INDEX

VOLUME 13

DR. M. A. NAQVI -----------------PAGES 1 - 65

TERRANCE P. GUSHUE --------------PAGES 66 - 78

PATRICIA HARRISS ----------------PAGES 79 - 173

MARY CSERNYIK (O'REILLEY) -------PAGES 174 - 175

CATHERINE SOLTESZ (O'REILLEY) ---PAGES 176 - 177

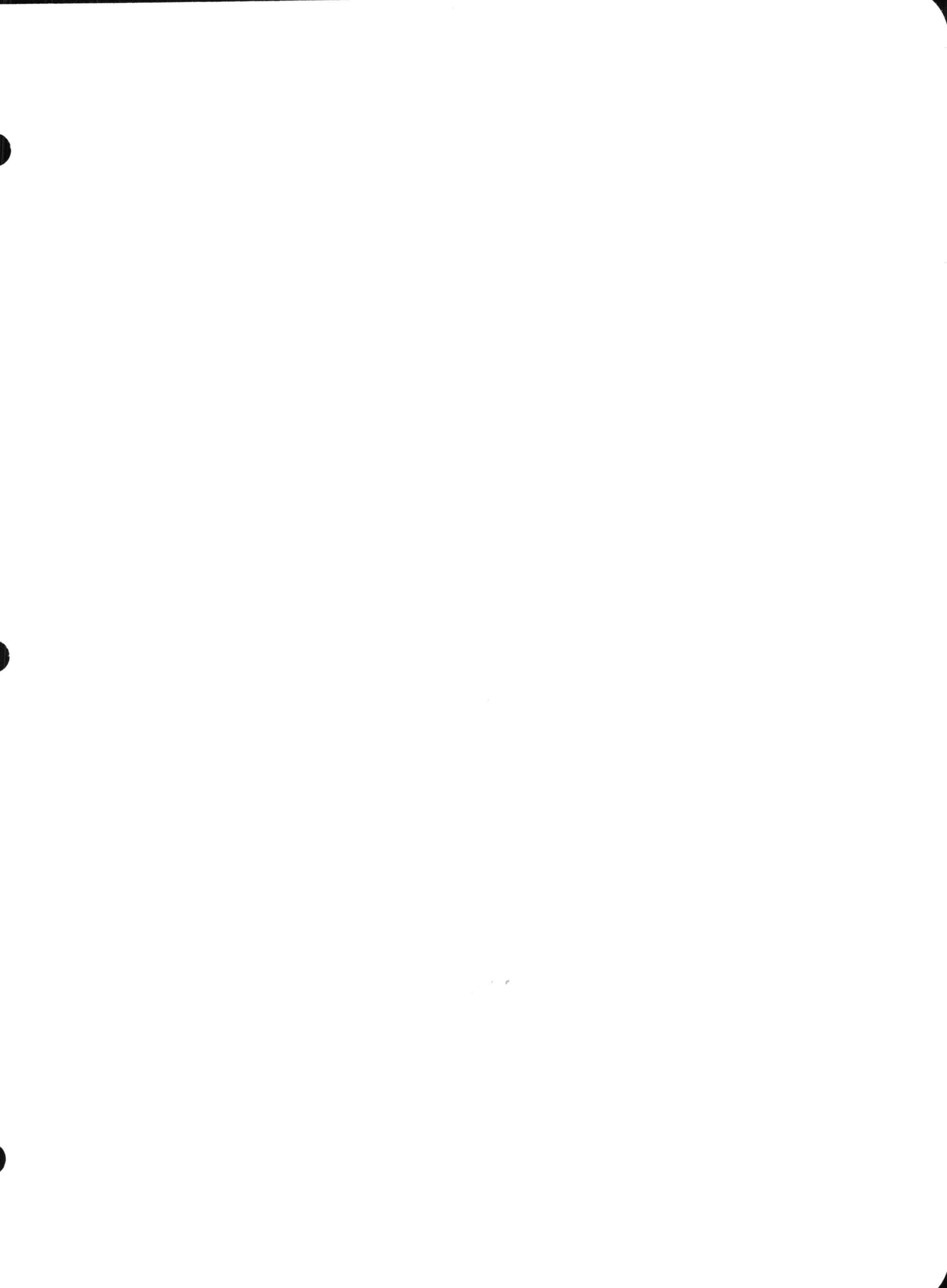
BARBARA FLOYD -------------------PAGES 178 - 180

SANDRA COTIE --------------------PAGES 181 - 183

WAYNE MAGEE ---------------------PAGES 184 - 203

LAWRENCE BURKE ------------------PAGES 204

MEDIA POOL COPY



DMPRE 7 JULY '71

CANADA
MAGISTERIAL DISTRICT OF THE
PROVINCE OF NOVA SCOTIA
COUNTY OF CAPE BRETON

IN THE SUMMARY CONVICTION COURT

THE QUEEN: SGT. DET. JOHN F. MacINTYRE INFORMANT

- VS -

DONALD MARSHALL (JR) DEFENDANT

CHARGE: SECTION 206(2) OF THE CRIMINAL CODE OF CANADA.

SYDNEY, COUNTY OF CAPE BRETON, PROVINCE OF NOVA SCOTIA.

MONDAY, JULY 5, 1971 COURT OPENED 10:00 A.M.

The Accused present.

John F. McDonald, Provincial Judge, presiding.
Donald C. MacNeil, Q.C., Crown Prosecutor, present.
C.M. Rosenblum, Q.C., Defence Counsel, present.
S.J. Khattar, Q.C., Defence Counsel, present.
Irene McMullin, Official Reporter, present.

BY THE COURT

DONALD MARSHALL. JR. you are charged at or near Sydney, in the County of Cape Breton, Nova Scotia, on or about the 28th day of May, 1971, that you did murder Sandford William (Sandy) Seale, contrary to Section 206(2) of the Criminal Code of Canada.

PROCEEDING BY WAY OF PRELIMINARY HEARING

The Court orders no publication by the Press or Radio of the Preliminary Hearing.

Dr. Naqvi, sworn By Mr. MacNeil

Q. Your full name Doctor?

A. My name is Mahomad Ali Naqvi.

Q. And are you a duly qualified medical practitioner, practicing medicine in the Province of Nova Scotia?

A. Yes I am.

Q. How long have you been practicing in Nova Scotia?

A. Eleven years.

Q. You reside and practice in the City of Sydney, County of Cape Breton, Province of Nova Scotia?

A. Yes.

Q. What are your qualifications.

By Mr. Rosenblum

Qualifications admitted.

By Mr. MacNeil

Q. Were you practicing in the City of Sydney on the 28th of May, 1971?

A. Yes I was.

Q. During the course of your duties did you have occasion to administer to Mr. Sandy Seale?

A. Yes I did.

Q. And where did you first see this man?

A. In the emergency room at the City Hospital.

Q. Describe the man himself, not his injuries but the man himself?

A. This patient was brought into the emergency room in a state of shock, with no blood pressure, no pulse, he was pale and unresponsive.

Q. What time of the day or night and what date was this?

A. This was approximately between twelve midnight on the 28th and One o'clock on the 29th.

Q. And did you administer to this patient?

A. Yes.

Q. And what was done?

A. The patient was prepared after given three intravenous, four units of "O" Positive blood due to the urgency of the situation, with no luck in rescussitation, the patient was placed on the respirator and was transferred to the operating room.

Q. What took place?

A. He was prepared in the operating room, put under a general anesthetic and an incision above and below the stab wound was made, this was converted into a paramedian incision. There was no tear into the small bowel but there was a tear into the midtransverse colon and there was free spillage of fecal material into the peritoneal cavity. Hugh retroperitoneal hematoma extending from the level under the esophagus right down to the iliac crest on the left side. There was hematoma into the bowel and this was not touched because of fear of bright bleeding already present into the peritoneal cavity. Large sized opening was seen to the superior mesemteric vein with a free bleeding of this area. This opening was closed with vascular sutures and the superior mesenteric vein was repaired after dissecting proximal end. Then branch of the middle colic vessel which was bleeding, having passed the knife through the area, was ligated. The colon was exteriorized and there was a large amount of blood into the stomach, the small bowel and the colon and the patient had brisk bleeding through the entire gastro intestinal tract. However, the stomach was not opened due to the critical nature and there was no obvious laceration or tear seen into the stomach. The bowel was placed into the peritoneal cavity which again could not be placed because of the huge hematoma occupying the entire abdominal cavity, there was also a dalation of the small bowel. The abdominal cavity was closed and the midtransverse colon was brought out as a colostomy. This patient, in spite of necessitated measures and corrections of injuries

