

**IN THE MAGISTRATE'S COURT FOR THE DISTRICT OF PRETORIA
HELD AT PRETORIA
INQUEST NO 573/1977 In re the death of: STEPHEN BANTU BIKO
SOURCED FROM: STEVE BIKO FOUNDATION**

A. Counsel's Submissions on Behalf of the Biko Family

1. After receiving certain information and hearing evidence, the court is enjoined by the provisions of section 16(2) of the Inquest Act, No 58 of 1959, to make certain findings whenever an inquest is held following the death of a person from other than natural causes. The identity of the deceased as STEPHEN BANTU BIKO and the date of his death as the night of the 12th September, 1977, have been clearly established.

2. As to the cause or likely cause of death there can be no doubt whatsoever. On the evidence of Professors Loubser, Proctor and Simpson and Dr Gluckman, it has been established that Mr. Biko died as a result of at least three brain lesions caused by the external application of force to his head. The suggestions made in the affidavits of certain police officers and highly placed persons outside court that Mr. Biko was on a hunger strike or that he had become

dehydrated or that he had suffered a stroke or that he suffered from kidney disease need no serious consideration. These incorrect statements will be examined later when submissions are made on the credibility of those who may have given birth to them. We submit, therefore, that the court will enter a finding that the cause of death was brain damage which in turn was caused by application of force to the head; that the uremia, kidney failure and "d i c" were caused by the brain injuries and may therefore be considered as the sequelae of the brain injuries sustained by Mr. Biko.

3. The other question which the court has to answer is whether the death was brought about by any act or omission involving or amounting to an offence on the part of any person. In terms of section 16(2) (b) the court may find that a person is responsible and if his identity has been disclosed in the evidence the court should name him. The fact that the identity of a wrongdoer has not been disclosed in the evidence does not, however, mean that the court is entitled to make a finding that no person is guilty of any act or omission causing the death. A negative finding would be tantamount to exonerating all the persons involved in the handling of Mr. Biko. We submit that the conclusion which would have the effect of exonerating all concerned is one that cannot, on the evidence as a whole, be reached by any reasonable man.

4. Our submission is that one or more of the security policemen is responsible for the injury which caused Stephen Biko's death and that the probabilities are that the injuries were inflicted deliberately, unlawfully, without good cause. Those responsible are accordingly guilty of at least the crime of culpable homicide.

5. We do not submit that Mr. Biko was willfully killed in the sense that whoever assaulted him wanted him to die. We submit that he was beaten and the person or people who did this did not at the time care whether he was seriously injured or not.

6. We must not be misled by Colonel Goosen's exclamations of concern about the price he was prepared to pay for the life of Mr Biko. Certainly he did not want him dead; but is it not because he feared that Mr Biko's injuries would then be discovered, and one, or other of his own men might be exposed? His concern for Mr. Biko's life must be seen together with his refusal to allow him to go to a proper hospital, his failure to mention to the doctors that he may have suffered a head injury and his insistence on sending him on a 14-hour journey to Pretoria; his main concern, we say, was to lead the doctors into the belief that Mr Biko was not ill but was shamming.

7. This court's function is not to try the security policemen nor to convict them. An inquest is not a criminal trial at the instance of the Attorney General nor indeed is it a private prosecution with the representatives of the family as the prosecutors. The function of the court at an inquest is an attempt to ascertain whether or not there is evidence that, on all the probabilities, establishes at least a prima facie case that some known or unknown, is responsible for the death of the deceased. The court, therefore, does not have to come to a verdict beyond any reasonable doubt. The court must express an opinion as to whether or not there is a prima facie case or not. Whatever the court's view may be in relation to a prima facie case, if it is apparent that further investigations should be conducted, it is the court's duty to point this out to the Attorney General, in the hope that the further investigation will take place.

8. Although the court's finding is not a final one, it is nevertheless an important one, in which the members of the family have a real and substantial interest. The importance of the correctness of the finding on the evidence is emphasised in *Claassens v Landdros, Bloemfontein*, 1964 (4) S A 4 (0).

9. We as representatives of the family are entitled to avail and have availed ourselves of the opportunity to place information before the court and to cross examine witnesses in order to assist the court in coming to the correct

conclusion. However, we have subject to a number of limitations. We have no right to subpoena witnesses. Nor in the nature of things could we produce any eye-witness to the treatment received by Biko in Sanlam Buildings. What we have tried to do is, to test and probe the evidence made available to us by the court. We have been permitted full scope by the court in cross-examining the witnesses called, although we would, of course, have liked to cross-examine other person too, whom the court felt it unnecessary to call. In the task of probing and testing the evidence of police officers and the witnesses, we had the assistance of the court, but of none of the other counsel in court. All, including the Deputy Attorney-General, appeared to us to ask no question but to repair or extenuate the effect of our cross-examination. Further, notwithstanding public promises of the fullest investigation, the investigation undertaken by the police had peculiar and unfortunate limitations. First, it appears that the investigating officer made his appearance in Port Elizabeth only a month or more after Mr. Biko's death. Yet the fact of Mr. Biko's injury (if not its cause) was ascertainable from Prof Loubser by the morning of the 13th September. The investigating officer took numerous affidavits, many in duplicated form, and all self-serving. Then, he failed to search for or take possession of documents - not even the telex messages or the hospital bed letter. He made no search of the Security Branch's office, whether for possible blunt instruments or for anything else. He seems to have made no effort to find out whether there was any truth in the, rumour spread by Col Goosen that in his previous detention Biko had shown "similar symptoms"; nor does he seem to have subjected Col Goosen to any real interrogation on this or any other subject. A police investigation would require far more spirit and initiative than asking suspects to fill in a form or answer a few simple questions. Accordingly we must base our submissions on the probabilities which arise from the medical evidence, the circumstances surrounding Mr. Biko's death, and the evidence, often unwilling and evasive, of the police and doctors concerned.

10. Our submission in simple summary is that Mr. Biko was assaulted and that is how his brain lesions were caused. The security police deny that he was assaulted and now appear to suggest that his injury may have been accidentally caused in an incident on the morning of the 7th, in which Mr. Biko was said to be the aggressor. We assume that the fanciful theories of Colonel Goosen that the injuries were self-inflicted in attempts to commit suicide are not going to be persisted in. The main issue before the court, therefore, is whether, considering the evidence, there is reason to conclude that one or other of the security policemen assaulted Biko while he was in t' custody.

11. There is no direct evidence that any particular security policeman assaulted Biko. The reason for the absence of such direct evidence or eye witness evidence, we will submit, is due to the fact that some at least of the security police have closed their ranks and have entered into a conspiracy of silence as to what really happened to Mr. Biko. However, in order to reach the conclusion that Biko was assaulted it is not necessary to have direct evidence. Circumstantial evidence is sufficient. In certain circumstances circumstantial evidence may be far more cogent than direct evidence.

12. The circumstantial evidence which shows that one or more of the policemen assaulted Mr. Biko during the night of the, 6th/7th or the morning of the 7th September falls broadly into the following categories:

(a) The time when the injuries were sustained, namely between the evening of the 6th and 7 30 on the 7th September.

(b) The failure of the police officers in whose custody Mr. Biko was during this period to give any truthful or acceptable explanation of the circumstances in which Mr. Biko received his injuries; the fact that at the time they concealed the truth; and the fact that in this court some of them at least have give demonstrably false evidence of the events which took place early on the 7th.

