clearly that Dr Aggett took his own life. It is accordingly accepted that Dr Aggett committed suicide in his cell during the early hours of 5 February 1982.

3. 3.1 At the time of his death, Dr Aggett had

been in detention for a period of 70 days. During this time the evidence reveals that he was extensively interrogated by members of the security police on the tenth floor of John Vorster Square. This interrogation, according to the evidence of the police commenced on 15 December 1981 and continued intermittently until 31 December 1981. Thereafter from 4 January until 8 January 1982 Dr Aggett was interrogated daily and on 11 January 1982 he was again taken to the tenth floor in order to index a statement which he had apparently written and thereafter typed between 4 and 8 January 1982. On 20 January he was again taken to the tenth floor, apparently to clarify certain questions which were not clear to the security police⁴.

- 3.2 On 25 January, as appears from the evidence given by various members of the security police, Dr Aggett's interrogation recommenced and, from that day up to and including 4 February, he was interrogated daily. It is also common cause that for approximately 62 hours, i.e. from 16h00 of Thursday 28 January

until approximately 03h30 on 31 January Dr Aggett remained on the tenth floor and was not returned to his cell.

3.3 Reference is made to a bar chart of the periods of interrogation. It has been prepared on the basis of the information contained in the affidavits of the various members of the security police who were in charge of and/or concerned with Dr Aggett's interrogation. A copy of the chart is annexed to these heads of argument marked 'A'.

4. 4.1 Evidence has been placed before the presiding officer regarding the character and many personal characteristics and details of the late Dr Aggett. In particular reference is made in this regard to the evidence of Dr Elizabeth Floyd⁵, Yvette Breytenbach⁶, and Sisa Njikelana⁷. In addition Dr Zalmon Wolf, a practising psychiatrist⁸ and Prof Charl Vorster, a professor of psychology at Rand Afrikaans University and a practising clinical psychologist⁹, investigated the

background of Dr Aggett and submitted affidavits each painting a picture of Dr Aggett prior to his detention.

4.2 Evidence was also tendered from a number of persons who were co-detainees with Dr Aggett and who encountered him at various stages during his detention on the second floor at John Vorster Square. Their evidence paints a contrasting picture of Dr Aggett during the earlier stages of his detention and during the first half of January 1982 as compared with his physical, mental and emotional state after 25 January 1982 which is the date from which his interrogation was resumed. In particular, a number of these witnesses have described Dr Aggett's condition after the weekend of 29/31 January, which, on all the evidence, was the most intensive period of interrogation undergone by Dr Aggett¹⁰. On their evidence Dr Aggett's condition was such that a suicide would not have come as a surprise.

4.3 In contrast to the picture painted by the detainees and in particular to the

deterioration in Dr Aggett's physical, mental and emotional condition at the end of January, evidence has been given by various members of the security police to the effect that at all times during his detention Dr Aggett was in a sound state of health, was well cared for, was mentally and emotionally stable and healthy, was calm, agreeable and co-operative¹¹.

4.4 His sudden death by his own hand on 5 February therefore came as a complete shock and surprise to his jailers in view of his sound state of physical, mental and emotional health¹².

5. 5.1 Persons who had known Dr Aggett prior to his detention spoke of him in the most laudatory terms¹³.

5.2 He appears to have been a highly intelligent and a dedicated person who had been prepared to forego the material advantages of practice as a doctor for the sake of working for a trade union. He lived an austere life,

worked very hard both in the trade union and doing extra work as a doctor at Baragwanath Hospital, and had little time to indulge in the ordinary pleasures and activities which he might otherwise have been able to enjoy. His life was apparently purposeful and directed and there was no indication that he had ever contemplated or was likely to contemplate taking his own life¹⁴

5.3 The act of suicide on 5 February 1982 was therefore in total contrast to the life which Dr Aggett led and was engaged in prior to his detention. In order therefore to establish the reasons why he should have taken his own life on 5 February, one must examine the circumstances of his life during the period of 70 days of detention and in particular the evidence relating to the manner and circumstances of his interrogation and treatment at the hands of the security police since it can be fairly submitted that but for his detention and what happened to him during that detention, Dr Aggett would on all the probabilities and having regard to the

evidence of what his life consisted of prior to his detention, still be alive today.