as a result of a stab wound, continued to be in a state of shock, with no urine output and no response. As a result of no improvement, the patient was taken back to the operating room within a few hours, who has been in a critical condition since the operation was brought into the operating room with pressure ranging from 40 and 50 of a systolic and the wound was opened from the xiphoid to the pubis, from the top to the bottom. The small bowel was markedly vilatious where the previous mesenteric vein was repaired and did not function. The colon was vilatous and dialated and the previously seen hematoma into the the back was increased in size because of this a pressure on the aorta behind the esophagus was applied by Dr. David Gaum who was assisting me at the second procedure. The aorta was dissected with this dissection there was a gush of bleeding and we lost the control of the aorta at this point. Due to this with a hand pressure on his aorta a thoracotomy was done through a left thoracic incision cutting the two costal cartilages and going between the 6th rib intercostal space. The aorta was clamped in the chest with a Satinsky clamp, then opening was seen into the aorta distally which was just below the level of the renal vein. This opening was closed with a 4 0 silk suture. Once the hemostasis was achieved and the opening was closed, the pressure packs were applied and the aorta clamps were slowly released After releasing the clamps, there was some increase in the blood pressure and attention was drawn to close the thoracotomy wound. The thoracotomy wound was closed

with an interrupted chromic sutures. Hemostasis was achieved. Continuous sutures were applied into the muscles and the fascia. Skin closed with black silk sutures and a chest tube was inserted for thoracid drainage. Following this, attention was drawn to the abdominal part of the wound, the hemostasis by sutures into the abdominal part of the wound was achieved. The small bowel at this time almost peritoneum, however, the pulsation into the major vessel was present. Due to the extensive envolvement of the small bowel it was best felt to leave the small bowel into the abdominal cavity which might recover and if not so patient condition continue to improve within the next twenty-four or forty-eight hours and a second look operation would be required. Following this the patient was transferred into the recovery room. He continued to be in a state of shock in spite of extensive measures taken for rescussitation. During the entire procedure twenty-seven pints of blood were given to the patient but to no avail. He was pronounced dead.

Q. At what time doctor?

A. At Approximately 8o'clock.

Q. On what date?

A. Between 8 to 10, this was on May 29th.

Q. Doctor, you said you gave Mr. Seale fifteen or so pints of blood?

A. Twenty seven (27).

Q. Twenty-seven, did you first of all determine thetype of blood of this young man?

A. When he arrived he was in such bad shape and patients that come in like this, in order to revive them, we give them O negative or O positive blood, irrespective of what group they belong to. If we feel this might help him toward survival and his condition is so serious.

Q. Did you eventually type the blood of Mr. Seeley?

A. Yes sir.

Q. What was that blood type, please?

A. Here it says "O Positive."

Q. Now, doctor, you said you were being assisted by Dr. David Caum?

A. Yes.

Q. And you also mentioned in your evidence on several occasions, a stab wound, what did you mean by that?

A. This patient was brought in with the small bowel outside the abdoment. There was an opening in the abdoment and it was made by a sharp object.

Q. Would the injuries you described and the treatment in the hospital be consistent with a stab wound of a knife?

A. Any sharp object.

Q. You were the surgeon, would you tell his Honor the cause of death?

A. Cause of death in this case was massive trauma.

Q. Which means?

A. Injury to his colon, pancrease, vein and small bowel and aorta.

Q. Caused by?

A. Caused by a stab wound due to a sharp object.

Q. Doctor, I understand you stayed with the patient from the time he was admitted until the time of death?

A. Yes. [illegible]

By Mr. Rosenblum [illegible]

NO QUESTIONS. [illegible] the patient or the victim was first treated in the [illegible] department and at the first operation that night. I hadn't seen the wound that [illegible] had sustained [illegible] he was brought in, the only thing I [illegible]

[illegible] of his [illegible] condition [illegible] to the [illegible]

[illegible]

[illegible] and it was [illegible] of his condition

5:00 P.M., NOVEMBER 2, 1971 COURT ADJOURNED to
10:20 A.M., NOVEMBER 3, 1971 AT WHICH TIME COURT
WAS PROPERLY OPENED: PETIT JURY POLLED, ALL PRESENT

DR. MAHOMAD NAQVI, being called and duly sworn, testified as follows:

BY MR. MacNEIL: (Dir. Exam.)

Q. Your full name doctor?

A. My full name is Mahomad Ali Naqvi.

(10) Q. You are a duly qualified practitioner, practicing medicine in the province of Nova Scotia?

A. Yes I do.

Q. How long have you been practicing, sir?

A. Ten years.

Q. How long have you been residing and practicing in the city of Sydney?

A. Three years.

Q. Where were you before that?

A. I was in training in New York city.

(20) Q. Where were you before that?

A. I was in New Waterford.

Q. How long were you in New Waterford?

A. Three years.

Q. Where were you before that?

A. Halifax.

Q. How long were you in Halifax?

A. Two years.

Q. Where were you before that?

A. New York city.

(30) Q. How long were you there?

A. One year.

Q. What were you doing there?

A. Internship.

Q. Tell me doctor, what are your qualifications, as a medical practitioner?

DR. MAHOMAD NAQVI, Dir. Exam.

MR. ROSENBLUM:

I may say, My Lord, I happen to know Dr. Naqvi, he is one of the most talented and highly respected physicians in the area and I readily admit his qualifications.

THE COURT:

The qualifications of Dr. Naqvi are accepted as admitted and as well, accepted by the Court. His opinion will be admissible.

(10) BY MR. MacNEIL:

Q. Were you practicing in the city of Sydney on the 28th day of May, 1971?

A. Yes I was.

Q. During the course of your duties, did you have occasion to administer to Mr. Sandy Seale?

A. Yes.

Q. Where did you first see this man, Sandy Seale?

A. I saw him at the Emergency Room at the Sydney Hospital.

Q. Would you describe the man please?

(20) A. He was coloured teenage boy, who was - has had the bowel outside his abdomen and an opening into the abdomen approximately three inches - three to four inches wide into the abdomen. His clothes were filled with blood and he himself was in a state of shock.

Q. What time of the day or night would this be?

A. This was the middle of the night.

Q. Could you make any other external observations as to the nature of his condition?

A. Very critical and he had no pulse or blood pressure. He (30) was on the verge of death at the time I saw him.

Q. What did you do to the patient, doctor?

A. Oh well, right away we did resuscitation, gave him blood, intravenous and supported his respiration and took him to the Operating Room right away.

DR. MAHOMED NAQVI, Dir. Exam.

Q. What was done in the Operating Room?

A. In the Operating Room, we did extend the cut in the abdomen and made a formal cut where his bowels was torn - his vessels were torn. And he has had massive bleeding inside and the major vessel cut.

Q. Do you know how much blood you administered to Mr. Seale?

A. He has had a massive replacement. This means over

(10) 15, 20 pints of blood.

Q. Do you know the blood type of Mr. Seale?

A. I don't have it in my record here, but it is in the hospital record.

Q. Another witness will give the blood type, I just wondered whether or not you knew it. You described the nature of the internal injuries to Mr. Sandy Seale, Doctor. Can you express an opinion, Doctor, as to what might cause these injuries?

A. The injuries were caused by a sharp, pointed object that

(20) has penetrated through the abdomen and all the way down to the back.

Q. How long did you administer to Mr. Seale?

A. I was in attendance for over from 12:00 midnight until next day, approximately 4:00 or 5:00.

Q. 4:00 or 5:00 the next day?

A. In the afternoon.

Q. What day would that be Doctor, can you tell me? You saw him I believe -

A. This was May 29th, 1971.

(30) Q. Yes that's the day following his admission to the hospital.

A. Yes.

Q. What happened at that time?

A. Well, in spite of resuscitation, controlling of his hemorrhage and doing what we had to do, he did not survive. He has - his kidneys were shut down, his respirations were shut down. He was on the artificial respiration machine for all this period after the operation, but he just could not be resuscitated.

DR. MAHOMAD NAQVI, Dir. Exam.

Q. What was the cause of death?

A. Cause of death is injuries to his bowel, his vessels.

Q. Were you assisted by any one, doctor?

A. Yes, I was assisted by Dr. Dave Gaum and Dr. Pajari, who no longer is in the city of Sydney.

BY MR. ROSENBLUM: (Cross-Exam.)

Q. Doctor, how many blood types are there?

A. There are types of A, B and O.

(10) Q. And in these classifications of A, B and C, O is probably - is it the most common?

A. Yes.

Q. O is the most common, and I suppose millions of people belong in that category of O.

A. Let's put it this way, O is common, yes, but I wouldn't know the figures that you have given me.

Q. No, but, it would be a very common type?

A. It is a common type, yes.

Q. Of blood grouping -

(20) A. Yes.

Q. "O".

A. Yes.

Q. Now, Doctor, would you say that the late Sandy Seale died as a result of one or more stab wounds, or wounds of a sharp instrument, as you described it.

A. The instrument was one -

THE COURT:

He didn't say sharp instrument.

MR. ROSENBLUM:

(30) An instrument of some sort -

MR. MacNEIL:

Sharp pointed, I believe -

BY MR. ROSENBLUM:

Q. Did you say a sharp pointed instrument?

A. Pointed instrument, yes -

DR. MAHOMED NAQVI, Dir. Exam.