(c) The behaviour of certain of the doctors and their failure to see what must of necessity have been visible to them; which shows that to a greater or lesser extent they too were drawn into the conspiracy of silence.

(d) On an overwhelming balance of probabilities on the medical evidence the "scuffle" on the morning of the 7th as described by Maj Snyman, Capt Siebert, W/O Marx and W/O Beneke could not have caused the brain injuries found post morte

(e) The callous treatment of Mr. Biko by the security police.

(f) The Undisputed Facts concerning the Treatment of Mr. Biko

13. Mr. Biko was detained on the 18th August, 1977, whilst in good health. He died 26 days later. What the security police themes, admit they subjected him to during this period is more than a matter for comment. The admitted assaults on his dignity under the direction of Colonel Goosen are evidence of a callous disregard for his legal and human rights and are highly relevant in assessing the evidence of those who abused him:

(a) He was left in solitary confinement from the 19th August to the 6th September. Whilst at Walmer Police Station before his interrogation he was deprived even of the negligible rights he had as a section 6 detainee. (See

the warrant under which he was detained). His clothes were removed and he was left naked in his cell; he was not taken out for the minimum period of exercise in the open air; he was not allowed to purchase any food; he was not allowed proper washing facilities. Complaints to the magistrate on the 2nd September were a dead letter. The complaints did not even come to the notice of those against whom they were made.

(b) He was brought to the interrogation room on the morning of the 6th September, 1977. At night he was handcuffed and shackled by leg irons placed on, his feet which in turn were locked on to walls. This was the position that he was expected to sleep in.

(c) He remained so shackled even after Colonel Goosen, according to his own evidence, suspected that he had suffered a stroke and was trying to get Dr Lang as a matter of urgency during the morning of the 7th.

(d) He remained so shackled even after his hands, feet and ankles were swollen and cut.

(e) He remained shackled on the mat on the floor, after he was seen by Dr Lang, for the whole day of the 7th and during the night of the 7th/8th, despite sufficient concern about his health to arouse Lieutenant Wilken to call Major Fisher, who in turn called Colonel Goosen.

(f) He remained shackled during the morning of the 8th. Security policemen say that he had not made use of toilet facilities offered, but the fact is that he was found in urine-wet trousers and blankets, on a wet mat.

(g) The two medical practitioners who saw him during their lunch hour on the 8th were sufficiently concerned to seek the assistance of a specialist physician. However, Mr. Biko was still left there, shackled, in wet trousers and a wet bed until he was removed to the prison hospital at about 2100h.

(h) No attempt was made to get another physician when it was known that Dr Hersch would not be available until late. Mr. Biko was left shackled on the mat.

(i) Although Mr. Biko was shown some kindness by prison warders (who alone seem to have shown some appreciation that Mr. Biko was a sick man) no channels of communication were established to report his condition to the doctors.

(j) This obviously confused behaviour in trying to have a bath with all his clothes on or sitting in an empty bath, although reported to the doctors and Colonel Goosen, produced no change in their attitude to him.

(k) For contradictory and inadequate reasons he was moved from the prison hospital and placed in a cell, ostensibly to make it easier for Dr Lang to see him regularly. In fact, meant that he was removed from even the semi-skilled care of the prison warders; removed a bed to a mat, and again left naked in an ordinary cell.

(l) He had not been back in the police station above a few hours when he was found in a state of collapse on the floor by Sgt van Vuuren. The senior officers and Dr Tucker were again hurriedly called in. Again there was insistence on only a prison hospital, even if it was 1200 km away and even if only a van was available as transport.

(m) He was transported approximately 1200 kilometers lying naked in the back of a Landrover without any medically qualified person to attend to him and with nothing more than a bottle of water by way of equipment.

(n) No medical reports were furnished by the doctors of Port Elizabeth nor were they asked for by the security policemen who took Mr. Biko to Pretoria.

(o) Although Mr. Biko had to be carried into prison by four men using a mat as a stretcher a further attempt was made by the security policeman from Port Elizabeth to persuade the official at the Pretoria Prison that the obviously sick man might be feigning illness and that he was on a hunger strike.

(p) He was sent all the way to Pretoria Prison because there, according to Colonel Goosen (Affidavit, p 2, para 19), there were "outstanding medical facilities". For Biko these facilities proved to be a mat in the corner of the cell, the attendance of newly-qualified G P six hours after his arrival at the prison, a diagnosis based on false reports of a hunger strike and that other doctors had found nothing wrong with him, and a vitamin injection and nothing more.

(q) At no time was any member of Biko's family or any friend informed of his condition. He died a miserable and lonely death on a mat on a stone floor in a prison cell.

14. It is difficult to comment on these facts in measure terms. Certainly Colonel Goosen's statement made after the death of Biko was known to him that everything was done for the comfort and health of Steve Biko is as cynical a statement as any heard in a court of law. Colonel Goosen, Major Snyman, Captain Siebert, Lieutenant Wilken, Dr Lang and Dr Tucker are all to a greater or lesser extent involved in the sorry treatment of Mr. Biko. Their evidence must be approached with this in mind and their alleged concern must be judged in the light of their conduct rather than their professions. Insensitivity or even callousness is not proof of criminal acts. of R v Gani, 1958 (1) S A 102 (A D)" at 113. But the evidence of some of the security police of their tenderness towards those in their care becomes unacceptable in the light of this evidence and their use of improper methods of interrogation more likely.

B. Dating the Brain Injury

15. (a) The Pathological Evidence

(i) The forehead injury is dated as 4 - 8 days old by Prof Loubser, Dr Glucknian and Prof Simpson. It was probably 5 to 6 days old. *Vol 16, p 1181.*

(ii) The injuries to the brain are dated by Prof Proctor as probably 5 - 8 days old. *Vol 18, p 1311.* Prof Loubser and Prof Simpson thought they were nearer 5 days than 12 days old. *Vol 16, 1) 1150*. The head injury was suffered before the night of the 8th September, and not earlier than the 4th or 5th September.

(b) The Police Evidence

Biko left Walmer at 10 a m on the 6th September. He was fit and well. He then underwent seven or more hours of interrogation during which, according to his interrogators, he was in full command of himself, and was in possession of all his faculties. This session ended at 6 pm. At 7:30 am on the 7th September he was found by Colonel Goosen to be incoherent. He was not responding to stimuli, and Colonel Loosen spoke in term; of a "stroke".

(c) The, Clinical Evidence

(i) By 10 pm on the 8th Dr Hersch had found unmistakable evidence of brain damage- the extensor plantor reflex, echolalia and left-sided weakness:

(ii) Earlier, on the same day Dr Tucker's examination revealed the following neurological abnormalities (whether or not he realised it at the time):

(a) He moved his left upper limb with difficulty;

(b) The reflexes of the left upper limb were reduced and difficult to elicit;

(c) There was a doubtful up-going toe on the right side;

(d) He had difficulty in using his left leg;

(e) Eneurisis had occurred.

These features reflected a neurological disorder.

(iii) At 9 30 on the 7th September Dr Lang (whether or not he realised their significance noted the following signs of neurological abnormality:

(a) Slurred or thick speech;

(b) The "ataxic type" gait;

(c) A difference between the reflexes in Biko's arms (weaker on the right side).