6. 6.1 A fundamental question which arises for consideration is whether Dr Aggett was ill treated by the security police in the manner described by him in his affidavit made by him to Sgt Blom on 4 February 1982, the day before his death¹⁵.

6.2 The security police have denied having ill treated Dr Aggett in any manner whatsoever and have described their relationship with him throughout the period of his detention as a cordial co-operative respectful one¹⁶. On the other hand, the treatment referred to by Dr Aggett in his affidavit of 4 February is inconsistent with the existence of the type of relationship and treatment described by the security police. In this connection and in order to establish the probability that Dr Aggett was in fact ill treated in the manner described by him, evidence has been placed before the enquiry of various detainees who experienced similar ill treatment

administered by the security police under the command of Maj Arthur Benoni Cronwright on the tenth floor of John Vorster Square and in the case of Premanathan Naidoo, at Vereeniging¹⁷.

- 6.3 Direct evidence of an assault on and ill treatment of Dr Aggett was given by the witness Smithers¹⁸. Corroboration of the assault on 25 January is to be found in the evidence of various co-detainees, namely Van Heerden and Ngwenya, and corroboration of the assault on 4 January is to be found in the existence of the injury to his right forearm found on post mortem and seen by Van Heerden and Njikelana.

THE NATURE OF INQUEST PROCEEDINGS AND THE COURT'S
FUNCTION, POWERS AND DUTY

7. An inquest is neither a criminal nor a civil trial but an enquiry to be so thoroughly conducted that the public and the interested parties are satisfied that there has been a full and fair investigation into the circumstances of a death not due to natural causes.

Timol & Another v Magistrate, Johannesburg
1972 (2) SA 281 (TPD)

per Cillié J P and Marais J, at 292A.

The magistrate has a wide discretion to be used in a manner which would not hamper the search for the truth.

Timol's case, supra at 293C and F - H

He is in his discretion entitled to follow a less formal procedure with less rigid rules.

Timol's case, supra, at 291G.

8. In the absence of pleadings the issues to be enquired into and the decisions to be made by the magistrate are to be found in section 16(2) of the Inquests Act, which provides:

- "(2) The magistrate holding an inquest shall record a finding upon the inquest -
- (a) as to the identity of the deceased person;
 - (b) as to the cause or likely cause of death;
 - (c) as to the date of the death;

- (d) as to whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person."

The facts to be enquired into and their relevance to the matters in issue can only be defined by having regard to the contents of the statements, documents, information and evidence placed before the court. Its discretion as to the relevance, admissibility and the weight of the evidence can only be properly exercised by having regard to everything that has been placed before it.

Cf. Timol's case, supra at 290E.

9. 9.1 It is conceded that the identity of the deceased, the date of his death and the cause of his death have all been established. The question in issue which must now be determined by the court is that required of it in terms of section 16(2)(d), namely, whether the death of Dr Aggett was brought about by any act or omission involving or amounting to an offence on the part of any person.

9.2 If the court is unable to record any such finding, then, in terms of section 16(3) of the Inquest Act, it shall record that fact.

10. The substantive law to which the court must have regard in making its decision and which, it is submitted, it will apply is the following :

10.1 That members of the South African police who detained Dr Aggett in terms of the provisions of section 6 of the Terrorism Act No 83 of 1967 did not possess the right to impair his mental or physical health. That, on the contrary, they were obliged to maintain him in good health, both in body and in mind, and to ensure that at the end of his detention he would be released with his physical and mental health unimpaired. The police were not entitled to subject him to any form of assault or make use of what is commonly described as third degree methods in interrogating or attempting to obtain a statement from him. See -

Rossouw v Sachs, 1942(2) SA 551 (AD) per
Ogilvie-Thompson, A J at 561 D-F and
564H.

10.2 The duty of care owed by the police to Dr
Aggett has been stated by Viljoen, AJA (as he
then was) in -

Minister of Police v Skosana, 1977(1) SA
31 at 40 A-B in the following words:

"On the other hand, where detainees are concerned, no policeman should allow his diligence to flag for a moment. He is the custodian of the detainees under his charge who have been deprived of their freedom of movement and whose capacity to make their own decisions and carry them out has not only been restricted but completely neutralised. A comparable case is that of a prison warden in charge of prisoners. The emphasis Schreiner, AJ placed upon the duty of a prison warden to protect prisoners in his charge in Mtati v Minister of Justice, 1958 (1) SA 221 (AD) at p 224 appears to me to be, mutatis mutandis, a weighty consideration in the present case, and generally in all cases in which the freedom of movement of the person concerned has been restricted by official interference."