Q. You said that, a pointed instrument, is that the way you said it?

A. Yes.

Q. All right, would you say it was by one insertion into his body?

A. I would say one insertion.

BY THE COURT:

Q. Doctor, I didn't get the width of the incision of the wound - I thought you said -

(10)

A. I said approximately - approximately 3 inches.

Q. That was, you said the cuts -

A. Made by the object.

Q. And through which cut, the intestine extended?

A. The cut into the intestine extended right from the front of the vessels supplying the large intestine, the vessels supplying the small intestine, the intestine - the large intestine itself, then right to the aorta.

Q. And what was extending outside the man's body, as a result of the cut? What organs were visible?

(20)

A. All the intestine was outside - all the intestine was outside. I wouldn't say all, but most of the intestine was outside.

(THE WITNESS WITHDREW)

(Dr. David Gaum called but not present)

C.A.

AUGUST '83

EBPRE 1

0. DR. NAQVI - SWORN

BY MR. EDWARDS - DIRECT EXAMINATION

Q. Would you give your name and occupation sir?

A. My name is Manuel Naqvi.

5. Q. And your occupation?

A. I am a surgeon.

Q. And as such you are qualified to practise medicine in the Province of Nova Scotia?

10. A. Yes.

Q. And you have been acting as a Medical Practitioner in the Province of Nova Scotia for how long?

A. 25 years.

Q. And you have been a surgeon for how long?

15. A. Since 1968.

Q. And you have been qualified to give evidence in the field of General Medicine and in fact you have given such evidence in the Courts of the

20. Province of Nova Scotia on previous occasions?

A. Yes.

Q. And your evidence has been accepted?

25. A. Yes.

Q. And you have also given opinion evidence as a Surgeon is that correct?

A. That is correct.

30. Q. And your evidence in those insitances has been accepted has it?

0. DR. NAQVI - Direct Examination

A. Yes.

BY THE COURT

Q. Are you admitting his qualifiactions?

5. A. I would like to ask a couple of questions.

BY MR. WINTERMANS

Q. Doctor where did you take your medical training?

A. I took my undergraduate training in Karachi
10. Pakistan. I did my post graduate work in New York City, I did post graduate training in Halifax and again took my post graduate training in New York City.

Q. Where in New York City?

15. A. At Mount Sinai School of Medicine.

Q. And in Halifax?

A. At Dalhousie University and Victoria General Hospital. I have a license from the Medical Council
20. of Canada, that is called LMCC. I have an MD, I have a FRCS, Fellow of the Royal College of Surgeons of Canada, I have the FACS, Fellow of the American
25. College of Surgeons, and I am a member of the American Board of Surgeons, presently I am a member of the American College of Surgeons, the Royal College of Surgeons, the International College of Surgeons and the American College of Gastro Interology,
30.

0. DR. NAQVI - Direct Examination

Q. Were they notes that were made at the time?

A. Yes.

Q. And you are using them to refresh your memory?

5. A. Yes.

BY THE COURT

Very well.

BY MR. EDWARDS

10. Q. Yes Doctor?

A. May 29, 1971.

Q. May 29th?

A. That's right, 1971.

Q. So that would have been in the early morning

15. of the 29th you would have treated one Sanford

Seale at the City Hospital?

A. That's correct.

Q. And approximately what time that morning would

20. you have first seen Mr. Seale?

A. The very early morning, I can't be sure of the

time but I have a note here that it was before

25. 7 a.m.

Q. Could it have been around midnight, in the

area of 1 to 2 a.m. Do you have any independent

recollection?

A. Ah 2:00 o'clock.

30.

0. DR. NAQVI - Direct Examination

Q. Do you remember Mr. Seale, can you describe approximately what age he would have been and what his general physical characteristics
5. would have been?

A. He was a young man.

Q. Would you say he was a teen ager?

A. Yes.

10. Q. And would you say he was a black person?

A. Well I would say he was a coloured person.

Q. And would you describe his condition when you saw him at 2 a.m., approximately 2 a.m. on that morning?

15. A. He was very critical at the time and he did not respond, and he did not communicate because he was in a state of shock. He had lost enough blood from him that we could not record his blood
20. pressure at that time and his blood pressure was almost zero over zero. His respiration was 36, very shallow and he was just almost dead at that
25. time.

Q. Were you able to determine the cause of the loss of blood?

A. Yes he had had a wound in his abdomen and he
30. had most of the intestine was lying on the abdominal wall.

0. DR. NAQVI - Direct Examination

Q. Could you describe the size of the wound in his abdomen?

A. The size of the wound was large enough that most

5. of the bowel was outside.

BY THE COURT

Q. The bowel exited from the wound?

A. That's right yes.

10. BY MR. EDWARDS

Q. And for how long did you treat Mr. Seale that morning?

A. I treated Mr. Seale from that time on until he died and I was in attendance on Mr. Seale throughout

15. his entire hospitalization.

Q. And how long after you started treating him was it before he expired?

A. Well we treated him as soon as he was brought

20. into the emergency room. From then on we did recussitate him, we gave him a lot of blood and fluids and then we took him to the operating room to assess his injuries and he had had the first

25. operation on the same morning, on May 29th, '71 and at that time, I have my own report of the operation if you would like me to read it.

Q. Well perhaps you can just briefly tell us what

30. happened, you operated on him?

0. DR. NAQVI - Direct Examination

A. He had a stab wound of the abdomen and he had a perforation of his large bowel, he had an injury to the vessels going to the large bowel,
5. injuries to the vessels going to the small bowel and he had a lot of haemmorhages in the abdomen and he had a rupture in the aorta.

Q. A rupture in the aorta?

10. A. Yeah.

Q. And did you make a note of what time he did expire?

A. Yeah 7:30 a.m.

Q. Could you give the Court an opinion on the cause
15. of death?

A. Abdominal injuries, injury to all his organs, ruptured aorta.

Q. That would be loss of blood?

20. A. Yeah.

Q. And could you give the Court an opinion as to what the wound to his abdomen would be consistent
25. with?

A. The would was consistent with a sharp object.

BY THE COURT

Q. Such as a knife?

A. Possible.

30. No further questions thank you.

0. DR. NAQVI

BY MR. WINTERMANS - CROSS EXAMINATION

Q. I understand there was only one wound as far as from the outside is that correct?

5. A. Yes.

Q. Consistent as if it was from a knife from one stab with the knife?

A. If it was with a knife yeah it would be one

10. stab. But the wound was very deep, the wound of entry was in the abdomen and the other end of the wound was in the aorta, the aorta is the last organ that lies over the vertical body, over the bones, the back bones. The aorta is the last

15. organ that lies over the back bones, the wound was gone all the way through and cut everything going in.

Q. So just pointing to your own abdominal area where

20. approximately would the point of entry have been?

A. The wound was somewhere in the middle of the abdomen.

25. Q. Which is where?

A. Which is not over the belly button but around the belly button.

Q. And do you have a height and weight for the deceased on the record?

30. A. No.

0. DR. NAQVI - Cross Examination

Q. You wouldn't have that?

A. No.

Q. Would that be available under any of the hospital
5. records?

A. I couldn't tell you because when the patient comes in if they are very sick and they are very critical we generally try to do the best for the
10. patient at that time, when they do recover then these things come later on and in this case he did not recover.

Q. Now we heard a police officer say something to the effect that you were waiting at the hospital
15. when the ambulance arrived, do you agree or disagree or recall?

A. I can't recall but traditionally what happens, if the ambulance has a patient, a sick patient,
20. they do notify the Out Patient Department and Emergency Room of the Hospital that they are bringing in a sick patient so when this happens we do come in and wait for them.
25.
Q. Now from other testimony it would appear to put the time of arrival at the hospital somewhere in the vicinity of 12:30, now you testified that you thought it was 2:00 o'clock?
30.
A. I couldn't be sure.

0. DR. NAQVI - Cross Examination

Q. Are you saying that it could have been 12:30, closer to 12:30 than 2:00 o'clock?

A. According to my notes I handled the patient
5. somewhere around 2:00 o'clock, I can't be sure what the time of arrival was.

Q. And what would the first procedures that you performed on the patient be?

10. A. Recussitation involves the classical A,B,C, that is airway, circulation and breathing, so we maintain his airway, start his intravenus and we administer large quantity of blood transfusions.

Q. And there was exploratory surgery then?

15. A. Yes.

Q. On 2 occasions?

A. Yes.

Q. In the course of the early morning?

20. A. Yes.

Q. And I understand that on the 1st of those exploratory surgeries that certain injuries were
25. dealt with but as I understand it the rupture to the aorta was not seen at that time?

A. What it was is the 1st injury would repair most of the bowel, he was in such bad shape we couldn't
30. proceed to continue with the operation and what

0. DR. NAQVI - Cross Examination

the haematoma and the recto peritoneal space
for the aorta was injured. Quite often it seals
off and when the patient's condition was so bad
5. we thought that once we repaired the opening that
this would seal off but it did not seal off so we
had to go back and seal that off.

