ROYAL COMMISSION ON THE DONALD MARSHALL, JR., PROSECUTION

Volume 80

Held: June 22, 1988, in the World Trade and Convention Center, Halifax, Nova Scotia

Before: Chief Justice T.A. Hickman, Chairman
Assoc. Chief Justice L.A. Poitras and
The Honourable G. T. Evans, Q.C., Commissioners

Counsel: Messrs. George MacDonald, Q.C., Wylie Spicer, and David Orsborn: Commission counsel

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Mr. Donald C. Murray: Counsel for Mr. William Urquhart

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Messrs. Jamie W.S. Saunders and Darrel I. Pink: Counsel for the Attorney General of Nova Scotia

Mr. James D. Bissell & Mr. A. Pringle: Counsel for the R.C.M.P. and Counsel for the Correctional Services of Canada

Mr. William L. Ryan, Q.C.: Counsel for Officers Evers, Green and MacAlpine

Mr. Charles Broderick: Counsel for Sgt. J. Carroll

Messrs. S. Bruce Outhouse, Q.C. and Thomas M. Macdonald: Counsel for Staff Sgt. Wheaton and Insp. Scott

Messrs. Bruce H. Wildsmith and Graydon Nicholas: Counsel for the Union of Nova Scotia Indians

Mr. E. Anthony Ross: Counsel for Oscar N. Seale

Mr. E. Anthony Ross and Jeremy Gay: Counsel for the Black United Front

Court Reporting: Margaret E. Graham, OCR, RPR

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MR. MacDONALD

Good morning, My Lord. Dr. Perry is the next witness.

DR. ROLAND PERRY, duly called and sworn, testified as follows:

EXAMINATION BY MR. MacDONALD

Q. Now, sir, your name is Roland Perry.

A. Yes.

Q. And at the present time you're the chief medical examiner for the Province of Nova Scotia.

A. That's correct.

Q. And you obtained your degree of Doctor of Medicine from Dalhousie in 1961?

A. Yes.

Q. And would you just for the benefit of the Commission trace your career from that time, please?

A. Since...from 1961 until the end of 1976 I was in general practise, from 1964 until the end of '76 I was part-time medical examiner for the Province...for the County of Halifax, and from 1977 until 1984 I was the full-time chief medical examiner for the County and also acting at that time in an informal way as chief medical examiner for the Province, and in 1984 I was appointed chief medical examiner for the Province.

Q. Could you describe generally for me your role as chief medical examiner?

A. The role of a medical examiner is to investigate the

circumstances surrounding sudden unexpected deaths and to do the appropriate examinations in order to determine two things: that's the cause of the death; and the manner of death. The cause of death being the disease or injury which produced the fatal outcome. The manner of death is the way in which the cause of death came into being.

There are two broad categories in manners of death. There are either natural causes or unnatural causes. Natural causes is by such things as heart attacks, cancers, things that are normally considered parts of the problems which we're all subject to. Unnatural manners of death refer to accident, suicide, homicide, or the fourth category is undetermined. And, these are the areas in which the medical examiner operates. Whatever examinations have to be done in order to determine these two criteria are carried out. Sometimes that means performing an autopsy. It might mean taking x-rays. It might mean doing various toxicological studies. Anything that is deemed necessary in order to come to the cause and manner of death.

Q. Your position is a statutory position, created by statute?

A. Yes.

Q. Do you have other medical examiners under your control throughout the Province?

A. Yes, I do. At the present time there are about 105 medical examiners scattered throughout the province. These are all

part-time people, most of whom are in general practise. In Nova Scotia, one must be a medical doctor in order to be a medical examiner, and along with the 105 medical examiners, there are approximately 18 pathologists, again scattered throughout the Province in order to be available in case an autopsy is required by the medical examiner.

Q. All medical examiners, except yourself then, are part-time.

A. That's correct. And all the pathologists are fee-for-service too. That's...I'm the only full-time medical examiner in the Province.

Q. What is a pathologist?

A. A pathologist is a doctor who has specialty training in pathology, which is the study of disease processes in the body. Pathologists are the people who commonly do autopsies, in particular clinical autopsies. Those are the types that occur in hospital settings where the permission of the family must be obtained in order for the autopsy to be done. This is to separate it from the medical-legal autopsies where permission is not necessary from the family. It's at the decision of the medical examiner as to whether or not an autopsy should be done. Most clinical pathologists, as a matter of fact I guess all of them, their focus, at least ninety-five percent of the time, probably more, is focused on clinical autopsies, which are really completely different from the medical-legal end in the scope and in the

objectives.