16. It is submitted that this evidence places it beyond reasonable doubt that Mr. Biko had suffered his brain injury by not later than 7 30 a m on the 7th. It also points the very strong probability that the injury had been suffered not earlier than the night of the 6th. One may also note Colonel Goosen's telex which speaks of the fact that injuries were inflicted (toegedien) at 7 am on the 7th. In the course of cross-examination we put it that Biko had been "smashed up". Police witnesses and district surgeons maintained that he showed no sign of this. They claim that all they saw was a cut lip, a bruise on the chest and abrasions on wrists and ankles. This evades the real point of the indisputable evidence. On the morning of the 6th September Biko went into the interrogation room alive and well. At 7:30 am on the 7th September he was a physical and mental wreck.

C. The Duty to Explain

17. It is clear, therefore, that Mr Biko suffered his injuries either while in the custody of the night squad (Lieutenant Wilken, W/O Fouche and Coetzee) or the day squad (Major Snyman, Captain Siebert, W/O Marx, W/O Beneke, Sgt Nieuwoud Nobody else can have direct knowledge of how he sustained his injuries. It is, therefore, for them to explain acceptably how he came to sustain them. In the absence of an acceptable explanation the court is entitled to draw an inference that one or more of them was responsible for unlawfully assaulting him.

See *R v Afrika*, 1938 A D 556;

S v Rama, 1966 (2) S A 395 (A D);

Gardiner and Lansdown, 2nd ed, Vol 1, p 463.

If, in addition to failing to give an acceptable explanation, a false explanation is given, the inference of guilt is strengthened. In this case it is submitted:

- (a) That no satisfactory explanation of the injuries has been given; and
- (b) That false evidence of the events of the 6th and the 7th September has been given by members of the security branch.

D. The Absence of a Satisfactory Explanation

18. In this section it is proposed to consider the absence of a satisfactory explanation apart from the question of the falsity of some of the evidence given by the witnesses.

(a) **The Night Squad:** From Lieutenant Wilken and W/O Fouche one has had a bare denial that Biko was assaulted. He was either within their sight or their hearing at all times during the assault. Both Lieutenant Wilken and W/O Beneke stated that any sound above a whisper could be heard by them. W/O Beneke said that Biko was never found out of his bed. Nobody appears to have heard anything unusual. The affidavit of W/O Coetzee is similarly negative. No explanation is to be found in this evidence.

(b) **The Day Squad:** All five members have given an account either orally or by affidavit of the events alleged to have taken place between 7 and 7:30 am on the 7th. Their version consists of a story of aggression by Biko - for which, as we shall show, false and conflicting explanations were given followed by a struggle in the coup of which he was pinned to the ground and manacled. In this version it is said that the struggle was a violent one, that five men were needed to overpower him and that he went on struggling even after he was manacled. In the course of this struggling, it is said Biko and his captors bumped into the furniture and perhaps into the walls and may have fallen to the ground. Can this version explain the brain injury which Biko sustained? Our submission is that it cannot for the following reasons:

(i) In the first place not one of the five members of the Day Squad is prepared to say that he saw Biko strike his forehead. Nor does anybody admit to having seen what would have been a fresh injury on his forehead - this notwithstanding the fact that they saw the lip injury. Moreover - a point to be expanded on later - nobody mentioned whether in his original affidavit or his statement to General Kleinhaus that Biko had or might have bumped his head. The omission is particularly glaring in the case of the statements taken by General Kleinhaus as on that occasion the policemen concerned had their attention specifically drawn to the question of brain injury. They were asked if they could give any explanation of it. The fact that nobody mentioned that Biko had or may have bumped his head either on a wall or on the floor leads irresistibly to the inference that that did not happen.

(ii) It may be said that a possible modification to what is said above is necessitated by Major Snyman's entry in the occurrence book. The strange circumstances in which this entry was made will be referred to later. The value of this entry however must be measured in the context of the whole of the evidence of Major Snyman. It is submitted that neither Major Snyman nor any of his officers has given satisfactory or even intelligible accounts of any impact which might account for the injury to Mr. Biko's forehead and the resulting lesions in his brain.

(iii) Major Snyman in the occurrence book stated as a fact that Biko had fallen "with his head against the wall and his body on the ground". See Exhibit J2, vol. 1, p. 63. But when asked what part of his head hit the wall, Major Snyman said plainly that he hit the back of his head against the wall. Vol. 4, p. 133. In this part of his evidence however, he seems quite unable to explain the statement that he fell with his body on the ground. When asked to demonstrate to the court he graphically demonstrated a man's head being pushed backwards against the wall so that the back of his head strikes the wall. Vol. 4, p. 147. But when pressed by the court, it became clear that he had seen nothing of the sort. He was drawing "an inference". Vol. 4, p. 148 and p. 186. (See also the muddled account in vol. 4 p. 183). It is obvious from the medical evidence that even if there were this blow on the back

of the head, it could not account for the injuries sustained. Moreover, Major Snyman gives a picture not of the fall to the ground but of someone being wrestled to the ground. Vol. 4, p. 117. The description on this page is also at odds with the occurrence book description.

(iv) The evidence of Captain Siebert is equally vague and unconvincing. In his original affidavit (vol. 4, p. 223) he said that during the struggle "we" fell against tables, chairs and on the ground. But when the question was pertinently put to him by General Kleinhaus whether he could throw any light on Biko's head injury, all he could say was that it was not "impossible" that the injury could have been sustained on the 7th when he was placed under restraint. He said nothing about any particular fall and nothing about Biko's head being knocked against the wall. At p. 232, for the first time, he mentioned that he fell full length. He later (p. 234) described this as a fall "op sy maag" - on his stomach. When asked (foot of p. 234) whether he had seen Biko fall with his head against the wall, he said No, that it was he, Siebert himself, who bumped into the wall. Later (vol. 4, p. 273) it became clear that when there was this great bumping against the wall, Captain Siebert was in fact half behind Biko with the wall on his left. His left shoulder bumped into the wall. It is hardly likely in these circumstances that Biko's head would have hit the wall. See also the top of p. 274. On this page also it is made clear when after this incident he (Biko) fell to the floor, he fell on his elbows, hands and knees. Moreover, he immediately sprang to his feet.

(v) Warrant Officer Beneke contributed nothing to the explanation of the injury. He does not claim to have seen any impact or possible impact to Biko's head. Warrant Officer Marks attempted to give a more circumstantial account. He says, vol. 4, p. 203, that when Biko was 12 or 18 inches from the wall Sergeant Niewoudt charged him with his left shoulder. He does not say however that Biko bumped his head against the wall. He says that he fell to the floor and at once sprang up again. Later (p. 208) Marx said that they had pinned Biko to the wall. At p. 212, he conceded that he had never said in his evidence that Biko sustained any head injuries. Nor did Major Snyman ever say anything of the sort to him - p. 213.

(vi) Notwithstanding the absence of any convincing evidence that anyone saw Biko sustain an impact to his head (and it must be remembered that nobody admits having hit Biko - see Major Snyman, vol. 3, p. 118) it might be argued that in a confused struggle in a crowded room he might have sustained a blow on his forehead which nobody noticed. This in itself is possible although highly unlikely. But the "struggle" as an explanation of the injuries is entirely eliminated by the powerful medical evidence on the subject of unconsciousness. There is strong convincing and uncontradicted evidence that in so far as there can be any certainty in medical matters, it is virtually certain that the brain injury which Biko suffered must have resulted in a substantial period of unconsciousness.