Q. So you are saying that it wasn't a matter of
10. having missed it the first time around?

A. No, no, in fact we have a record of the first
operation and this was the first operation. The
laparotomy repair of the superior mesenteria
vein and ligation of the branch of the middle
15. colic artery and transvers colostomy. The
patient was brought in from the Emergency Room in
a state of shock with no blood pressure, no pulse,
with rapid respiration, he was pale, the patient
20. prepared, given 3 intravenuses and 4 units of O
positive blood in order to bring pressure however
with no luck. It was best felt to do a laparotomy
25. in spite of critical situation, was brought in from
the Emergency Room directly to the Operating Room,
was prepared in the Operating Room and under
general anasthesic, an incision below the stab
30. wound was made and this was converted into a

0. DR. NAQVI - Cross Examination

paramedian incision. No tear into the small
bowel was encountered but there was a tear into
the mid transverse colon, there was a free
5. spillage of fetal matter in the peritoneal cavity.
Huge rectal peritoneal heamatoma extending from
the level under the esophagus right down to the
iliac on the left side, the patient's condition
10. was so bad that we just couldn't do anything at
that time. Although the aorta was palpated at
the time it appeared ulcitar but this probably
was secondary to a stab wound of the aorta which
sealed off into the rectal peritoneal space,
15. this was not touched with the fear of the bright
bleeding already present in the peritoneal
cavity. He was hemorrhageing so much we thought
to control the rest of it first to see what happens
20. but this large sized opening was sealed to
see if it would drain with the free bleeding of
this area. This opening was closed by vascular
25. surgery. Severe mesenteria bleeding was
repaired after that a branch of the colic vessel
which was bleeding had been patched and the
area was lighted, the colon was exteriorized and
30. there was a large amount of blood into the
stomach, the small bowel and the colon, we tried

0. DR. NAQVI - Cross Examination

bleeding although the site could probably be
a stress ulceration so by this time he was bleeding
from all over. However the stomach was not open
5. due to the critical nature of the injuries. There
was no obvious laceration or tear seen in the
stomach, the bowel was placed into the peritoneal
cavity which again could not be placed because
10. of this huge haematoma, there was some free
bleeding, again it was all from the peritoneal
space and through fibre muscle sutures were
applied to close the abdomen. after exteriorizing
the peritoneal colon. So what we did is
15. sometimes if there is bleeding in rectal peritoneal
space it will seal off, it will give you a temporary
effect until you stabalize the patient.

Q. Did the deceased stabalize at any point before
20. expiring?

A. No.

Q. Was there any improvement ever during the course
25. of the morning?

A. That morning he had a very fluctuating blood
pressure, his blood pressure dropped to 60
we did a cardio response and he didn't respond.
30. The patient didn't respond at all, he still

0. DR. NAQVI - Cross Examination

continued to bleed, it came from the rectal peritoneal space so because of this continual bleeding we went back right away within a
5. time span of very few hours.

Q. Would that have been a ruptured aorta causing the continuing bleeding?

A. Yes.

10. Q. Why wouldn't you fix the ruptured aorta the first time and if you had done so could there have been any possibility of him being saved?

A. Well the problems of course were too many at
15. that time. The anesthist assistant and surgeon, everybody at the time wanted the patient to come out alive and there was no way we could keep him going, we had administered already some 27 pints
20. of blood at the time and this was the problem. We waited to see if he would stabilize on his own because once you open the aorta then you are finished so you have to, like in his case
25. we didn't control from the abdomen the second time when we went back we had to prepare for the chest operation in order to control the bleeding from the chest, we had to do a
30. terachotomy, open the chest to control it.

0. DR. NAQVI - Cross Examination

Q. Was any measurement done of the depth of the injury?

A. No.

5. Q. Are you aware of any autopsy being performed afterwards?

A. I don't think he had an autopsy.

Thank you Doctor.

10.

15.

20.

25.

30.

0. DR. NAQVI

BY THE COURT

Q. Doctor do you have any idea just approximately the length of the incision, you know the injury
5. from when it entered the abdomen until it penetrated the aorta, just roughly?

A. Well he was an average boy and you can take any average boy and measure from one end to
10. the other.

Q. I know you have to just answer in a general way, I want just a rough idea.

A. I couldn't put the size on it, I would say it would be fairly something like this.

15. Q. The length of the palm of your hand?

A. The wound of entry, I would say something like the length of the palm of your hand, it would be from here to here.

20. Q. I see 3 or 4 inches?

A. Something like that.

Thank you very much Doctor.

25.

30.

EBl 2

September 12, 1983

Dr. Naqvi, Direct Exam. by Mr. Edwards

Dr. Naqvi is duly sworn.

1. Q. Your full name sir?

A. (inaudible) Naqvi.

2. Q. And you are a surgeon and and as such qualified medical practitioner in the Province of Nova Scotia?

A. Yes I do.

3. Q. And you've been so qualified since when?

A. Nineteen sixty-eight.

4. Q. Since nineteen sixty-eight. And you practiced medicine and surgery in or about the City of Sydney continuously since that time?

A. That's right.

MR. EDWARDS:

My Lord, my Learned Friend has indicated that he is prepared to admit the qualifications of Dr. Naqvi to give opinion evidence in the field of surgery and the general practise of medicine.

MR. WINTERMANS:

That's correct My Lord.

BY THE COURT:

Opinion evidence in the field. . .

MR. EDWARDS:

General surgery.

BY THE COURT:

In the field of general surgery?

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

September 12, 1983

Dr. Naqvi, Direct Exam. by Mr. Edwards

99.

MR. EDWARDS:

Yes My Lord, and the general practice of medicine.

BY THE COURT:

Thank you.

MR. EDWARDS:

Thank you My Lord.

5. Q. Dr. Naqvi, I understand that you were on duty at the City Sydney Hospital on the night of May twenty-eighth, nineteen seventy-one, is that correct?

A. Yeah.

6. Q. Yeah, and either late that night or early on the morning of the twenty-ninth you had occasion to treat one Sandy Seale, the apparent victim of a stab wound?

A. That's correct.

7. Q. Yes, and what time did you first see Mr. Seale?

A. Some time ah -- way early in the morning.

8. Q. Pardon me?

A. Some time very early in the morning on the twenty-ninth day, fifth of the month, nineteen seventy-one.

9. Q. When you say very early, could you say about what hour?

A. Approximately between, I'd say after midnight anyway.

10. Q. Yes?

A. Sometime after midnight.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

11. Q. Sometime after midnight, yes. The victim, Sandy Seale, do you recall his approximate height and weight?

A. He was a young boy. I couldn't tell you the definite approximate height and weight but he was a colored boy. He was, I'd say about maybe five six or five seven, something like that.

12. Q. Five six or five seven?

A. Could be in that range , I couldn't be sure.

13. Q. Could you give an approximate weight?

A. No answer.

14. Q. Well how did he appear to you, thin, fat or?

A. Average person, an average person.

15. Q. Average, an average build?

A. Hmm-mm.

16. Q. Yes, okay. When you first saw him you were in the outpatients department of the City Hospital?

A. That's correct.

17. Q. Would you tell the jury please what you observed about his condition at that time and place?

A. At the time when they came to the outpatient department he was unconscious, unresponsive, he did not have any blood pressure and he had a wound into his abdomen and there was an intenstine was lying over the abdomen at that time.

18. Q. Could you describe the approximate size of the wound?

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

A. Well approximately it would be at my finger's breath.

19. Q. Your finger's. . .

A. Yeah, approximately about this much size. I couldn't be sure of the exact measurements.

20. Q. You're talking about three or four inches?

A. Something in that vacinity.

21. Q. From where did the wound extend, to where?

A. At the time in the emergency room this was not determined. He was taken to the operating room right away. At that time the wound extended right from the abdomen here on the front part, all the way to the back where the aorta lies.

22. Q. Yes. So how deep, could you give us an estimate how deep that wound would have been? If I understood you the wound went from the outside into the back where the aorta lies. What distance would that be approximately in a person of Mr. Seale's size?

A. Well, it could be about ah -- you can imagine from here to there, I'd say a good six inches, maybe more.

23. Q. Six inches, maybe more?

A. Yeah.

24. Q. Yes, okay. Would you describe what procedures would follow to try to save Mr. Seale?

A. At the time of arrival to the emergency room we took Mr. Seale to the operating room. He was in a state of shock and he had a -- we did extend his old stab wound incision

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

September 12, 1983

Dr. Naqvi, Direct Exam. by Mr. Edwards

to enter into the abdominal cavity. At that time he had had the wound entering into the large bowel and there was a shetal matter present into the abdominal cavity. There was a large hemotomen into his back which was fairly extensive and his aorta was pulsata but the hemotoma was into the (inaudible) in his face. At that time we did not touch the aorta and there was a big opening into his vessels going to the, his bowel and these were repaired at that time and also his bowel is brought outside. Once the blood bowel is brought outside he had a, quite a bleed then and there was a blood also into the stomach at that time but because his condition was extremely poor it required over twenty-seven units of transfusion and he was on the respirator and after he received the first twelve points of blood to get some more blood pressure he was taken back to the operating room the same day. At this point the bowel was again packed on the side to open the large hemotoma which was into the aorta and once this was dissected there was a gush of bleeding and at that point we could not control the bleeding from the aorta. At this point his chest was opened on the left side and the aorta was cross clamped to control the bleeding. Although the bleeding was controlled the repair was done and once this was done his condition remained critical afterwards; and the blood supply to his bowel was very poor at that time and at this time we did repair his abdominal wound.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

and close the abdominal cavity and he was placed on all the life support majors but he died the same day.