Q. One of the phrases we've heard here frequently is forensic pathologists. Could you tell us what that is?

A. Forensic means pertaining to a forum or the results of the investigation which may come up before a forum and in that regard implies that it may be the subject of Court proceedings.

Q. The...you yourself perform autopsies, do you, doctor?

A. Yes, I do. Over the 24 years that I've been a medical examiner I've probably examined over 6,000 bodies of which 2,500 or so I've done autopsies. I've been in court probably over 400 times in a 24-year period, not only in Nova Scotia, but also in P.E.I., New Brunswick and Newfoundland with regard to cases in which I've been involved.

Q. What type of training is given to persons who are part-time medical examiners in this province?

A. Well, at the moment there is not a great deal of training being given, and this is something that is going to have to be rectified. The medical examiners have general instructions as to how to approach cases which come to their attention. Basically the people are appointed in the... especially in the smaller areas. It's not a type of job that people are standing in line for as general practitioners. It's not because of the nature of the job, because it's actually quite interesting. But

most of the general practitioners are not too happy, in their spare time, and also in their busy practise times, having to go out and be involved in a medical-legal investigation. So, these people are not, as I say, it's more of a public service which the medical profession does. It's not only in Nova Scotia, this is the situation everywhere. In every province, and probably in all the states, most of the people that are involved in the medical-legal system are fee-for-service or part-time people.

Q. Is there any legal requirement to have an autopsy carried out in Nova Scotia in the event of a violent death?

A. No, there isn't. The legal requirement is that if a person dies and, to use the legalease, "Where a chief medical examiner is informed that..." and chief medical examiner implies a medical examiner who is acting for the chief medical examiner in cases. Anyway if he's notified that

> There is lying within the territory to which he's appointed the dead body of any person, and it appears that, (a) there's reasonable cause to suspect that the person died by violence, undue means or culpable negligence, or (b) the person died in a place or under circumstances requiring an inquest under a statute, where the cause of death is undetermined or a person, (d) a person died in jail or prison, then the chief medical examiner shall forthwith take charge of the body and shall make diligent enquiry respecting the cause and manner of the death of the person.

So, there's a requirement that the medical examiner be notified. Then it's up to the medical examiner to enquire into the circumstances surrounding the death and to decide on the basis of that whether any further investigation has to be done in order to determine the two things that have to be done, that is to determine the cause of death and to determine the manner of death.

Q. What statute were you reading from, Dr. Perry?

A. This is the Fatal Inquiries Act.

Q. Thank-you. Now, the...in the event of a violent death then it is required that the chief medical examiner or his appointee take control of the body. Yes.

A. That's right.

Q. And the decision then is left with the medical examiner to do whatever he considers necessary to determine those two criteria you have said, the cause of death and manner of death.

A. Yes.

Q. Now, are there times when you can make that assessment without the requirement of performing an autopsy? Can you give me an example of that?

A. Yes. Yes, in...as a matter of fact, in most cases or the majority of cases, take for example a person who is, say, sixty-five years old who may or may not have a past history of heart disease, comes home at night says to his wife, "I've

got a pain in my chest, just started when I was outside working on the lawn and I don't feel well," and his wife thinks he looks rather pale, sweaty and he's having some difficulty breathing and he says, "I think I'll go upstairs and lie down." He does that, his wife goes up in a half hour's time, he's dead in bed. That's a classic story of a heart attack and if this man had not been attended recently by his family doctor or a physician, then usually what happens is the ambulance is called, sometimes the fire department, sometimes the police, as you can imagine the shock of this sort of thing. So, they sometimes are calling anybody and everybody they could think of. When that occurs, if the ambulance attendants get to the scene first, for example, and the person is obviously dead, then the medical examiner's office is called. For example, if I take the call, I'll get the story from the medic...from the ambulance attendant or from the family if there is somebody there who is up to saying what happened. Then depending on the story, I'll either go to the scene or have the body removal people take the body from the scene to the Path. Lab where I'll see the body, examine the body, check for old history, that's medical records and then determine whether anything else has to be done. In a case like this that I'm describing, this type of case, it would be sufficient to examine the body and if this examination doesn't show anything unusual and it's

consistent with the story, there's no need from the medical-legal point of view to go any further in order to determine the two things that I need to know. It's death by heart attack and it's a natural death. Then a report is made up, it's filed with the clerk of the Crown and that...the death certificate is filled out and that's usually the end of it, other than maybe dealing with the family again in order to answer any of their questions. And also, if there's any insurance forms or any of that sort of thing that follows later and that's done.