(vii) Professor Proctor, a neuropathologist of the highest standing and the greatest experience, having examined the lesions and considered the undisputed evidence relating to the medical history, stated "I would say as far as medically one can say it that this patient must have been unconscious". Vol. 18, p. 1304. He estimated a period of unconsciousness of ten to twenty minutes (p. 1305). It could not have been momentary (p. 1306-1307). See also vol. 19, pp.1383-1384. See also Professor Proctor's reexamination in which the point is noted that if, as may be possible, all the brain lesions were caused by one blow, the period of unconsciousness would have been so much the greater.

(viii) Professor Proctor's evidence was supported by Professor Simpson end of examination by Mr. Kentridge). He fully agreed with the proposition that it was almost inconceivable that there would not have been unconsciousness following these lesions to the brain. In answer to the court, he made it clear that by unconsciousness he meant a state of collapse such as Biko was in when he arrived in Pretoria. He would not have been able to use his limbs.

(ix) This evidence is supported by much authority. See, in particular, Munro, vol. 18, p. 1306. Sir Charles Symonds in Brock, "Injuries of the Brain and Spinal Cord and Their Coverings" See vol. 16, pp. 1174-1176. Professor Loubser, vol. 16, p. 1177, stated that he had no reason to disagree with the view that there must have been a period of unconsciousness following this injury of at least ten minutes - more likely fifteen to twenty minutes, and possibly up to an hour. The third authority referred to was Courville in the same volume, p. 26. This author stated that contre-coup damage is to be anticipated only when the injury is severe enough to result in a loss of consciousness. See vol. 16, p. 1178. Professor Loubser did not differ from that view. Cross-examination on this point was based on a theory that unconsciousness was caused by disturbance of the brain stem and that there was no evidence of that. See, e.g. vol. 17, pp. 1229-1230. This was fully disposed of in due course by references to Forensic Medicine by Gordon and Shapiro and to Northfield. See vol. 18, pp.1307-1310. Although Professor Loubser's view was not as firm as that of Professor Simpson, in vol. 7, p. 1263, it was put to him that it was "virtually inconceivable that there would not have been an appreciable period of unconsciousness". He was asked by the court whether he agreed with that. His answer was "That is my personal view and I agree with that but the alternative that he was not unconscious is a distinct possibility that I cannot rule out".

(x) In the light of all this evidence, it must be accepted not merely on the balance of probabilities but for all practical purposes that the injury sustained must have resulted in a period of unconsciousness. The account given by the various officers completely excludes any possibility of unconsciousness. It follows that the struggle as

described cannot be taken to explain the injuries. Some other explanation is necessary but has not been forthcoming.

(xi) The question whether one or more blows to the head was responsible for the brain lesions is a matter in controversy. It depends in part on whether the lesions numbered 3 and 5 on the model are primary lesions or are ischaemic. Although it is submitted that there is good reason to accept the view of Professor Proctor, it is submitted that the acceptance of Professor Simpson's view does not assist the police officers to explain the injuries. Their account of the struggle is not consistent with either view of the head injuries.

19. The possibility of a self-inflicted injury was mentioned in passing but not seriously mooted. None of the doctors appears ever to have come across the phenomenon of a self-inflicted brain injury or to have read of it. See Professor Loubser, vol. 17, p. 1207. Even if it is medically not an impossibility, it is so improbable as/not to be worth mention. During the time in question Mr Biko was constantly under surveillance. None of the night squad suggests that he heard or saw anything untoward. Any banging of Biko's head against the wall or floor during the night would have been heard. Moreover, none of them suggests that he was ever out of his bed. The position in which Mr Biko was manacled and chained makes it highly unlikely that he could or would have inflicted the wound on the left side of his forehead. Further, as Professor Loubser says, to inflict that degree of injury himself, he would have had to bang his head against the wall with some considerable force "and repetitively". Vol. 17, p. 1206.

E. The Furnishing of False Explanations

20. It is submitted however, not only that the police account of the "struggle" is insufficient as an explanation of the injuries, but that the police account of what took place on the morning of the 7th is untruthful. An analysis of the evidence shows that the untruthfulness arises in this way: at some time in the night or the early hours of the 7th, possibly at 7.00 a.m., possibly earlier, injuries were inflicted on Mr. Biko. It must have been seen that he was unconscious and his lack of reaction to stimuli as he began to come round caused concern to Colonel Goosen. The seriousness of the injuries was no doubt not realized but it was nonetheless felt to be necessary to call in a doctor. Some of the injuries suffered by Biko, such as his cut lip, could not be disguised. It was therefore necessary from the outset to give some account to be the aggressor and justify any force used against him. The telex, concealed by Colonel Goosen as long as he was able to, and produced at a late stage, throws a great deal of light on this. The telex speaks of injuries inflicted on Mr. Biko at 7.00 a.m. Colonel Goosen, when recalled, said in answer to his own counsel that he was simply referring to the minor injuries such as the lip injury. This cannot be true. The vital point in the telex, which the witnesses in their evidence had failed to disclose, was that Mr. Biko's inability to speak was directly related to the injuries inflicted. No one could have believed that a mere injury to the lip would have accounted for his failure to react, his incoherence or the symptoms generally which Colonel Goosen chose to describe as evidence possibly of a "stroke". Notwithstanding what he could see for himself, Dr Lang was induced to give a clean certificate, one which he acknowledged in this court was substantially incorrect and which we submit was plainly false. Assured by Dr Lang that there was nothing seriously wrong, and with the certificate for protection in case the detainee should later complain, no further steps were taken by Colonel Goosen. However, when Biko again manifested alarming symptoms on the night of the 7th, further action became necessary. That action was the making of Major Snyman's entry in the occurrence book. There a foundation was laid for a version which would if necessary explain Biko's injury as caused by "falling with his head against the wall". The explanations given for this late entry have been contradictory and unacceptable. In his main affidavit, p. 3, Major Snyman gave as his reason for making the entry that Biko was still "stubbornly" refusing to react to questions. In his evidence, vol. 3, p. 126, Major Snyman gave as a reason that Biko was shamming - a ridiculous reason for making the entry in the book. Colonel Goosen said in evidence that the entry was made because of the injury to W/O Beneke, vol. 7, p. 533. And in the telex the reason for not making the entry at the proper time is said to be the existence of Dr Lang's certificate.

21. It is instructive to compare the telex dated the 16th September with Colonel Goosen's affidavit dated the 17th September. The telex clearly connects the refusal to speak with the injuries. The affidavit does not; on the contrary, the detainee's condition is attributed to a suspected stroke. The telex which is intended only for the eyes of the Security Police says nothing about any suspicion of shamming. The affidavit, intended for other eyes, is at pains to introduce the alleged suspicion of shamming - the refrain taken up by all the Security Police officers when compelled by circumstances to give some explanation of Biko's condition. It is little wonder that Colonel Goosen denied the existence of any telex messages. Colonel Goosen, vol. 6, p. 497-498; vol. 5, p. 327. This false denial shows that Colonel Goosen was well aware of the contradictions between what was stated in the telex and what he had said in his affidavits and evidence. Why else should he have lied?