10.3 The person who instigates, assists or puts another in a position to commit suicide, commits an offence depending on the facts of the particular case. The mere fact that the last act of the person committing suicide is

such person's own, voluntary, non-criminal act, does not necessarily mean that the other person cannot be guilty of any offence. Depending upon the factual circumstances the offence may be murder or culpable homicide.

See Ex Parte Minister of Justice in re S v Grotjohn, 1970 (2) SA 355 (AD).

Rex v Makali 1950 (1) SA 340 (N)

S v Hibbert 1979 (4) SA 717 (D)

1969 South African Law Journal page 148

See also the People v Lewis 124 CAL 551 (Supreme Court of California 1899) referred to in cases and materials in criminal law Second Edition Brett and Waller page 762 et seq.

Australian Criminal Law by Howard Second Edition page 35.

Cases and Comments on Criminal Law Schmeiser page 111.

10.4 In the article in the South African Law Journal 1969 supra Hugo comments critically on the decision in the case of S v Grotjohn supra and refers to two possible approaches, namely:

10.4.1 The so-called 'natural and probable consequences approach or the theory of adequate causation'.

See R v Loubser 1953(2) PH
H190 (W).

10.4.2 The *condictio sine qua non* approach.

See R v Makali 1950(1) SA
340 (N).

10.5 In the case of R v Peverett 1940 AD 213, it was held that the accused having entered into a suicide pact with another and having made the necessary arrangements for introducing exhaust fumes into a car in which he and the other sat, had correctly been convicted of an attempt to murder the other person notwithstanding the fact that that person was free to breathe the poisonous gas or not as she pleased.

See also the discussion in Hunt, South African Criminal Law and Procedure, Volume 2, Common Law Crimes, page 334 et seq.

Tydskrif van Suid-Afrikaanse Reg 1980, page 83.

11. 11.1 Upon the finding that Dr Aggett committed suicide by hanging himself in his cell on 5 February 1982, the question to be determined by the court in terms of section 16(2)(d) of the Inquests Act is whether, in the light of the legal principles enunciated in the abovementioned authorities, his death was brought about by one or other member of the South African Police through their acts and/or omissions which involved or amounted to the commission of the offence of culpable homicide?
- 11.2 It will be submitted, on the evidence, that the facts and circumstances disclosed by the evidence relating to Dr Aggett's detention and interrogation, including alleged physical ill treatment of varying forms and degrees over a period of time and more particularly during the week immediately prior to his death, drove or induced him to take his own life and that the person or persons

responsible for such conditions and treatment are therefore criminally responsible for his death by reason of their acts and omissions.

11.3 It is submitted that, for the court to bring in a finding of this nature, it does not have to be satisfied beyond reasonable doubt as to the responsibility of any person or persons for the death of Dr Aggett. The Inquests Act does not indicate that an onus akin to the onus resting on the State in criminal prosecutions must be discharged and there is clearly no onus of any nature placed upon the family of the deceased to satisfy the inquest court either on a balance of probabilities or beyond reasonable doubt as to the responsibility of any person for the death of the deceased. Ultimately the decision will rest with the Attorney-General when the papers are referred to by him in terms section 17(1)(a) and (b) of the Inquests Act as to whether to prosecute any person or persons. The court hearing such prosecution will be required to determine the guilt of the accused beyond reasonable doubt. It is accordingly submitted that all that the inquest court is

required to determine at this stage is whether prima facie there is evidence before it upon which a reasonable man might convict any person or persons of an offence relating to or arising from the death of the deceased.

11.4 It is submitted that the persons primarily responsible for the death of Dr Aggett are:

11.4.1 Maj Arthur Benoni Cronwright who was in overall charge of the investigation and interrogation of Dr Aggett and other detainees and, as such, bore responsibility for the conduct of the police officers under his control and command. The evidence discloses that:

(a) He was at all times monitoring the progress of the investigation and interrogation and that reports were being made to him at regular intervals by his officers.

(b) He also had a responsibility towards detainees while they were in the cells and he was fully aware of and in fact approved of the 'long weekend' of interrogation to which Dr Aggett was subjected between 28 and 31 January and which interrogation.