Q. Let's deal with a situation where it's a violent death. Someone is killed under circumstances that appear to be culpable or criminal.

A. Okay. In those cases, just before I get to that, if I could. For example, you can go to a violent type of death, such as a motor vehicle accident. It may be a single vehicle, one-occupant fatality where the circumstances are known. There are several witnesses to what's happened, the police get to the scene, the person is dead at the scene. Say it's a twenty-year-old male. And, the police then would call my office from the scene and give the information as they have it at that time. The body again would be sent to the morgue and examined there, and if the circumstances are quite clear as to what's happened from the witnesses and from the examination of the body externally, it's quite clear that the

person died of injuries, then what I would do is, without an autopsy, take blood and/or urine if it's present to determine the presence of alcohol and/or drugs, because this is the major cause of the accident phase, of a pre-collision of an accident. If, go to the next case, where it was clearly culpable negligence. In other words, you know it's going to go to court, usually the protocol is that an autopsy is done, in spite of the fact that it's quite obvious what the cause of the death is. When one gets to court, it's not beyond the realm of probability that some rather, maybe I could say, arcane questions are asked by some of the lawyers, usually defence lawyers, but prosecutors are not immune. So, that in a way in order to...in order to not have to explain, like I'm explaining today, why it's not necessary in some cases to do an autopsy, one is done, just so that these questions can be answered very quickly. So, that's the situation. In homicides we get to the worst type of case that we get involved in. Then the practise is that all homicide cases are autopsied in spite of the fact it may be very clear as to what happened. There may be an excuse for not doing one in cases where it's very straightforward, say you're in a crowd of several people and there's an argument and people are watching these two people argue and one guy takes out a gun and shoots the other person dead, the bullet goes right through him so you don't have to recover the bullet, and

then you could say, well, all we need to know is if he was drinking, how much was he drinking, you take blood again, and urine, without having to do an autopsy. But generally speaking an autopsy should be done. That presupposes, of course, that the medical examiner is notified, which is leading up to, I guess, the reason I'm here.

Q. We've heard some evidence, as well, that some hospitals have a requirement that anybody who dies within twenty-four hours of entering the hospital must be subjected to an autopsy, is that correct?

A. No, it's not correct. It's a policy with some hospitals. It's certainly not a law. It's not in the Fatal Inquiries Act in Nova Scotia. It is in some of the provinces, but it's not here. The policy may be that if someone dies within twenty-four, and this has been twenty-four to forty-eight hours on admission to the hospital that the medical examiner be notified. That's the requirement. But that's a policy, that's not a law. And, as a matter of fact, what used to happen here in the Victoria General Hospital, and that's been stopped, because we were getting calls all the time for clearly natural deaths which were of no consequence from a medical-legal point of view. So, they don't do that anymore. If somebody has died as a result of violence, whether it's as soon as they got in the door of the hospital or whether it's ten months later when they die of complications of the

injury or of maybe they've taken an overdose or something, then still it's a case that has to be reported to the medical examiner. So, a time element isn't important.

Q. Who signs that death certificate in Nova Scotia?

A. Two people, two groups can sign death certificates. In cases which are not medical-legal, in other words, I'm the family doctor and my patient who I had been treating for several months, say terminal cancer, dies. I get the call from the family. I will sign the certificate and there's a box designated on the death certificate which states medical examiner or last attending physician. So, in that case I would check that off as last attending physician. If it's a case where the medical examiner has been involved, then the medical examiner should sign the death certificate, and he would check off the box designation, medical examiner.

Q. The set up that you've described in operation in Nova Scotia in the event of, and I'm concerned primarily with violent deaths, where the medical examiner must be notified, do you know how that compares with other provinces?

A. Oh, it's the same. It's everywhere. Whether it's the medical examiner system, which we have here, and also in Manitoba and Alberta, or whether it's the coroner's system which is in most other places. The preamble, if you like, about who should be...which cases should be reported to the medical examiner or the coroner are always the same. Sudden

unexpected deaths basically, certainly all violent deaths are reported to the coroner or to the medical examiner. Again, it's up to him and not in every province is a coroner a medical doctor, then it's up to him to determine whether or not further investigation warrants such things as an autopsy, toxicology, x-rays, things of that nature. But everywhere the requirement is for the coroner or medical examiner to be notified, and then it's up to him or her to determine whether or not anything else has to be done.