22. At the stage when they were giving evidence, when it was their case that the brain injuries were probably sustained in the "scuffle", both Colonel Goosen and Major Snyman were impelled to say that they always had it in mind that Biko's mysterious state might be attributable to a head injury suffered at that time. See Colonel Goosen's rather reluctant statement, vol. 5, p. 342. But it is common cause that this is the one possibility that was never mentioned by Colonel Goosen or anyone else to Dr Lang, Dr Tucker or Dr Hersch. What can be the explanation for that? Only a desire to conceal the true circumstances in which the injuries were received. Consider also the fact that amid the host of irrelevant photographs of places "pointed out" to the police photographer, the one thing that was never pointed out was any place where Biko might have bumped his head in the struggle. See Snyman, vol. 4, p. 140. Major Snyman's statement that he demonstrated to General

Kleinhaus how the alleged fall of Biko against the wall took place (vol. 4, p. 138-139) is obviously unacceptable - there is no mention of this in any of the affidavits which the General took and it is inconceivable that even in the type of investigation carried out by the General, this point would not have been noted by him. It is fairly easy to make up a general story of a "scuffle" in which anything may happen including the bumping of a head against a wall or the floor, but it is not easy for the police officers to explain why this possibility which looms so large in their present evidence played no part in their reports to the doctors or in their attitude to Biko. If they really believed that he had, without fault on the part of the police, possibly sustained a head injury in the struggle, it is inconceivable that they could have clung so firmly to the idea that he was shamming.

23. There are furthermore numerous points on which the police evidence concerning the origin of Mr. Biko's alleged aggression is demonstrably false.

(a) First and most important, relates to Major Snyman's attempted explanation of why Biko should have "gone berserk". Major Snyman was carefully led on the reasons for Biko's alleged outburst. See vol. 4, p. 160 et seq. Major Snyman begins a circumstantial account of the facts with which he confronted the detainee on the morning of the 7th. On p. 161, we are told in detail of the facts which are put to Biko. This was the "confrontation". See also p. 166, where Major Snyman is asked what reaction can be expected from a detainee confronted with facts obtained from his own associates. At p. 167 also, the aggression is attributed to the "direct confrontation". At the top of p. 168 Major Snyman repeats that there was good reason for Biko going berserk. He denied that the facts with which he had been confronted were simply plucked out of the air and said himself (without prompting from his counsel) that they already had statements in that connection. He said that they were sworn statements and he set out in detail the contents of the sworn statements. Counsel, at the top of p. 169, then tendered the sworn statements to the court. It was made clear that the sworn statements to be handed in were the sworn statements with which Biko was confronted. Major Snyman (pp. 1,70-171) was specifically asked whether he had put these sworn statements to the detainee on the morning of the 7th and he confirmed this.

(b) It was then shown that the sworn statements were dated after Biko's death. On p. 176, after this ignominious retreat, Snyman made some attempt to suggest that he had in mind unsworn, statements. But the other police officers admitted that on the morning of the 7th no documents at all were put to Mr. Biko. See Captain Siebert, vol. 4, p. 230. Beneke confirmed this. Consequently, what we have is a clear and plain case of deliberate perjury on the part of Major Snyman. What object could he have if had in putting forward a false reason for Mr. Biko's alleged outburst other than to conceal something to Major Snyman's own discredit?

(c) It will also be observed that Major Snyman's careful story of the confrontation of Biko with the facts (which Captain Siebert attempted to support) is entirely contradicted by the affidavits made last September when the full implications of the case were not yet clear to the police officers. Major Snyman, on p. 2 of his first affidavit, says nothing about confronting Biko with facts. He speaks of questions to which Biko would not respond. Captain Siebert said (para. 9 of his affidavit) that Major Snyman was putting questions to Biko which Biko was answering in a hostile manner. Warrant Officer Marks (para. 6) suggests that the incident started only after twenty minutes of interrogation. Warrant Officer Beneke (paras. 4 and 5) also indicates that there was about fifteen minutes questioning before the alleged incident. See also Sergeant Niewoudt, para. 7. Captain Siebert's further attempt to decorate the story by describing how Biko was shocked by the confrontation and how he went "ashen grey" is a most unconvincing afterthought, particularly compared with para. 9 of his affidavit, where there is no mention of this and where Biko is said to have been answering in a hostile manner right up to the moment when he sprang up. Cf. vol. 4, p. 272. See also Dr Lang, vol. 11, p. 766.

(d) Indeed, the whole story of the alleged confession in the late afternoon of the 6th is unacceptable. Major Snyman's explanation of how he persuaded the tough and experienced and aggressive Biko to depart from his denials and make a confession of a serious offence hardly rings true. See, e.g. vol. 2, p. 82. Moreover, there are other indications in the evidence that this confession was a fabrication. First, Lieutenant Wilken's statement to Mr. Biko that he should stop wasting people's time and tell the truth would hardly be comprehensible if Biko had already done so. Lieutenant Wilken's explanation (vol. 8, p. 606) is also difficult to credit. What finally tells against the story of the confession is the fact stated by Brigadier Zietsman in the affidavit put to Colonel Goosen on the latter's final recall to the witness box. When Colonel Goosen was asked how far the investigation had progressed, he made no mention of Biko's confession. On the contrary, all that he reported was Lieutenant Wilken's story of Biko's request for fifteen minutes and his subsequent failure to make a statement. It is not credible, when asked this question, that Colonel Goosen would not have mentioned the confession and would have mentioned what according to Lieutenant Wilken was a trivial and unimportant passing incident. Colonel Goosen's attempt, when examined by his own counsel, to explain this by saying that the important thing was a written statement is also an obvious untruth particularly when compared with Lieutenant Wilken's statement (vol. 8, p. 607) that at that stage it would have been premature to think in terms of a written statement. This flaw in the police case destroys its whole foundation.

(e) From the time of Dr Lang's first visit on the 7th, right up to the last day's evidence in this court, the police officers have repeatedly stated that they believed that Mr. Biko was shamming. They pressed this view on the doctors and they still maintain that this was their genuine belief. This also is demonstrably untrue.

(i) Colonel Goosen, in his evidence, based his belief on what he admitted was gossip that Biko in a previous detention had shown "similar symptoms", whatever that may mean. This is what he said to the Port Elizabeth doctors. But no attempt was made to substantiate this. It was not confirmed by Major Hansen or any other officer. See vol. 5, p. 316. This story bears all the hallmarks of invention.

(ii) It has already been pointed out that the telex makes no mention of shamming. Further, the idea repeatedly put up that Biko was shamming to avoid answering questions cannot stand with the officers' denial that they exercised undue pressure on detainees to make them speak. See vol. 5, p. 351.