(c) He was fully aware of the overall circumstances of Dr Aggett's detention, interrogation and general ill treatment, which led him to take his life on 5 February.

11.4.2 Lt Stephan Peter Whitehead was the officer:

(a) Who was in direct control of Dr Aggett's interrogation.

(b) Who was assigned during the period of approximately three years prior to Dr Aggett's

detention to keep him under surveillance and to monitor his activities.

(c) Who decided to subject Dr Aggett to 'intensive' interrogation over the 'long weekend'.

(d) Who was in direct control of Dr Aggett's treatment during the critical last week to 10 days of his life.

11.5 It is submitted that it was reasonably foreseeable on the part of Maj Cronwright and Lt Whitehead that:

11.5.1 Dr Aggett as a detainee was in a vulnerable position whether or not he had anything to hide from the police.

11.5.2 A person in Dr Aggett's position, having been subjected to lengthy periods of interrogation, sleep deprivation, physical assault and

threats of physical assault, strenuous and possibly debilitating periods of exercise, deprivation of access to family, friends and legal advisers, was likely to have become depressed, despondent, experience feelings of helplessness and hopelessness and possibly contemplate taking his own life.

11.5.3 The risk of suicide inherent in incarceration and particularly incarceration of a person in solitary confinement or social desolation is increased and accentuated by physical and mental ill treatment, deprivation of even the limited privileges, debilitation and the inducement of fear and anxiety.

These risks and dangers are well known to the security police. Added precautions against the possibility of detainees committing

suicide are required. The Minister of Law and Order, in the House of Assembly on 3 February 1982, alluded to the dangers and previous events which had disastrous consequences not only for the persons concerned but the country as a whole. "All reasonable precautions are being taken to prevent any of them from injuring themselves or from being injured in some other way or from committing suicide¹⁹".

11.5.4 The evidence at this inquest has shown that, far from reasonable steps having been taken, the assurance given by the Minister was not well founded. The warnings contained in the 1978 circular from the Commissioner of Police (Exhibit AA4) appear to have been ignored in relation to Dr Aggett and the persons (presumably the security police) who gave the Minister this assurance either did not know the

true facts or did not care to tell the Minister the truth.

12. 12.1 In Minister of Police v Skosana 1977(1) SA 31 (AD) the court was called upon to consider the question of the responsibility in law on the part of the police for the death of a person who was in their custody and who died as a result of an injury received by him in a motor accident; in short, the police had failed to ensure that the deceased received timeous medical treatment and it had been established that had such timeous treatment been received he would in all probability have survived. The test applied by the Appellate Division was that of *causa* (condictio) sine qua non namely whether, but for the negligent act or omission of the defendant, the event giving rise to the harm in question would not have occurred: The court held that the police were in fact negligent and that such negligence was the *causa sine qua non* of the death of the deceased. In the course of the judgment Viljoen AJA referred to the decision in

Mtati v Minister of Justice 1958 (1) SA 221 AD at 224 in which Schreiner J A emphasized the duty of a prison warder to protect prisoners in his charge. The learned judge said that this dictum appeared to him to be mutatis mutandis, a weighty consideration in that case, and generally in all cases in which the freedom of movement of the person concerned has been restricted by official interference (at 240B). See also Dolf v Heath 1959 (1) SA 714 (ECD) at 719 - 720, per Wynne, J, Hunt supra p 346. R v Chenjere 1960(1) SA 478 at 482.

12.2 In considering the responsibility of the police towards detainees, reference should also be made to certain standing instructions dated 1978 which were referred to before the Rabie Commission and are referred to in paragraph 10.47 of Chapter 10 of the Rabie Commission's report.

12.3 It appears that these instructions were issued by the Commissioner of Police during 1978 in regard to the medical treatment and care of detainees and which instructions were

issued to all security police commanding officers.

12.4 Brig Muller, to whom this portion of the Rabie Commission report was put in cross-examination, said that "I am, apart from existing instructions, very adamant on my own instructions as to the handling and the safeguarding of detainees of this nature" and "The principles requested or the principles prescribed in those instructions were normal practice" and "There should be instructions of those kind in my file, yes sir²⁰."

12.5 Thus it is clear that the security police generally and certainly the security police operating on the tenth floor of John Vorster Square were at all times fully apprised and instructed and cautioned in regard to the manner of treatment of detainees and these instructions were or should at all times have been in the forefront of their minds when dealing with detainees and in particular Dr Aggett.