Q. What type of liaison is in existence between your medical examiners and the police who are investigating the circumstances of a violent death?

A. Well, in my experience it's always been excellent, especially in homicides, there's no question. In homicides I know I always go to the scene, some...even if the body has been moved, for example, if the person wasn't dead at the scene, I always have a look at the scene and especially if the body has not been moved, in other words, the body is found somewhere and the police are notified, then before the body is moved and that's another power which the medical examiner has, is that that body is not to be touched until the medical examiner gives the authority for the body to touched, moved or whatever. The police have no authority to move bodies, nobody does except the medical examiner. So, as I say, in cases like that we work very closely together.

9:55 a.m.

Q. Now in the event of violent death and an autopsy is being performed, is there the possibility of obtaining information carrying out the autopsy which could be of assistance to the investigators?

A. Yes. It's always possible. Sometimes you get much less evidence or information in some cases than you do in another. And, again, leading up to this particular case, we're not dealing with a body which was found undisturbed in a room or out in a field somewhere. We're talking about seeing somebody after 20 hours of treatment and fairly extensive alteration of the body. So that any information that would be obtained there would be much less and maybe infinitesimal, if not completely none, compared to the information that you could gather from the time person is found and the time the person died. The people who have control of that patient, the person at that time, certainly have a duty to make sure that they make fairly accurate observations as to what the situation is, especially if they know that this is likely to go to court. So to go back to the original question, if the person is found at a scene and the person is dead, of course there's a chance of a lot of information being obtained. The obvious cause of death, the cause of it may be quite obvious but there's more to the cause of death in the investigation of these causes. You want to know is there injuries on the body

and if there are, do they have a pattern. And if they do, what is the pattern. If it's a firearms' injury, is it consistent with close or a distant wound. Stab wounds, is it single, multiple or can you have an idea of what type of weapon was involved. So all of these things are important in trying to determine not only what the cause of death is but with this information does it fit with the stories that have been given by people who have been interviewed or interrogated by the police. If these findings fit, then that helps to either prove or disprove, or helps to whether or not the stories that are being given are likely to be truthful.

Q. How far afield do you personally go with respect, let's talk about homicide. If there's a homicide in Halifax County, I assume that will be you supposing you're available, is that correct?

A. Yes.

Q. Now what about other counties? Do you go to other counties as well?

A. In other areas bodies have been sent to me. I haven't gone to the other areas. Fortunately, in most things in life, the common things are common and most homicides are fairly straightforward from the medical point of view. In spite of what you see on TV and movies with "Quincy" and "Murder She Wrote" and all these types of programs, life doesn't work that way. Most of these cases are very straightforward from

the medical point of view and you'd never get a sponsor to allow me, for example, to go on TV for the day-to-day stuff I do. You have to embellish everything with lots of fictionalized aspects.

Q. Are your medical examiners in other counties though given advice or instructions to always go to the scene of the crime, for example? You do that as a matter of course, but are the people in the other counties...

A. Well, they always go there because the police call and say we'd like to have you here which means you go. And the usual practice in Nova Scotia, even up to now, again which is something that we're trying to change is that, if anything, more autopsies are done which are not necessary than ones not done which should have been done. So the problem is usually not one of an autopsy not having been done when it should have been done, but it's the other way around. Tend to do more ones that are not needed from the medical/legal point of view.

Q. Have you ever had a case where you have determined, or one of your medical examiners, that a autopsy is not required and the police insist that one be carried out?

A. It's happened occasionally but usually the reason for the insistence of the autopsy has no basis in any reasonable request. I've been involved in few like this where the medical examiner has called and said the police insist in

having an autopsy when it's clear form the story that one is not necessary. And I've checked with the police. What they really wanted was want to know whether the guy was drinking. Well, of course, you can check that out without doing an autopsy. This is what they're interested in. So there's usually no real problem there. The only problem is in these cases where, in fact, is all they're wondering was whether the person was drinking and they feel that you can't tell it unless you do an autopsy when it's quite easy to take a blood sample without doing an autopsy.

Q. Now let's move to this particular case, Dr. Perry. At my request you've reviewed the medical records here, is that correct?

A. Yes.

Q. And you've also had the opportunity to review evidence?

A. Yes.

Q. And what evidence did I give to you?

A. Tons of it. Dr. Naqvi's testimony. You gave me the copy of the hospital records, Dr. Naqvi's testimony in the original trial and then the subsequent several inquiries. Dr. Gaum, I think who was assisting Dr. Naqvi at the original operation, his testimony. Dr. Naqvi's testimony at the Inquiry here along with, I think I counted 55 pages of questioning from various lawyers here to various, mainly members of the police departments, as to whether or not an autopsy should be done,

should have been done in this particular case.