(iii) Certainly after Dr Hersch's examination none of the officers could honestly have believed that Biko was shamming, yet they persisted with their story. Further Colonel Goosen's story stated at length in his second affidavit (paras. 14 and 15) of Biko first feigning weakness in one arm and then in another was shown to be false - none of the doctors would support it and the clinical findings of Dr Tucker when compared with those of Dr Hersch show that the complaint in both cases was in respect of the left arm - another pure invention by Colonel Goosen. particularly good example of Colonel Goosen's demeanour in the witness box). Again, it is not possible to believe that Colonel Goosen made the urgent arrangements which he did on Sunday evening, the 11th, for someone whom he honestly believed to be a malingerer. See vol. 6, p. 388. He says there that at the time he was sent to Pretoria he still had no reason to believe that the man was sick. This is the man whom in his own telex is described as being in a "semi coma". There are other false statements onthistopic scattered through Colonel Goosen's evidence. For example, his statement in para. 17 of his second affidavit that he was assured by all the doctors (including Dr Hersch) that there was nothing physically wrong with Biko and his statement that it was the "general opinion" that the detainee was shamming. This was plainly untrue and his attempted explanation of the words "general opinion" (algemene mening) show this witness at his most shifty. See vol. 6, pp. 402-405. Colonel Goosen attempted to deny that the suggestion of shamming came from him to the doctors. See vol. 6, p. 374. He suggested that it was the doctors who conveyed the suggestion him. This is plainly false. The doctors said that the story of his previous detention had come from Colonel Goosen and this must be correct. Contrast Colonel Goosen's own evidence (vol. 5, p. 315) in which he admits this.

(iv) Perhaps the most absurd and flagrant example of Colonel Goosen's prevarication is the "theory" put up in his second affidavit dated as late as the 21st October when he knew the cause of Biko's death. Even at that stage he attempted to put up the theory that Biko's head injury had been self inflicted on the early morning of the 9th (i.e. after Dr Hersch's clear findings of evidence of neurological damage). He maintained in evidence that at the time when he made that affidavit he still thought that Biko had been shamming on the 7th and the 8th. In other words, he put forward the view that Biko on the 7th and 8th was shamming the effects of a head injury which he actually suffered on the 9th. See vol. 6, pp. 435-436. It is submitted that no honest man of Colonel Goosen's experience and intelligence could honestly have believed in the theories stated in his affidavit. They constituted an attempt to draw attention away from the fact that the head injuries had actually been suffered not later than the early morning of the 7th and in circumstances to which Colonel Goosen did not dare honestly to advert. He could give no explanation of why, even in that affidavit, he preferred his own absurd theories to the theory that Biko had suffered a head injury in the incident of the morning of the 7th. See vol. 5, pp. A2-346.

(v) Colonel Goosen's attitude is reflected in that of other members of his branch. For example, Captain Siebert, Lieutenant Wilken and Warrant Officer Fouche were all responsible for taking Mr. Biko in a semi coma from Port Elizabeth to Pretoria. They had to carry him to the van. He was plainly comatose during the journey. He had to be carried into the prison in Pretoria. Sergeant Pretorius, at Pretoria Prison, expressed the view that Biko was seriously ill and was afraid for his life. The reaction of Captain Siebert and Lieutenant Wilken was to talk about his experience as a medical student and about yoga and to suggest that he was still shamming. In this court they maintained that position. See Siebert., vol. 4, p. 243 & p. 252 (Captain Siebert) vol. 9, pp. 6-9, 642644 (Lieutenant Wilken) . Warrant Officer Fouche, without being able to give any credible reason for it, echoed this view when giving evidence on the last day of the hearing.

24. There is also the unexplained mystery of the alleged hunger strike. What is known is that the Ministerial head of Colonel Goosen's department very shortly after Mr. Biko's death issued statements in which it was said that on the 5th September when the Port Elizabeth officers had attempted to question Biko, he had threatened a hunger strike and refused to speak. The "fifteen minute" incident was allied with this threatened hunger strike. What is abundantly clear is that Biko did not "threaten" a hunger strike and particularly that he did not do so on the 5th September. The "fifteen minute" incident had nothing to do with a hunger strike. The question remains how it was that statements could be made and repeated at the highest level which were false and misleading. And why was it that in the official statements there was no mention of this "scuffle" which has now taken on such importance in the police evidence? Who was responsible for this misleading statement and, equally important, who was responsible for the fact that although published amidst a public outcry, it was never corrected? The Security Police has not deemed fit to clear up this mystery nor has the Minister of Police. Although Colonel Goosen has denied that it started with him, there can be little doubt that it have originated in the Port Elizabeth office. Neither the Minister nor any officer in Pretoria is likely to have invented it. Once the police themselves do not choose to give a full and proper explanation to the court a question mark remains over the Port Elizabeth branch. See Loosen, vol. 6, p. 454. See also pp. 439 and 441. It should also be noted that Colonel Goosen's account of his telephone conversation with Brigadier Coetzee (vol. 5, p. 326) makes no mention of any injuries to Biko. This too must be contrasted with the telex message which was sent after Biko's death.

24. A further unexplained mystery which casts doubt on the truthfulness of the police officers is their concerted denial of having seen the obvious injury on Mr. Biko's forehead. As Professor Loubser and Dr Gluckman indicated, it is hardly credible that this would not have been seen by any of the police officers. These doctors did not admit having seen it either - a fact which will be discussed when their evidence is considered in detail. The denial that the police officers after the 13th September discussed among themselves the possible causes of Biko's death is also not credible. See Goosen, vol. 6, p. 414.

F. The Inference from the False Evidence of the Police Officers

25. It is necessary to consider the effect of this mass of false evidence. Sometimes a false statement does no more than destroy the credibility of the man who makes it. But in many cases the making of a false statement is in itself a piece of positive evidence. See Hoffmann, South African Law of Evidence, 2nd edn., p. 420. Nolte v. Row (1926 P.D. 615). VanderMerwe v. Nel (1929 J.P.D. 551). Poggenpoel v. Morris, N.O., 1938 C.P.D. 90. This is particularly so when the obvious inference from a piece of false evidence is that there is something about the subject matter of the false evidence which the witness wishes to hide. This is plainly such a case. There could be no reason for the mass of false evidence referred to above (and it is by no means a complete recital of all the falsehoods in the police evidence) unless there was some circumstance connected with Mr. Biko's injuries which the police wanted to hide. No other explanation can reasonably suggest itself. The false evidence is of a piece with the actual conduct of the police at the time. Thus-

- (a) They constantly distracted attention from the possibility of a head injury and pressed the theory of shamming.
- (b) They kept the detainee in Sanlam building as long as they could.
- (c) They persistently refused to allow him to go into a Provincial Hospital.
- (d) They gave instructions when he went to Port Elizabeth Prison that no black member of the force should come into contact with him.
- (e) They preferred to send him by road to Pretoria rather than put him in a Port Elizabeth hospital.
- (f) They gave a false name when sending a sample to the Institute of Medical Research.
- (g) His true name was kept at least from Dr Keeley and possibly from Dr Hersch.

G. The P.E. Doctors' Findings:

27. The medical profession's general reputation for absolute integrity and independence of police interference has led courts in the past, whenever an issue arose as to whether or not a prisoner seen by a doctor had been assaulted or not, to place great, if not absolute, reliance on the district surgeon's findings. It is with some sadness and regret that we are compelled to submit that in this case the proved facts show that not only can the court not rely on the evidence of Drs Ivor Lang and Benjamin Tucker but that an analysis of the evidence shows that they joined with the security police in this conspiracy of silence related to Mr. Biko's condition. We submit, for the reasons that follow, that not only can the court not rely on their evidence that they saw no injury (other than the lip injury) and that no complaints were made to them by Mr. Biko but that their admitted lack of enquiry from the police and Mr. Biko about the possible cause of his injuries and/or the probable cause of the suspected brain damage shows clearly that at the very best for them they turned a blind eye. Dr Hersch is not specifically included in these criticisms even though his stated failure to see the injury on Mr. Biko's left temple and eye is difficult to accept.