12.6 In considering the question of the reasonable foreseeability of a detainee inflicting harm to himself or committing suicide, the standing instructions issued to the police with this very danger in mind are a relevant consideration and would have required the police to take special precautions in the handling of Dr Aggett and other detainees.

12.7 Dr Aggett, was not only a prisoner in the hands of the police but he was a detainee over whom the security police had almost absolute power, subject only to the slender limitations contained in the warrant. They were entitled to hold him, in terms of section 6 of the Terrorism Act No 83 of 1967, indefinitely "subject to such conditions as the Commissioner may, subject to the directions of the Minister, from time to time determine, until the Commissioner orders his release when satisfied that he has satisfactorily replied to all questions at the said interrogation..."

12.8 The police were therefore entitled to deprive the detainee of all rights and privileges

which the normal awaiting trial or convicted prisoner has in terms of the Prison Regulations other than those specifically directed by statute or regulation.

12.9 As was stated in Rossouw v Sachs 1964(2) SA 551 (AD) by Ogilvie Thompson AJ at 561D to F and 564H, there is "also an obligation on the part of the State to see that the detainee is, at the end of his detention, released with his physical and mental health unimpaired". Accordingly, the security police, although during his detention have virtually absolute power over a detainee, they are nevertheless obliged to conduct themselves in relation to him so as to ensure his release in a sound state of body and mind.

12.10 The police therefore bore a very special and onerous responsibility to ensure the physical, mental and emotional well-being of Dr Aggett. Since he had been deprived of his normal amenities of life, social and physical contacts and all means of fending for and attending to himself and his needs, the

police having assumed full and complete control over him, must, in law, take the responsibility for his well-being.

12.11 It is submitted that the evidence establishes that the circumstances of Dr Aggett's detention and interrogation, including physical ill treatment, resulted in his decision to take his own life and that the security police, and in particular Maj Cronwright and Lt Whitehead, are therefore guilty of culpable homicide because of what they themselves did or what they allowed others to do and/or what they failed to prevent others from doing to Dr Aggett.

12.12 In approaching the responsibility of the police in these circumstances regard must be had to the background and history of the high number of deaths in detention which have, according to the police, mainly resulted from suicide although several have been said to have been caused by accidents of one form or another. It will also be of significance that the security police appear to be hyperconscious of the tendency of people to commit or attempt suicide while in

detention. This is seen from the apparently painstaking precautions taken by the police to remove from detainees any means at their disposal to commit suicide e.g. the barring of all accessible (and even non-accessible) windows on the tenth floor at John Vorster Square and the bar placed around the stairwell between the ninth and tenth floors at John Vorster Square. There are also certain cells at John Vorster Square which are referred to as suicide-proof cells which have perspex which prevents access to the bars. Dr Elizabeth Floyd also comments on the fact that members of the security branch frequently made reference to persons in detention committing or attempting suicide²¹.

12.13 Knowing of this tendency, Maj Cronwright and Lt Whitehead placed Dr Aggett under the most extreme and severe pressures without satisfying themselves that he was either physically or emotionally able to withstand the pressures.

13. 13.1 Their protestations of concern after the event are belied by their conduct which is not in serious dispute in relation to Dr Aggett's complaints, the manner in which they were ignored and the attempts made by them to keep them out of these proceedings. Dr Aggett complained to a magistrate on 18 January 1982 that he had been assaulted on 4 January 1982. He was prevented by various stratagems from complaining to the inspector of detainees, the magistrate and the doctor. This complaint was not fully investigated immediately nor was a statement obtained from Dr Aggett until 4 February, the day before he died. In his affidavit made on that day, he complains about certain further assaults that had taken place during the weekend prior to 4 February; the nature of these assaults was more severe than the original assaults. Despite this serious complaint, no attempt was made at that stage to have Dr Aggett examined by a doctor, to call off the further interrogation and to investigate the complaints. Had this been done on 4 February, there is every likelihood that Dr Aggett would not

have taken his life in the early hours of 5 February. A fortiori had a proper investigation been carried out at an earlier stage or immediately after 18 January by a doctor and an investigating officer of rank, authority and competence and not simply by the timid Sgt Blom, it is unlikely that he would have taken his life on 5 February 1982 or at any stage.