Q. Now let me get you identify two particular pieces of evidence. I've put in front of you Volume 16, which is the larger volume, and also Exhibit 53, which is Volume 24, I think. The, if you go to page 159 on that Volume 16...

A. Page 159?

Q. 159, yes. From 159 to page 164 are the records of the operation. You have reviewed those.

A. Yes.

Q. Is that correct?

A. Yes.

Q. And if you'd also just pick up that other volume, which is Exhibit 53, Volume 24, those are the records, the nurses' notes and so on from the Sydney Hospital. And you have reviewed those.

A. Yes, I have.

Q. Thank you. From your review of the documents that I asked you to look at and the evidence, are you able to generally tell us your understanding of what was done here medically.

A. Yes. What was clear was that Sandy Seale came into the hospital shortly after midnight on May 29th, 1971, with a single stab wound to his belly. The stab wound was to one side of the umbilicus, the navel, the belly button, and it was in an up and down direction, in other words, vertical. Furthermore, a lot of the small intestine was protruding from

that stab wound and was on the, lying on his belly, outside belly surface. He was as close to being at death's door as one could get at that moment. The physicians, Dr. Naqvi was the surgeon, was called. Ultimately, or eventually rather, he is taken to the operating room at around 1:15 in the morning and a two-hour operation ensues.

The operative notes indicated that the stab wound went through some vessels which provide blood to the small and large intestine, went through the transverse colon, which is the large intestine which goes horizontally across the upper part of the body, and then had gone into the back of the abdominal cavity, perforated the lining of the cavity and perforated the aorta, which is the major artery in the body. There was a huge, what is medically termed, a hematoma, which in lay terms means a huge collection of blood in this space behind the belly. This is not in the abdominal cavity itself. This is behind the abdominal cavity. But it bulges into the space of the abdominal cavity so that, that's one of the reasons that the bowel was protruding out through the opening of the stab wound.

At the time Dr. Naqvi felt that the more important of the two problems was to tie off or ligate the bleeding vessels in the belly and to do a colostomy, in other words, to bring the bowel out to the surface of the body. He started the operation by extending the stab wound up and down so what

he had was a very extensive, what is called a paramedian incision, and all that means is that it's to the side of the midline. And this was to the left of the midline. So he extended the stab wound altering it extensively. And then these things were done. He felt that, at the time, that maybe the huge hematoma in the area around the aorta would stop itself by means of pressure. And because of that feeling, decided to suture up the belly and send him back to the recovery room.

During that time he apparently had around seven units of blood and back in the recovery room around five in the morning he's got blood pressure that goes from 104 over 60, eventually by 7 o'clock it's down to 66 over maybe close to nothing. And his pulse rate is rapidly rising, a clear indication that he's continuing to bleed. This was his problem when he first came in among other things, but the first major problem was that he was exsanguinating— he was bleeding to death.

Had he survived, he was looking forward to lots of problems with infection from the belly wound because when the stab wound went through the bowel it produced fecal material which went into the bowel and would have produced a tremendous problem. But in any event, this is what happened up until about 7.

Then it was clear that he was continuing to do very

badly and he goes back to the operating room at 9:15 in the morning till about 12:40 during which time he had 11 units of blood. The hematoma at this time is even bigger if you can imagine, and you have to see some of these things, you see this in natural disease in ruptured aortic aneurysms in older people and the amount of bleeding there is just very extensive. In any event, he was back in and the swelling's even more extensive. These are all according to his notes as you can imagine.

At this time then he feels now we should look into getting the aorta fixed. He starts to incise the back of the belly wall in order to do this and when this happen blood starts to spurt into the belly cavity. Before it was apparently oozing there in a fairly decent rate but, again, he felt that the original pressure might have stopped it. So now he's confronted with a belly full of blood and, you know, if we use the expression "all hell breaking loose again," a tremendously difficult problem for everyone involved here.

So what he then decides to do is do a thoracotomy, which it's make an incision in the chest wall and they spread the ribs and they go in that way and clamp off the aorta above the diaphragm, the diaphragm being the muscle that separates the chest from the belly. He clamps off the aorta in order to stop the bleeding and at that time he sees that there is about a half-inch long perforation, stab, through the

anterior wall of the aorta. And the aorta is, as I say, the major artery in the body and it's a good sized vessel, I mean a very good sized vessel. He sutures that and this then apparently stops the bleeding. He also notices that there is blood in the stomach which later on he, apparently in his testimony, wasn't quite sure where it was coming from. In any event, this was the extent of the operation at that time.