28. We submit that (missing texts; source original document) cannot be believed for the following reasons:

- (a) (missing texts; source original document) to explain the reason why he issued the certificate, Exhibit T 6; why the complaint that he noted on the certificate was a complaint other than that made by Colonel Goosen; why he had not noticed the injury on the lip, the ankle's, the wrists, the swelling of the hands and feet nor the bruise over the sternum at the level of the second rib. And his statement that he did not know why Colonel Goosen may have wanted it are, it is submitted, sufficient grounds to disbelieve him on any of the matters that his evidence has been put in issue. See Record: Vol 10, p (missing texts; source original document). In answer to leading questions put by counsel for the security police, an attempt is made to rehabilitate Dr Lang on this point. It is submitted, however, that Dr Lang's acceptance (missing texts; source original document) from him that the specific request of Colonel Goosen in order that his, Goosen's records may be kept "straight" may be evidence of a degree of subservience going a long way to proving the submission being made. See Record: Vol 11, E 779, line 14 to p 780, line 31. In any event this purported explanation in answer to counsel for the police is in conflict with Dr Lang's statement earlier when Dr Lang said that he cannot answer nor could he explain why the additional matters were not put into his certificate. See Record: Vol 10, p 705, line 10 to line 18.

(b) Dr Lang's inability to answer the questions as to why he did not ask Mr. Biko any questions about his lip or chest injuries when he himself says that he suspected a head injury when he saw one lip injury is inexcusable from a professional man on whom a grave responsibility has been placed to protect helpless people in detention. What value can be placed on a district surgeon's evidence who says that the reason why he did not ask an injured person how he got his injuries was because he assumed that the patient would have told him in the presence of a colonel or whilst lying in an interrogation room in the immediate vicinity of his interrogators? Seerecord:Vol10, p 708,line 16-to p 710,line 8. In answer to unsel for the police Dr Lang said that Mr Biko had ample opportunity to complain to him. Seerecord:Vol 11, p 803,line16 to p 804,line1. His concession that his report was misleading in giving the reason for the ataxic gait lack of cooperation when in evidence he says that he attributed it to the swelling of the feet. Seerecord:Vol10, p 715,line12 to p 716.

(c) He failed to note in his report that he found Mr. Biko shackled and only mentioned this for the first time in his affidavit of the 20th October, Exhibit T 3. See record:p 720,line 16 to 20.Dr Lang's decision to remove Mr. Biko from the prison hospital to the Walmer Police Station is inexplicable if one has regard to Mr. Keeley's affidavit and the cursory enquiries made by him of prison officials which led him to the conclusion that Mr. Biko's health had improved. See record:Vol 10,p 739,line 8 to 16.

(e) His evidence in relation to his conversation with Mr. Keeley is in conflict with the affidavit that of Keeley. The probabilities clearly favour Mr. Keeley's version. Dr Lang's treatment of the conflict between his evidence and that of Mr. Keeley is not satisfactory. SeeRecord:Vol10, p 742,line 15 top 744, line 5.

(f) Dr Lang's statement to Biko at the (input)prison that there was not much wrong with him; his entry on the bed letter that no pathology could be found and his explanations for these statements clearly show that he is riot speaking the truth even if he merely wants to describe them as incorrect. SeeRecord : Vol 11, p 747, line 16 to p 749, line 3 and Vol 15 , o 1_108,line 9 et seq.

(g) His failure to enquire from Biko and/or Goosen whether there may not have been a head injury is not explained in cross examination or in answer to the Court. See Vol 11, p 754,line 9 to27 andVol 12, p 829, line 20to p 830, line 18.

(h) Dr Lang's failure to see the injury shown on photograph number 7 having regard to the fact that he saw Mr. Biko on the 7thtwice on the 8th, the 9th and the 10th can not be explained except on the basis that he did not examine him properly. For that Dr Lang has made himself a party to the conspiracy of silence initiated by Colonel Goosen and his officers. Dr Lang himself offers no satisfactory explanation. See Record: Vol 11, p. 758 line 3 et seq. p. 759 line 20 to p. 760 line 26 et seq.

(i) Dr Lang's reliance upon hearsay upon hearsay on Mr. Biko's condition at the prison hospital which induced him to move him to the police cells so that he may more closely observe him and then shows a lack of responsibility towards his patient so extraordinary for a doctor that the most adverse inference must be drawn against Dr Lang's credibility. SeeRecord:Volume II, p 762 line 21 to p 763 line 10 Volume 15, p 1114line 29 to p 1119 line 7 (in answer to Prof Gordon). His reliance upon information given by untrained persons in coming to a conclusion that his condition had improved on the Friday when it in fact had deteriorated further strengthens the submission being made. SeeRecord,Vol 11 p 764line23to P 765 line 23.

(j) Dr Lang's unreliability and how easily he is influenced is best illustrated by his uncritical acceptance of whatever was put to him in cross examination by Counsel for the Police. See Record:Vol 11, p 1167, line 10 et sea. It is submitted that in view of the fact that he had consulted with Counsel for the Police very little, if any, weight should be attached to his evidence. Then he readily concedesmatters in favour of the Security Police. The intervention of members of the Court from time to time reminding him of his contradicting himself or giving patently incorrect answers is further support of the witness's unreliability. See Record:Vol 11 p. 789 lines 10 to 21, p. 791 line 2 to 23,p. 792 line 19to 22, p. 811, line 28 top. 813 line 8.p. 825 line 20 top. 827 line 11 and p. 828line 9 top. 829 line 15

(k) Dr Lang's denial that Mr. Biko was not "smashed up" cannot be of any assistance to anyone wanting to submit that he was not as a minimum of three lesions in the brain, two injuries on the lip and injury on thechest abrasions on the wrists and ankles and swollen hands and feet most of which Dr Lang missed may not in the minds of many be construed as an exaggeration. See Record: Vol 12, p. 845 line 21 to p. 846,line 5.

(l) Dr Lang clearly allowed himself to be influenced in his diagnosis by Colonel Goosen See Record: Vol 12, pane 847 line 14 to line 27.

(m) In view of Dr Lang's consultation with Counsel for the.Police at the offices of the Security Police at a time when he knew that his patient had died and when he must have realised that he had been misled about his condition not only shows lack of sensitivite but the degree of identification between medical practitioner and the Security Police whose conduct he knew was about to be investigated.

29. We submit that (input) not be believed on matters on which his evidence has been put in issue for the following reasons:

(a) He too identified himself with the Security Police by attending the Consultation held by their Counsel. See Record: Vol 12, p. 856, Line 22 to 27.

(b) Although he was called in by Colonel Loosen and told that Mr. Biko had not passed urine for substantial period of time he makes no searching enquiry as to what may well be wrong with Mr. Biko when he finds him clothes and bedding wet with urine. See Record :Vol 12, p. 860 line 9 to p.861 line 10.

(c) His persistence in making assumptions about the causes of the injuries on Mr. Biko which he admits he saw is not in accordance with the practice of District Surgeons, far less of a Chief District Surgeon. See Record: Vol 12. p. 861 line 14 to p. 862 line 9

(d) No satisfactory explanation was given for the omission in the report of the injuries to the ankles. SeeRecord: Vol 12, p. 865 line12 to line 18.