25. Q. Do you recall approximately what time it was he died, Doctor?

A. The last note I have in my record here is eight o'clock.

26. Q. Eight o'clock, a.m.?

A. Eight o'clock, p.m.

27. Q. P.M.?

A. Yeah.

28. Q. So I take it he did not recover from the operation?

A. That's right, yeah.

29. Q. Now, in your opinion doctor, what was the cause of death?

A. The cause of death was his abdominal injuries as a result of an injury by a sharp object.

30. Q. Which caused a massive loss of blood?

A. Massive loss of blood, injury to his bowel, injury to his aorta and injury to the vessels going to his bowel and sort of a gangrene of the bowel as well. The cause of the loss of blood supply.

31. Q. Thank you doctor.

MR. WINTERMANS:

1. Q. First of all, I understand that there was just one injury, if it was caused by a knife, one stab wound to Mr. Seale. Is that correct?

A. Yes.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

September 12, 1983

Dr. Naqvi, Cross Exam. by Mr. Wintermans

2. Q. Whereabouts on, whereabouts in relation to say my stomach area, would that approximately have been?

A. Somewhere around the umbilicus, somewhere around there.

3. Q. That would be below where the rib cage area is?

A. That's right.

4. Q. Right. So now what you're saying is that it went in there and it went about to where on his -- as far as his internal organs and things go?

A. From here to all the way the - where the bone is in the back, in inner part of the bone.

5. Q. I see.

A. Because the aorta lies right over the bone.

6. Q. So if he was a fairly thin person that's not all that far, is it

A. If it's a thin person still I would say -- just remember one thing that there was, beside the skin and the muscles there's a hollow cavity and the hollow cavity has to go through which is, I would say it would be a fair distance yet.

7. Q. Pardon me?

A. It would be a fair length just the same.

8. Q. Okay, now if a person were to take a swing at another person, punch them in the stomach like this, isn't it a normal reaction for the person who is about to receive the blow to kind of suck in their stomach, so to speak, a bit?

A. It's possible.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

9. Q. Can't you push a fair distance in, just with the pressure of your hand?

A. If you're relaxed.

10. Q. If you're relaxed?

A. Yes.

11. Q. I take it that there is no autopsy done on this boy?

A. According to my notes there is no.

12. Q. According to your notes there is none. I understand also that you never actually measured the depth of the injury?

A. That's right.

13. Q. So what are you relying on, your recollection, your memory?

A. You mean the length of the injury?

14. Q. Hmm-mm?

A. I would say yes.

15. Q. Do you remember this incident independent of your notes that you have?

A. I couldn't describe to you without my notes.

16. Q. I see. One thing that bothers me doctor is that my understanding that -- let me put it to you this way. Do you recall giving evidence in the preliminary inquiry on August the fourth, nineteen eighty-three? That was the last time, last month?

A. Yes.

17. Q. In the Magistrates' Court inquiry?

A. Yes.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

September 12, 1983

Dr. Naqvi, Cross Exam. by Mr. Wintermans

18. Q. Page eighty-four, line eleven. Being asked a question by my Learned Friend: " And did you make a note of what time he did expire?" Your Answer: "Yeah, seven thirty a.m." Do you remember giving that answer?

A. Well, if could recall, I've only gone through my notes and I do have two controversial notes here and no, I have a note here at seven thirty a.m. It says patient did regain some consciousness, there is free bleeding through the lavene tube, dressing was saturated with blood which was again (inaudible) There has not been any urine output and the patient's condition remains critical. There is a large amount of bleeding through the lavene tube, last hemoglobin showed to be eleven grams. Now this was at seven thirty a.m., my note. Then I recall, I see here on the chart that I have permission from the hospital and here I have a note, the first note is at seven o'clock; this was seven thirty; then I have a note here seven o'clock. The seven o'clock note says patient has a very fluctual blood pressure, now his blood pressure dropped to sixty, again had taken cardio response, patient had a drop in the (inaudible) and I feel that he still continues to bleed into the rectal organ space by virtue of a sharp object.

19. Q. Without getting into all those details, what I'm asking you is the time of death. You've testified today that it was

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

at 8:00 p.m. You recall having given evidence at the preliminary at 7:30 a.m. Let me ask you one more question, do you recall having given evidence in the original trial of Donald Marshall, Jr. back in nineteen seventy-one?

A. Well I don't have the dates but I was involved there.

20. Q. Do you recall having given evidence on July the fifth, nineteen seventy-one in the Supreme Court, here in Sydney?

A. I don't have the exact date but I was involved with the case.

21. Q. That was the preliminary. November the third, nineteen seventy-one, I'm sorry.

A. I couldn't tell you the time.

22. Q. But you do recall having given evidence in the Supreme Court in the trial of Donald Marshall, Jr?

A. It must be if I have that, my name is there.

23. Q. Page twenty, line twenty-two, twenty-three. You testified or at least it appears that there was a question: "How long did you administer to Mr. Seale?" Answer: "I was in attendance for over from twelve midnight until next day, approximately four or five o'clock." Question: "Four or five o'clock the next day?" Answer: "In the afternoon." Do you recall having said that?

A. Well I can't tell you the time but I was involved with that particular patient from the time he arrived until he died.

24. Q. I understand also that you operated on Mr. Seale on two

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

different occasions during the course of that morning, after midnight?

A. That's right.

25. Q. The first time you patched up some problems but didn't get to the aorta and it was only when he didn't respond that you went back in and the aorta appeared ruptured and he wasn't responding so you had to go back in for the second time?

A. Well he was, that's correct. He was such a bad shape that we couldn't really do it all so we had to go back within a short period. Even then we couldn't control it from the abdomen, we had to go through the chest in order to control it.

26. Q. Again with respect doctor, you indicated that you recalled giving evidence at the preliminary inquiry on August the fourth, nineteen eighty-three in Provincial Magistrates' Court in relation to this matter, and you indicated today that the death of the wound that's how deep it was - I think you said six inches, maybe more. Do you recall having, being questioned by the Judge at the very end of your testimony? Page ninety-three. And indicating, the whole page I guess. Question: "Dr., do you have any idea just approximately the length of the incision, you know the injury from when it entered the abdomen until it penetrated the aorta, just roughly?" Your answer: "Well he was an average boy and you

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

can take any average boy and measure from one to the other." Another question: "I know you have to just answer in a general way, I want just a rough idea." Answer: "I couldn't put the size on it. I would say it would be fairly something like this." I think you raised up your hand. Question: "The length of the palm of your hand?" Answer: "The wound of entry I would say something like the length of the palm of your hand. It would be from here to here." I think you pointed from here to here. The question from the Judge: "I see, three or four inches?" Your answer: "Something like that." Do you recall that?

A. Yeah.

27. Q. Well I take it doctor that you're not really all that sure exactly how deep this injury was?

A. No.

28. Q. And that you're relying on some memory of something that happened a long time ago. Basically taking a guess, is that correct, is that fair to say?

A. At the time - at the time he came in he was such a bad state that really. . .

29. Q. You didn't care exactly how deep it was or anything like that, you were just trying to save him, is that right?

A. That's right, that's true.

30. Q. Okay, thank you doctor.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

Dr. Naqvi, Re-direct Exam. by Mr. Edwards

MR. EDWARDS:

Arising out of that My Lord.

1. Q. With respect to the depth of the wound, relying on your knowledge as a surgeon, what would the minimum length of a blade have to be to penetrate the outside of the abdomen and into the aorta, where the aorta is located?

A. Minimum length of the blade?

2. Q. Yes?

A. I couldn't tell you. I could say that it all depends if you look at the front part of the abdomen and the back part, and you have got some approximate length, I say that should be probably, should take as a length for the minimum length.

3. Q. I'm sorry doctor?

A. I say if you take the front part of the back, back part of the abdomen and you measure the length and that gives you some idea how long it could be in order to provide injuries that would penetrate deep.

4. Q. Well approximately with a person the size, you say five six or five seven, normally...

A. That's a rough estimate.

MR. WINTERMANS:

You Honour I think I'm going to object to this. I think that my Learned Friend went into this during his direct examination, that I didn't really go any further, I didn't raise anything

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

new in my cross examination and my Learned Friend is now trying to go over the same matters that he initiated himself in the direct examination here. That this is not proper for the re-direct.

BY THE COURT:

What do you say to that Mr. Edwards?

MR. EDWARDS:

With greatest respect My Lord, I say he did open it up on his cross examination. Three-quarters of his cross examination dealt with the depth of that wound. The issue has now been confused by the cross examination and this is an attempt to clarify it.

BY THE COURT:

Whether you discovered from the witness in your direct examination, you did not review the wound was approximately three or four inches.

MR. EDWARDS:

He said approximately six inches.

BY THE COURT:

The distance would be about six inches, maybe more to my notes.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

MR. EDWARDS:

Okay, I'll leave the witness My Lord.