13.2 What ought to have happened contrasts starkly with reality. His complaint of 18 January becomes a slow letter by the magistrate to the security police that takes seven days to travel some half a kilometre from the court house to their headquarters. Whatever Maj Cronwright may have done with it, the next development was 10 days later when Sgt Blom arrived to take a statement. Maj Cronwright's calling in of Lt Whitehead and Sgt Van Schalkwyk on the morning of 25 January to ask them whether the allegations were true was hardly a sufficient safeguard. Lt Whitehead, upon being told on 4 February that Dr Aggett had complained on oath to Sgt Blom of sleep deprivation, that he had been

shocked and otherwise assaulted simply berated him for complaining and allowed his interrogation to continue²². But then this is not the only evidence that complaints such as Dr Aggett's are dealt with in a manner which would inspire confidence in the minds of Maj Cronwright and Lt Whitehead that they were immune from the danger of a proper investigation. The failure of anyone, including Dr Jacobson, to properly investigate the curious injury on the arm of Mr Shirish Nanabhai who complained of having been shocked is sufficient corroborative evidence of the fact that those who would ill treat detainees on the tenth floor of John Vorster Square were not likely to be asked to account for their actions beyond being asked to make a statement denying it.

The fact that Dr Aggett in his affidavit of 4 February did not mention this assault is but a make weight. It begs the question as to what Dr Aggett's condition was at the time he made his affidavit.

14. 14.1 Counsel for the Minister of Law and Order and the other interested parties has plaintively submitted during the course of the inquest that it was being used as a commission of enquiry into the security legislation of South Africa. The object of the enquiry was to ascertain the circumstances under which Dr Aggett was being detained at John Vorster Square from 11 December 1981 to 5 February 1982. It was established that:

14.1.1 Detention under section 22 of the General Law Amendment Act and section 6 of the Terrorism Act under which Dr Aggett was detained (even though his activities obviously had nothing to do with terrorism) give the security police unfettered discretion in regard to the circumstances of his detention.

14.1.2 Not only were they able to prevent members of his family, legal representatives and medical practitioners of his choice from seeing him but on the evidence were

able to effectively prevent the inspector of detainees, the magistrate and the doctor from seeing him at times when he would have wanted to complain and when visible injuries may have been able to corroborate his assertions that he had been assaulted, shocked, deprived of sleep and made to stand for inordinately long periods of time.

14.1.3 The complaints made by Dr Aggett and others who have given evidence were in the main treated as if they were dead letters by those not in the security police and became a cause for further threats and ill treatment because the very persons against whom the complaint was made were apprised of their nature. In the case of Dr Aggett, they were informed immediately after his complaint of 4 February was made, so that Lt Whitehead, W/O Mapope and others that were responsible

for his ill treatment were afforded an opportunity to cover their tracks.

14.1.4 The investigations into Dr Aggett's, Mr Nanabhai's and other complaints were dealt with in a flatfooted and lackadaisical fashion when the nature of the allegations such as electrical shocks on helpless detainees called for the most energetic investigation.

14.1.5 Those against whom the complaints were made must have felt secure that, because of the aura of power and authority surrounding them, even Cpt Victor would wrongly believe that he had no authority to go and interview detainees when exercising his duties as investigating officer.

14.1.6 Such limited rights in relation to exercise and other comforts depend

not only upon the whim of the interrogator but, as the evidence establishes, so little was thought of the detainees' limited rights, that nobody even tried to find out what they were.

14.2 14.2.1 The sanctity of human life like liberty and the protection of both the innocent and guilty from physical and mental abuse require adequate procedural safeguards. It was not intended by us during the course of the inquest nor is it the function of the court to enquire in the abstract into the adequacy of the procedural safeguards.

14.2.2 If on the other hand, on the evidence, the procedural safeguards are found to have been inadequate and even those that existed were not observed, it is submitted that the court has a duty to make findings in this regard in so far as they may be relevant to the

circumstances of the death of Dr Aggett. If those responsible for enacting the legislation will want to take note of the sorry state of affairs that has emerged and try and put things right, this will not change the nature of the inquest into a commission of enquiry.

14.2.3 It would be wrong for the court to appoint itself as a one man commission of enquiry. It is submitted that it would be equally wrong to remain silent if it is of the view that the inadequacy of the procedural safeguards was one of the circumstances that led Dr Aggett to choose death rather than the continued miserable state to which he had been reduced.

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