In spite of now having the aorta sutured and not bleeding, Sandy Seale's condition remained extremely grave and, in fact, he died at about 8 o'clock on the evening of May 29th, 1971.

Q. If repair the aorta had been the first thing to which Dr. Naqvi directed his attention be done immediately when Seale arrived at the hospital where he was disclosing no blood pressure, he was in shock, if he'd gone in then and sutured that aorta, are you able to say whether Seale still would have died, at least in the manner he did?

A. Hindsight's great but I don't want to try to judge what Dr. Naqvi did after the fact because, as I said, he was confronted with a kid who was just about a death's door and something had to be done and there were multiple problems. His first decision was to do the belly. My feeling is that the aorta certainly should have taken first precedent because, as I say, it's the major vessel in the body. It's already produced a huge amount of bleeding behind the belly wall and it's not

going to stop from pressure, it's just going to keep extending because it's an artery, it's not a vein. Arteries pump, veins just return blood and you can put pressure on veins and get the bleeding to stop, but with an artery, it just keeps pumping away. But as I say, he had such a terrible situation at the time that his feeling was that this was the first thing hoping that the aorta would, in fact, stop bleeding and then would deal with that later.

Q. How could it stop bleeding if you're going to continue to pump blood into the body? How's the aorta ever going to stop bleeding...

A. Well, it's going to stop bleeding eventually when the person either pumps out all his blood volume or until he dies. Totally here, according to Dr. Naqvi, 27 units of blood was administered throughout this whole affair. So a boy his size and his age, he's probably got about five and a half liters of blood and 27 units of blood, 500 cc's per unit, you're talking almost 14 units, 14 liters of blood there. So he's just, he's pumping it out as fast as they're pumping it in.

And on top of his problems which were the perforation of the bowel, the perforation of the smaller but still important vessels of the bowel itself, now he may have ended up, had he not had the aortic problem with a dead bowel, severe infection. As I say, he was in terrible shape no matter what. And when somebody comes in under those

circumstances, in smaller areas too, you're not dealing with areas where you've got all of the resources in the world to help, one has to do what you think is the appropriate thing at the time. And I think obviously this is what was done.

10:15 a.m.

Q. Do you know if the medical examiner was notified in this case?

A. Maybe just before I answer that, I just want to follow up on one other thing I think which is important, which was not done, is that in a record of the case, the medical records, especially in a case where you know it's going to go to court if somebody is accused, that it is important to make a diagram and describe as accurately as you can what the injury was. This was not done here and this creates a bit of a problem, because in all of this testimony following it was enough to give me a headache trying to follow this whole business, when I think it's important that accurate records, including a diagram, which is very simple to make.

Q. And that would have been made by the surgeon.

A. Yes.

Q. Now...

A. It makes it simpler. Now, okay.

Q. If we go back to my question, are you able to tell us in this case whether the medical examiner was notified?

A. The medical examiner was never notified. Dr. Naqvi signed

the death certificate. There is no record anywhere on the medical chart that the medical examiner was notified. There is no report at the clerk of the Crown from a medical examiner. There is no record from the police that the medical examiner was ever notified. So there is nowhere anywhere, any indication that the medical examiner was ever notified.

Q. If the medical examiner had been notified who would sign the death certificate?

A. It should have been the medical examiner.

Q. And the medical...the death certificate in this case is signed by Dr. Naqvi.

A. Yes.

Q. Thank you. Should the medical examiner have been notified in this case?

A. Oh, unquestionably. I mean there's no question. This is a...this is not only a violent death, I mean it's a homicide. And if you're going to miss calling the medical examiner for an accident that's one thing, and this happens. I mean you can't...even now I'm at the Victoria General Hospital occasionally a person who dies of an accident is not...we don't get notified. This happens very, very infrequently now, but it still is one of those things that does happen.