BY THE COURT:

Thank you Dr. Naqvi.

MR. EDWARDS:

My Lord, that is the evidence for the Crown.

My Lord, I'm aware that there are some exclamations from time to time from the gallery. I'm sure that it's distracting both to counsel and to members of the jury. I'd ask Your Lordship to make it clear to persons that they are not to making exclamations or comments upon the evidence and if they do so I'd ask Your Lordship to eject them from these proceedings.

BY THE COURT:

I haven't noted that happening Mr. Edwards but certainly I would caution the audience to save whispers and loud comments within the hearing for outside the court room.

MR. WINTERMANS:

My Lord, I would ask that the jury be excluded for a moment if I could before my next comment.

FORM W-100 REPORTERS PAPER & MFG. CO. 800-626-6313

NOVEMBER '83
EB2 3

Dr. M. A. Naqvi duly sworn and examined.

Dr. Naqvi, direct examination, by Mr. Edwards.

1. Q. Sir, would you give your name?

A. My name is Mahmood, Mahmood Ali Naqvi.

2. Q. And your profession?

A. I'm a surgeon.

3. Q. You're a surgeon.

A. Yeah.

Mr. Edwards: My Lord, I should advise the Court that I will be seeking to qualify this witness to give opinion evidence in the field of general surgery in determining causes of death.

By the Court: You're not prepared to admit those qualifications at the moment?

Mr. Wintermans: Yes. I'd be prepared to admit that Dr. Naqvi is a qualified medical practitioner and with a specialty in surgery and that he would certainly be, given those qualifications, in a position to give an opinion on cause of death.

By the Court: All right. Thank you very much. So qualified then.

4. Q. Dr. Naqvi, you practice surgery where?

A. Sydney, Nova Scotia.

5. Q. And you've practiced surgery at that location for how long.

A. Approximately fifteen years.

Dr. M. A. Naqvi, Direct Examination by Mr. Edwards

6. Q. About fifteen years?

A. Um-hmm. Fifteen or fourteen, something like that.

7. Q. So you would have been a surgeon in Sydney in May of Nineteen seventy-one, is that correct?

A. That's right.

8. Q. And on the early morning of May twenty-ninth, Nineteen seventy-one, did you have occasion to see one, Sandy Seale, a teenage youth at the City Hospital in Sydney?

A. Mr. Sanford Seale was admitted to the City Hospital on twenty-nine, five, seventy-one at two a.m. at the Sydney City Hospital.

9. Q. That's when he was, that's when the actual admission was noted, is that correct?

A. That's right.

10. Q. He could have been there sometime prior to that, is that correct?

A. Not more than a few hours maybe.

11. Q. Not more than a few hours. But as much as a few hours earlier?

A. It's possible. An hour or so.

12. Q. Okay. When you first saw him that morning, did you note the exact time you first saw him?

A. No, I didn't.

13. Q. No. Okay. So you can say it was sometime after midnight?

A. I'd say so.

Mr. Wintermans: My learned friend is leading the witness and I...

Mr. Edwards: I thought these were preliminary matters, My Lord. I'll withdraw it if it causes offence.

Mr. Wintermans: I think the question of when, when Dr. Naqvi first saw Mr. Seale is a question of some importance...

By the Court: Well, if it is of some importance then I'm sure that Mr. Edwards will not lead.

14. Q. Can you give us an approximate time, say between hours when you would have first seen him?

A. Ah, it has to be after midnight.

15. Q. After midnight?

A. Yeah.

16. Q. And what would have been the latest that you saw him that morning?

A. The latest would be two o'clock in the morning.

17. Q. I see. So sometime between midnight and two a.m. you first saw Mr. Seale.

A. That's right.

18. Q. Now, could you describe, as far as you have an independant recollection of him, his approximate size?

A. (Inaudible)...size?

19. Q. Yes.

A. I couldn't.

20. Q. I see. Okay. Would you describe what, if any, injuries you observed on Mr. Seale when you first saw him?

20. A. At the time when I saw him he had a, a stab wound of the abdomen with the evisceration of the small bowel over the abdominal wall. He was unresponsive, he was in a state of shock. He did not have any blood pressure and his pulse could not be recorded. His condition was very critical and at that time he was given initial resuscitation and then was taken to the operating room directly from the emergency room. At that time, an operation was performed. If you like me, I'll read the operative report.

21. Q. You, you performed the operation did you?

A. That's right, yes.

22. Q. Okay. I don't want to get into the details of the operation. But, perhaps you could tell us just generally what you did. What was the purpose of the operation?

A. His, the wound on the abdomen caused evis, injuries into the inside the bowel and there are not many, I can read it for you.

23. Q. Do you recall how the wound appeared, the external appearance of the wound?

A. It was a sharp, a wound as a result of a sharp object.

24. Q. Yes. And what, if anything, can you say about the size or appearance of it?

A. I couldn't tell you a definite size but this, this is the size I would think, with the fingers spread.

25. Q. I see. That's, that's the width of it.

A. Yeah.

25. Q. Okay. And so this first operation that you performed. What did you do?

A. At the first operation, he was prepared in the operating room. Under anaesthesia, an incision above and below the stab wound was extended. In other words, his own stab wound incision was made enlarge, both above and below.

27. Q. Okay.

A. There was a, no tears into the small bowel was encountered, but there was a tear into the large bowel and there was a free spillage of fecal material into the Peritonaeal cavity. Huge retro-peritonaeal hematoma, extending from the level of the esophagus to the... (Inaudible)... on the left side. Although the aorta was palpated and it appear ... (Inaudible).. this probably was secondary to a stab would into the aorta which sealed off into the retro-peritonaeal space. This was not touched with a fear of bright bleeding already present into the abdominal cavity.

28. Q. Okay. Would just, if I could stop you there, just in layman's terms, you repaired, you repaired some damage but you didn't touch the aorta during...

A. At this time.

29. Q. That operation. Is that correct?

Dr. M. A. Naqvi, Direct Examination by Mr. Edwards

29. A. Yeah.

30. Q. Yes.

A. He had other vessels injury. There was an opening into his arteries going into the small intestine and his small intestine was bad at the same time. So we repaired all the other injuries...

31. Q. Right.

A. And we did not open the aorta, no.

32. Q. So approximately what time did that first operation have been completed?

A. What time was completed? Ah,...

33. Q. Approximately Doctor if you don't have the exact time.

A. Well, he was back in the recovery room by seven o'clock in the morning.

34. Q. By seven o'clock in the morning.

A. Yeah.

35. Q. How was his condition after that first operation?

A. Well, at seven-thirty a.m. that day he did regain some consciousness. But there was still free bleeding through the Lavine tube. Started bleeding, he started bleeding into the stomach at that time.

36. Q. He started bleeding in the stomach after the first operation?

A. Um-hmm. The dressing was saturated with the blood which again was, the cause of this bleeding from the aorta and also bleeding from the stomach. He was remain in shock and he did not have any urine output. His condition

36. A. was critical. And his hemaglobin dropped, this was at seven thirty a.m. Then, then he, same morning he went back to the operating room to repair the aorta.

37. Q. So this is the second operation later in the morning, is that it?

A. Yeah. Um-hmm.

38. Q. And was the aorta repaired at that time?

A. Second time, yes.

39. Q. Yes. Okay. And following that second operation, what can you say about Mr. Seale's condition?

A. I have a note here on follow up, May twenty-ninth at seven p.m.

40. Q. Yes.

A. Patient's condition remains critical. There has not been any response since the surgery and patient has been on ventilator with an endo-tracheal tube and has had no urine output. Has been given (Inaudible).. medication but still there was no improvement. His chest tubes were draining and his blood pressure was markedly low.

41. Q. This was at seven p.m.?

A. At seven p.m.

42. Q. Yes.

A. Patient's condition remained critical and it was at this point, he was hopeless. And I have a last note here, at eight 0 five p.m. ...

43. Q. Yes?

Dr. M. A. Naqvi, Direct Examination by Mr. Edwards

43. A. Unable to obtain blood pressure. Patient's condition critical. And no pulse obtained. Heartbeat has stopped. Patient pronounced dead.

44. Q. He was pronounced dead at eight 0 five p.m?

A. That's it.

45. Q. And Doctor, based on your observations at that time, to what did you attribute the cause of death?

A. Massive hemmorage and abdominal injuries, shock and this was cause of the death.

46. Q. I see. What if anything can you say about the amount of blood he would have lost?

A. My note here says we have given twenty-seven pints of blood. Initial resuscitation.

47. Q. Twenty-seven pints of blood. How would you describe that in terms of quantity?

A. That's fourteen thousand cc's.

48. Q. Yeah. Perhaps I should put that another way. How would you characterize the transfusion of that extent?

A. Was almost total body blood replacement.

49. Q. Okay. Now you've stated in your earlier evidence that, you stated in your earlier evidence that you felt the cause of the injury was a knife or blunt, or sharp object. Is that correct?

A. Yeah. Sharp object.

50. Q. Yes. All right. What would you say could have been the minimum length of the blade that could have inflicted that injury?