(e) The superficial nature of the examination and/or the inaccuracy of the report is illustrated by Dr Tucker's evidence that he only asked Mr. Biko one question but says in his report that he vies mentally alert and answered questions in an indistinct manner. See Record: Vol 12, p. 874 line 14 to p. 875 line 12.

(f) Dr Tucker's evidence that he asked no questions to test the memory of Mr. Biko when he had been told that he may have suffered a stroke is inexplicable. SeeRecord: Vol 12. p. 875, line 30 to P.876, line 19.

(g) The finding recorded as lack of co-operation was clearly wrong in view of the concession that sufficient evidence was found that there was organic disease. SeeRecord: Vol 12. p. 873, line 17 top. 880, line21.

(h) Dr Tucker's failure to enquire whether or not there was the possibility of a head injury once he had found the presence of a doubtful extensor plantar reflex is clear evidence that he did not wish to ask questions which may embarrass the security police. See Record: vol 12. p. 882, line10 to p.833, line 27

The Court's questions on this issue were evaded. SeeRecord: Vol 12. p. 884, line9to ,837, line 10.It is submitted that the suggested excuse that he would only do this if he was filling in a form by a complainant is cogent evidence of the lack of reliability in his approach to the examination of Mr. Biko. See Record:Vol 12. P. 884, line 5 to 8.

(i) The witness evaded the questions of the cross examiner and the court in relation to his state of mind after his examination of the patient on the 8th and more especially after the findings of Dr Hersch.

See Record: Vol 12. P. 897, line 28 et seq

The condition that Dr Tucker says he found Mr. Biko on Sunday, 11th is at variance with the probably informed concern of Colonel Goosen and the bizarre behaviour noted by prison warders. It is submitted that it is unlikely that Mr. Biko's condition improved whenever a medical practitioner visited him even if one makes allowances for the varying levels for consciousness which must have taken place in view of his brain lesions.

(j) On his own evidence the examination on the 11th must have been a cursory one and his authorising the removal of Mr. Biko by road from Port Elizabeth to Pretoria is consistent with a desire to please Colonel Goosen and possibly to rid himself of the responsibility. His persistence "despite Dr Hersch's findings" that there was no organic disease does not bear critical examination. See Record: Vol 13. p. 906, line 6 et seq.

(1) For a registered medical practitioner to say that there were no signs of organic disease, if one ignored the positive plantar reflex and the level of consciousness is so absurd that one must seek sore reason for such a statement. See Record: Vol. 13. p. 910 line 2 to line 29 where he admits that his affidavit although deliberately made contained a vitally incorrect statement.

(m) Dr Tucker's statement that he considered Biko's condition satisfactory and that is why he gave leave for the patient to be transported to Pretoria is further evidence of his desire to accommodate the Security Police. His answers on this issue are clearly incorrect when analysed in cross-examination. See Record: Vol 13.P. 911,line11 et seq.

and is above all directly contradicted by the telex which described Mr. Biko's condition at the time in question as semi comatose.

(n) The absence of inquiry from the orderly at the prison hospital or from Dr Lang as to Mr. Biko's clinical picture from the evening of the 8th to the afternoon of the 11th is evidence of lack of concern for the patient. See Record: Vol. 13. P. 518 line 15 et seq.

(o) Dr Tucker's concession that he would have treated a non detainee differently -in the hypothetical example and have insisted on his hospitalisation is further evidence that Dr Tucker had abdicated his responsibility as a doctor and was guided by Colonel Goosen. See Record: Vol 13. P. 919, line 20 et seq.

(p) In common with all the security, policemen and all those who were allowed to see Mr Biko , Dr Tucker failed to notice the obvious injury on Mr. Biko's temple shown in photograph. number 7. See Record: vol 13. p. 935 line 25 et seq.

30. To a lesser extent criticisms may be leveled against Dr Hersch for his failure to insist that Mr. Biko should have been hospitalised; his failure to react positively to the extensor plantar reflex; the apparent contradiction in the report on the spinal fluid and above all his failure to enquire as to whether or not there had been a head injury. His failure to see the injury on Mr. Biko's temple is also inexplicable, as is the wrong name of the patient on the sample. His professed ignorance cannot be correct as he would have had to tie up the sample with the report and the patient that he had seen. See Record: Vol 14. p1010 line 10 to p1043 line 5.

31. The relationship of the District Surgeon to Colonel Goosen was one of subservience, bordering on collusion. Their obvious neglect of their patient's interests, and their deference to the requirements of the security police was a breach of their professional duty, which may have contributed to the final result. They should not have tamely accepted Colonel Goosen's refusal in any circumstances to send Mr. Biko to a proper hospital. Dr Lang, vol. 10, pp. 741-742; p. 745 ("You can't buck the security police.") Dr Tucker, vol. 12, p. 897; vol. 13, p. 920-921; p. 923. Their conduct is of a piece with Colonel Goosen's disregard of the statutory regulations and orders by which he ought to have regulated his conduct. He did not regard himself as working under statute.

H. Conclusion

32. The doctors - for whatever precise reason - felt themselves beholden to the security police. Upon being called in, Dr Lang, gave a patently false certificate. Neither he, nor his superior, Dr Tucker, made any inquiry of their patient as to the origin of even the lip injury. They did not even direct any inquiry to the police. This studied lack of curiosity can only be explained either by their active collaboration with the police or a deliberate election not to embarrass the police, nor indeed themselves, by asking questions to which the answers were obvious. They - no doubt in common with the police - did not fear initially for Mr. Biko's life. On the contrary, it must have seemed that the course of time would heal Mr. Biko without their medical intervention which would have had to be given in concert with officials of hospitals who would no doubt be more curious than they were. And as time passed, one falsehood was compounded by another: Dr Lang's false report to Biko that nothing wrong was found and Dr Tucker's claim that the dying man was in a satisfactory condition on his removal to Pretoria. The police felt confident they could rely upon the doctors to support them. And their confidence was justified. Perhaps strengthened thereby they, with gross impertinence, presented to this court a totally -unplausible account of Mr. Biko's death, starting with a fanciful description of a struggle violent in the extreme in which no blow was struck, a bizarre account of an alleged shamming when to any candid observer a man's progress to his death was being seen and described and all the while the refusal to acknowledge the head injury. A court - including an inquest court - is the brake upon the abuse of power. It must be made known by this court that the penalty for falsehood contemptuously fabricated is not merely rebuke or reprimand but a firm finding adverse to the fabricators; if you create a tissue of lies it can only be that you dare not speak the truth.

33. Accordingly the verdict which we submit is the only one reasonably open to this court is one finding that the death of Mr. Biko was due to a criminal assault upon him by one or more of the eight members of the security police in whose custody he was at Sanlam Building on the 6th or 7th September, 1977. This inquest has exposed grave irregularity and misconduct in the treatment of a single detainee. It has incidentally revealed the dangers to life and liberty involved in the system of holding detainees incommunicado. A firm and clear verdict may help to prevent further abuse of the system. In the light of further disquieting evidence before this court, any verdict which can be seen as an exoneration of the Port Elizabeth security police will unfortunately be interpreted as a licence to abuse helpless people with impunity. This court cannot allow that to happen.

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1st December, 1997