Q. Should there have been an autopsy in this case?

A. Well, from the general protocol point of view, yes, but from

the point of view of learning anything more about what happened you wouldn't have learned anything more. We know he was stabbed around the belly button. On surface anatomy that corresponds to the disc between the third and fourth lumbar vertebrae. Those are the low backbone vertebrae. Dr. Naqvi said in his records that the stab wound in the aorta was just below the renal vein, that's the vein to the kidneys. We know from surface anatomy that the...this corresponds to the disc between the first and second lumbar vertebrae. So you've got the belly button wound between three and four, the wound in the aorta between one and two. So clearly the wound...the stab wound was going in a somewhat upward direction. The wound has been altered almost, well, it's been altered completely because the stab isn't extended up, it's been extended down. The person who would have the best idea as to what the wound looked like obviously would be the people who first saw it, the surgeons, the medical people in the hospital. The person at that time was alive. In the morgue he's dead. Rigor mortis has set in. The body has been sutured. The whole bodily parts, everything has been altered. So,that you're not going to get anything of any substance in a case like this. You know that the wound is three, about three inches long is what...as far as I can tell from the evidence that's been given, it's three inches thereabouts. So we can say that the

maximum width of the knife would have been three inches. As to the minimum length of the knife, now this is another problem because the wound was in the belly. The belly is very compressible. Somebody can have a knife that long [Witness indicates approximately 6 inches.] and push it, if you push it hard enough in a person, especially if one is not expecting it, can push it right to the backbone and this would not allow you to give an accurate idea as to the length of the weapon. If it happens in the chest that's a different thing, because if it goes into the hilt, for example, it can only go that far if it strikes bone, say a rib or something, so that you have a better idea of what minimum lengths are there. So all the information that was available was there while he was in the hospital. The information afterwards was going to be of no basic value. He's had 27 units of blood. Are you going to take a blood specimen, you know, after he dies. You know, whose blood are you...whose blood are you taking from him and what tests are you going to do on someone else's blood is what it amounts to. So this is the type of case where the medical end, again like most homicides, is not very...it's not, ah, a mystery. It's straightforward. It's one single stab wound to the belly. The how it happened is not the problem, the who did it is...was always the problem. And this has happened all through the...since 1971. It never came up as a problem in the trial. It never was a problem

with the prosecution, with the defence lawyers. It was never a problem even in the book that was written about this. This has never been a problem. It's only come up since the Marshall Inquiry started as to how come an autopsy wasn't done and all the things that could have been, maybe could have been found out by an autopsy. Well, that's basically a myth.

Q. Is there anything that you consider could have been determined that would have assisted the police in carrying out their investigation, any evidence?

A. Not really. The information, the other thing that is important to see, and which pathologists don't often see and should, is that the clothing is something that the examiner should see. The clothing in a medical/legal case is part...as much a part of the body as the skin. Unfortunately, as I say, most people are involved in clinical cases and bodies come to see...come to the morgue without any clothing on, or a johnny shirt, and so clothing in the external examination of the body is usually fairly casual, because it's not the important area. But in medical/legal cases the clothing should always be examined. So, if the clothing could be examined, say if there's a defect in this person's shirt and that's consistent with the wound that was noted on his body. Then whatever further examination is going to be by the Crime Lab is done by them, such as if there's blood stains

they will do whatever they have to do there, check the blood types and they'll check for anything else that may be present.

Q. Would it have been possible in an autopsy to determine whether there had been altercation, for example, in which Mr. Seale was involved, other than the one that resulted in a knife going into his stomach?

A. No, that's all on the outside. You know, this is the myth that you do a medical/legal autopsy the way you do a clinical autopsy, where in clinical autopsies everything is inside, you know, you can't wait to get inside to see the problem, because outside is nothing. In medical/legal autopsies...in medical/legal examinations most of the information on violence is present on the outside of the body. Are there lacerations, are there bruises, are there other types of injuries which are obvious to anybody. Now, whether or not the people notice them is another thing. But it's all on the outside. This boy was in the hospital for twenty hours. Nurses' notes are always quite accurate and usually more detailed than medical, than doctor notes and nowhere there was there any mention about anything other than a single stab wound. I think you can take from all of that that that's, in fact, what was there, was a single stab wound.

Q. And the cause of death would be known without doing an autopsy.

A. Cause of death is stab wound to the abdomen with perforation of, without going into all the medical terminology, the various vessels, the large intestine and the aorta.

Q. And the manner of death.

A. The mechanism is haemorrhage or exsanguination, he has bleed to death. That's the mechanism. The cause is the stab wound. The manner of death is homicide. Now whether it's culpable homicide that's a legal terminology, and that's not for the medical examiner to say, but I mean it's quite clear in a case like this it would be culpable, but our determination is only it's homicide. Whether it's culpable is something for the lawyers and the police to determine as a result of their investigations.