Dr. M.A. Naqvi, Direct Examination by Mr. Edwards

50. A. I couldn't say minimum, but I could say, again, it would be approximately the width of my palm.

51. Q. The width of your palm--what is the width of your palm, three inches, do you agree it is three inches?

A. Well you measured it, I didn't.

52. Q. You have a look and you tell me.

A. Three and a half.

53. Q. Three and a half.

A. Thank you doctor.

Dr. M.A. Naqvi, Cross Examination by Mr. Wintermans

1. Q. Now, I notice you flipping through some notes there, are you relying on those notes to give your testimony?

   A. Yes.

2. Q. Are those notes made by yourself or.....

   A. These notes are part of the hospital medical records, the time of the discharge of the patient.......

3. Q. Are you the one who writes down that information that goes into those notes or does someone else?

   A. Yes most of it is -- the medical part, which is the responsiblity of the direct patient's care, is mine, but other people write notes just the same, the nurses write the notes and other medical personnel.

4. Q. I notice that there is no handwriting, hardly any handwriting, on these papers?

   A. There is handwriting there.

5. Q. Did you write that?

   A. No, that's the other doctor.

6. Q. The rest of the information that you have there is typed, is that right?

   A. Most of it, yeah.

7. Q. Do you have very much of an independent recollection of what happened?

   A. I look after thousands of operations a year and I couldn't tell you.

Dr. M.A. Naqvi, Cross Examination by Mr. Wirtermans

8. Q. So you don't specifically remember this incident?

A. I remember the patient, I mean I remember I done the operation, but I couldn't remember anything detailed.

9. Q. Now, do you remember the time of death?

A. According to the notes......

10. Q. That's not what I asked you, the question is do you remember the time of death?

A. Time?

11. Q. Yeah.

A. I couldn't tell you.

12. Q. You indicated eight -o-five p.m., is that right?

A. According to the notes, yeah.

13. Q. According to the notes. Did you recall having given evidence at the preliminary inquiry on August the fourth, nineteen eighty-three?

A. This was based on the same notes.

14. Q. Can you answer the question, do you recall having given evidence at the preliminary inquiry on August the fourth?

A. I have given the court evidence, but I don't remember the exact dates.

15. Q. Down stairs in this building?

A. Yes.

16. Q. Provincial Magistrates Court?

A. Yes.

17. Q. Page eighty-four, do you recall having been asked the question, "Did you make a note of what time he did expire?" and your answer, "Yeah, seven thirty a.m." -- do you recall having said that?

17. A. If it is there, I can't recall, all I can tell you is that time when you asked the questions, I could not figure out the time at that time and then til I went back again and looked at the record from the hospital and this is the record of times in the medical records that I can tell you.

18. Q. Did you indicate that you were with Mr. Seale from somewhere between midnight and two a.m. until....

A. Until he died?

19. Q. Until death?

A. Yeah.

20. Q. Without, you didn't leave him and have someone else take over?

A. No, no.

21. Q. You say that he regained consciousness at seven thirty in the morning?

A. Yeah, I said, the patient did regain some consciousness.

22. Q. What do you mean by that?

A. He opened the eyes but he (inaudible) respond to.

23. Q. I see. Now, I take it that you are not sure really when you first saw the patient, somewhere between twelve and two, do you remember the patient arriving at the hospital, do you recall that?

A. I can only go by what is in here.

24. Q. Okay, so what you are saying is that you can't remember the ambulance arriving and all that?

A. All I know it was after midnight, but I couldn't tell you the time.

Dr. M.A. Naqvi, Cross Examination by Mr. Wintermans

25. Q. Do you remember the ambulance arriving at all, were you there when the ambulance arrived?

A. I was there, yes.

26. Q. Now, let me ask you something Doctor, we've heard evidence that some of the intestines were coming out after this injury was suffered, why would that occur?

A. Once any cut into the abodomen is big enough that the patient when he has severe pain, it's the pain and the pressure that pushes the intestine out.

27. Q. So, it's.....

A. It's a physiological.

23. Q. So it's intra-abdominal....

A. Injury, yeah.

29. Q. If there was an opening it would push the insides out.

A. Yeah.

30. Q. And, doctor, would you agree that it's possible that injury to through the abdominal wall, as you've indicated, that upon strenuous exertion, on the part of the victim that, for instance, running or falling down, that it's possible that the opening could open a little more together with this intra-abdominal pressure?

A. When you have a cut of the abdomen, it doesn't expand by pressure, it's the intestine which is mobile pushes out, so my running or things like that, would not increase the size of the wound.

Dr. M.A. Naqvi, Cross Examination by Mr. Wintermans

31. Q. You're saying that it's not possible for the injury to tear anymore?

A. Unless somebody put their hands ....

32. Q. So, the exertion of running......

A. It would not cause any stretching.

33. Q. Is the, that part of the body, does it have any kind of elasticity, at all, in other words, is there any kind of stretch or give to it?

A. His kidneys are elastic, but that elasticity stretches in a different direction. It does not stretch as a result of injury.

34. Q. I see. Now, isn't it true that there was no autopsy done?

A. That's right.

35. Q. So no exact measure, and, I should say, no exact measurements were made of the size and depth of the injuries?

A. That's true.

36. Q. Does it say anywhere on that document that you are relying on the size of the injuries?

A. No, it does not.

37. Q. You say that you don't recall the size of Sanford Seale, you don't remember how big he was?

A. He was an average boy, I couldn't be sure of the exact height and weight.

38. Q. Now, in your opinion Doctor, if this was caused by a stab with a knife, how many stabs would there have been?

A. He only had one stab.

Dr. M.A. Naqvi, Cross Examination by Mr. Wintermans

39. Q. One stab. Where approximately was that injury located as far as indicating on the outside of the body?

A. Approximately somewhere around the belly button.

40. Q. Do you recall if it was above or below?

A. I wouldn't be sure if I said yes.

41. Q. Thank you.

Mr. Edwards: No re-direct My Lord.

By the Court: Thank you very much Doctor.

Mr. Edwards: That is the evidence for the Crown My Lord, tender the exhibits.

Mr. Wintermans: I wonder if the jury could be directed out of the courtroom for a moment.

By the Court: We'll get the jury to retire for a few moments while counsel is assessing (inaudible).

Mr. Wintermans: My Lord, on behalf of Mr. Ebsary, at this point I would make a motion for a directed verdict of acquittal. First of all, I don't believe there is evidence of cause of death before the court and, of course, in the absence of that there is the total absence of evidence on (inaudible) that point.that has to be proven by the Crown and if the Crown hasn't proved all the elements of the offence then, of course, if there is no evidence with respect to an element of offence then the matter should not go to the jury. I would submit that the evidence of Doctor Naqvi is not to be considered evidence in that he has no independent recollection of what occurred, he was relying on notes that were not prepared by himself and that notes that weren't

JANUARY '85
EB 3 1P

395.

0. DISCUSSION

this morning. Unless ordered to do so the Crown will not call James MacNeil.

THE COURT: Fine. That's your position.

MR. EDWARDS: That's my position.

5. THE COURT: You will not be calling MacNeil.

MR. EDWARDS: I will not be calling him.

THE COURT: All right. We will proceed with the trial. I've indicated to you what I thought your duty was. We've resolved all problems with Donna Ebsary so we'll recall her to the stand.

10. MR. EDWARDS: My Lord, before she is recalled I have Dr. Naqvi here, he's been here on two previous occasions having to postpone office hours and that type of thing, and I'm wondering if since we're just at the beginning of Donna Ebsary's testimony if we might not have her step down in order that Dr. Naqvi might be

15. heard and allowed to get back to his very busy schedule.

THE COURT: I have no problem with that.

MR. WINTERMANS: No problem with me, My Lord.

MR. EDWARDS: Perhaps Your Lordship might just explain that to the jury so that they're not . .

20. MR. WINTERMANS: With the understanding of course that Donna Ebsary is going to be back on the stand.

MR. EDWARDS: Oh, she's going to be back.

THE COURT: How do you spell Dr. Naqvi? N-a-h-?

MR. EDWARDS: N-a-q-v-i.

JURY RETURNED (2:19 p.m.)

25. JURY POLLED. All present.

DR. NAQVI, called, duly sworn, testified:

DIRECT EXAMINATION

MR. EDWARDS: My Lord, I'll be seeking leave of the court to qualify this witness to give opinion evidence

30. with respect to general medicine and surgery.

396.

0. DR. NAQVI, Direct Examination

MR. WINTERMANS: My Lord, might I go on record as indicating that I'm familiar with Dr. Naqvi's qualifications as a medical practitioner and general surgeon and I'm prepared to admit that he is qualified in that regard.

5. THE COURT: All right. So the doctor will be qualified as an expert entitled to give opinion evidence on general medicine and surgery.

Now members of the jury, before we start on this witness in order to accommodate Dr. Naqvi who has a busy schedule and not have him sit around outside, we

10. have stood aside the previous witness, we'll do Dr. Naqvi and then the previous witness will be recalled and her testimony will be heard then.

All right, Mr. Edwards?

MR. EDWARDS: Thank you, My Lord. Dr. Naqvi, you were on duty at the City of Sydney Hospital on the

15. night of May 28th and early morning of May 29th, 1971?

A. Yes, I was.

Q. And at that time and place you treated one Sandy Seale?

A. Sandford Seale.

20. Q. Yes. And he was a male youth, a teen-age male youth?

A. That's correct. 17.

Q. Yes. And could you indicate to the jury at approximately what time that night you first saw him and

25. what was his condition when you first saw him?

A. 29.5.71, after midnight.

Q. It was after midnight. And what was his condition at that time, Doctor? What if any injuries did he have?

A. He had a stab wound of the abdomen and at the

30.

0. DR. NAQVI, Direct Examination

time I saw him most of his small intestine was lying over his abdomen.

Q. You mean outside the . .

A. Yes, outside the . .

5. Q. The abdominal cavity.

A. The abdominal cavity, yes.

Q. Right. Yes?

A. And he was in a state of shock, he did not have any blood pressure at that time and he was very estremely restless and cold, cyanotic and he also had a very thready pulse.

10. Q. A very what?

A. His pulse was markedly weak.

Q. I see. So then what steps did you take after observing his condition?

A. Immediate resuscitation was carried out. It started off from the outpatient department of the City

15. Hospital and we took him right away to the operating room the same night and at that time we did perform the operation to correct the injuries.

Q. Um-hmm. And how long was he in surgery, do you recall?

20. A. I . .

Q. Well, that's not important I guess, Doctor. After the surgery was completed what happened then? He survived the initial surgery?

A. He survived the initial operation.

25. Q. Yes.

A. And then we took him back to the recovery room which was adjacent to the operating room and he still was in shock and still was bleeding and he was bleeding so badly including he was bleeding from his stomach as well so we took him back to the operating room on the same

30. day, early morning, same morning, and at that time he

0. DR. NAQVI, Direct Examination

had a tear into the aorta which is the major artery going from the heart and supplies the rest of the body from the chest down.

Q. I see. And what if anythinig was done to

5. repair the tear in the aorta?

A. We went back, we repaired that the second time and he was back into the recovery room afterwards but despite that he still remained in shock and he continued to bleed. We replaced almost all of his blood volume. He had received over 27 pints of blood, 14,000, something

10. like that.

Q. Um-hmm.

A. But he died that evening.

Q. He died that evening.

A. Yes.

Q. So, Doctor, in your opinion what would have

15. been the cause of death?

A. Hemorrhage. And shock.

Q. And with what would the injury to his abdomen and subsequent tearing of the aorta, with what would that injury be consistent?

A. With a sharp pointed object.

20. Q. And what would have been the minimum length of the sharp pointed object in order for it to penetrate far enough to tear the aorta?

A. Well, I couldn't be definite in the size but I would say it would be something the width of my palm.

25. Q. The width of your palm. And I believe on a previous occasion we measured your palm and it was 3½ inches wide, is that correct?

A. I couldn't tell you. Really.

MR. WINTERMANS: I'll acknowledge that it is 3 or

30. 3½. There was some discussion between Mr. Edwards as to whether it was 3 or 3½.

0\.

MR. EDWARDS: That was the minimum length.

A. Yes.

Q. What would've been the maximum length or can you give an opinion?

5\. A. The maximum length I can't tell you.

Q. Okay. Were there any other wounds?

A. One wound.

Q. One wound.

A. Yeah.

Q. And exactly where was it located, would you point. . .?

10\.

A. Somewhere around the belly button.

Q. Thank you, Doctor.

THE COURT: Cross-examine?

CROSS-EXAMINATION

MR. WINTERMANS: What was the approximate time of death, Doctor?

15\.

A. Time of death is 8:05 p.m.

Q. 8:05 p.m.

A. That's right.

Q. I notice you're looking through some documents there.

20\. A. They are all the hospital records.

Q. They are?

A. That's right.

Q. 8:05 p.m. on the 29th of May, 1971?

A. That's correct.

25\. Q. So therefore if he had arrived there around midnight or I believe at one time you testified that as far as you knew it was somewhere between midnight and 2 a.m.

A. That's right.

30\. Q. That you had an inscription saying 2:00 in the morning was when a record was actually written down,

400.

0.

DR. NAQVI, Cross-Examination

although he certainly could have been there for an hour or two before that, before the notation was made.

A. It is possible, but our record shows 2:00 a.m.

Q. Right. And so therefore Mr. Seale was in the

5. hospital then from at least 2 a.m. to 8 p.m. which would be about 18 hours.

A. That's right, yes.

Q. And during that time there were two operations performed, is that right?

A. That's right, yes.

10. Q. The first operation was shortly after he arrived in the hospital.

A. That's right.

Q. At which time you patched up most of his injuries but not the aorta.

A. That's right.

15. Q. And then the second time after his condition failed to improve you realized that there was still something wrong in there, I assume, and you had to go back in for a second operation, is that correct?

A. That's true.

20. Q. At which time you noted the injury to the aorta.

A. Well, we knew the injury before. The only reason we couldn't do it all because he was not stable, he had had a lot of injury to his bowel, his circulation to the bowel, the artery was also injured both the small

25. bowel, the large bowel, a lot of fecal contamination so all these things had to be taken into consideration to do what we did at that time.

Q. And you indicated that if this injury were caused by a sharp object such as a knife, that it would

30. have only been one insertion of that knife, correct?

401.

0. DR. NAQVI, Cross-Examination

A. That's right.

Q. And with respect to the - you indicated that the small intestine was outside of him, in other words it was coming out, is that right?

A. Yeah.

5. Q. Could you just explain to the jury how the body works that way?

A. Well, the body is - during the development phase is the bowel that grows around the artery and the bowel all stays inside the abdomen. What happens is the abdominal pressure and the chest pressure that

10. controls most of the abdominal content, if there is no opening outside the bowel will remain inside the abdominal cavity but once that/opening is made the aortic pressure inside the abdomen leads to the extrusion of the bowel outside. It's called the . . . intra-abdominal pressure that would lead to the bowel being

15. sterilized. The same thing happens as people who have hernias perhaps and the hernias get bigger and bigger because it's the pressure that causes those opening in people. However, in this particular case that was not the reason the bowel was outside because the pressure

20. inside built up.

Q. So in other words if you - if a person were to be stabbed and then the opening would cause the pressure from inside to . .

A. Push the bowel out.

25. Q. Push the bowel out. It's something like if you pop a balloon I suppose, the air bursts out of that because there's more pressure. The abdominal wall holds everything in.

A. That's right.

Q. Right. And without the abdominal wall

30. everything would spring out.

402/

0. DR. NAQVI, Cross-Examination

A. Yes.

Q. Now there's no way that this injury went right through this boy, in other words there was no hole in the back.

5. A. No. Because the hole was as far as to the aorta. The aorta lies right over the bone, the backbone.

Q. I see. And a lot of times when you think of aorta you think of your heart, but actually the aorta is a long . .

A. The aorta doesn't start from the heart. The

10. aorta originates from the heart, that is from the first two vessels that originate from the aorta is the coronaries supply the heart, then the aorta divides and as it goes down it has various names. In the chest cavity the aorta is called thoracic aorta, in the abdominal cavity the aorta is called hte abdominal aorta.

15. Q. And we're talking about the abdominal aorta.

A. The abdominal aorta, that's right.

Q. So in other words we're not pointing around the area . .

A. The abdominal aorta.

Q. Around the area of the belly button.

20. A. Yes. And in order to control the bleeding in this particular boy we had to make two upward incisions; one was into the chest and one was into the abdomen so we controlled the thoracic aorta first. We were able to repair the abdominal aorta.

25. Q. I see. And is it not true, doctor, that there were no measurements taken of this injury?

A. That's correct.

Q. Is it also not true that there was no autopsy done in relation to Sandy Seale?

A. That's true. In fact you asked me the last

30. time, that when the boy came in he was in so bad shape

0. DR. NAQVI, Cross-Examination

we were too busy to resuscitate the boy and there were a lot of things of this kind may have been left behind.

Q. So really there is no way for us to know with any degree of certainty the exact measurements or
5. anything because there was no autopsy done.

A. That's true.

Q. And you indicated in your testimony that your recollection, although you recollect the operation and the conditions, that you can't really state with much certainty the size of this boy or you know, the
10. exact depth and measurements, you were more concerned with trying to save this boy's life than you were about measuring things, right?

A. Yes. There's no question about it.

Q. And how many operations would you have performed since then, since May 29th, 1971, thousands?

15. A. Well, I say would you believe it would be something like 15,000?

Q. 15,000 operations.

A. Yes.

Q. So therefore your recollection of this may be a little shaky and you are relying on notes.

20. A. I only go by what the operative record shows.

Q. Right.

A. Because everything is here in the operative record that is the permanent record of every operation I do.

25. Q. Right. Right. Thank you very much, Doctor.

MR. EDWARDS: No re-examination, My Lord.

THE COURT: All right. Thank you, Doctor.

WITNESS WITHDREW.

30.