Q. The system that's now in use in Nova Scotia, the medical-examiner system, Dr. Perry, is it any different than it was in 1971?

A. I hope it's a little better. Certainly around the Halifax area it is, and it's always been pretty good because in almost all cases of death, certainly in violent death, autopsies are done, almost to whether they're needed or not. Most of the cases almost invariably are, from the medical point of view, violent deaths are not subtle types of injuries. Battered babies are not...that's not subtle. Gun shot wounds, stab wounds, beatings are not subtle. So it's awfully difficult for

a medical examiner to miss something that's obvious. And this is what most homicides are, I mean, they're usually pretty obvious. So the system, I think, is improving. Certainly it's still got improvements to be made because, again, you have medical examiners who don't see many cases, and it's hard to be all keen and excited about doing medical/legal cases when you only get about five a year. If you're down in some little tiny spot at the tail end of a province or in the middle of the province in some small area, as a public service to that community you have to act as a medical examiner. It's just not reasonable to expect that all of those cases would have to be sent into a big area like Halifax for investigation. So they don't have really any problems. And in this case, in spite of the fact an autopsy wasn't done it made no difference whatsoever to the outcome of the whole case. The medical evidence was always straightforward.

MR. MacDONALD

Thank you, that's all the questions I have, My Lord.

EXAMINATION BY MS. EDWARDH

Q. Dr. Perry, just a couple of questions, sir. In terms of the overall system that is in place in Nova Scotia now, you've described the medical examiners appointed outside of the County of Halifax as general practitioners. I take it none of them are general pathologists.

A. No.

Q. And so the general pathologists act in a consultative capacity to the...

A. Yes, they're there...

Q. ...medical examiners.

A. They're available, some of them are available for medical/legal autopsies.

Q. And if you were, assuming not in Halifax, and decided as a medical examiner that a post mortem ought to be, or an autopsy ought to be performed would you...would the medical examiner do it or would the pathologist be called into do it?

A. The pathologist would be called.

Q. So I take it you're the only medical examiner who does, then, autopsies, is that...

A. That's right, yes.

Q. Okay. Perhaps the sense that an autopsy should have taken place in this case comes primarily from certain questions I have, and let me pose the question to you differently. Whether or not a person skilled in medical/legal analysis decides a post mortem or an autopsy should be performed, would you agree that at least there should be that kind of inspection of the body that determines, for example, whether or not fingernail scrapings should be taken, whether or not nurses may have missed bruising, might not

be at all relevant to the injuries they are examining, that that kind of physical inspection of the body is also part of, broadly speaking, the examination a medical examiner would undertake before he decided a post mortem was or was not necessary?

A. No question about it. As I said the medical examiner must be notified. He wasn't here, so that's...nothing we can do about it if we're not notified. He must be notified and then the medical examiner always must examine the body. For example, if I get a call and somebody says someone has died at home and these were the circumstances and it's all quite straightforward and I agree from the story, I wouldn't for a moment think that I would fill out the death certificate, give it to the undertaker without seeing the body.

Q. Seeing the body.

A. You always, always see the body.

Q. So when my colleague asked you the question would a post mortem or would an autopsy have been of any assistance and your answer in this case is "No," would you agree that all the observations of the external parts of the body, looking for bruising, deciding whether you should take fingernail scrapings, any of those kinds of issues weren't even dealt with in this case. No one looked at that.

A. Well, but he...this is not a person who was found dead at a scene and was sent immediately to the undertaker for

burial.

Q. Of course not.

A. He was seen for twenty hours by all kinds of medical personnel. His body, when he was alive, was altered extensively. This business of fingernail scrapings to me is...falls in the mythical character. I don't know why people fixate on fingernail scrapings. In all my...

Q. Well, let's...

A. I know.

Q. Let me pose the problem this way.

A. Just...

Q. You're dealing with a situation where there is no known assailant. The circumstances are unclear. So if you were, for example, conducting an investigation where there is no known assailant and the circumstances of the death are unclear in terms of what happened. Would you not then approach the matter from using all the investigative tools that remained to you, just even preserve the evidence.

A. But some of the inves...some of the information was known. Before the body is examined I, as the medical examiner, would find out from the police what information they have, they have information as to what seems to have happened. Now, whether it's true or not this is the information they have. And when you look at the body does that...does that conform with what you see.

Q. Let's look at the kind of information they don't have though. They do not have the identity of an assailant.

A. Okay, but that's...that's an investigational point of view from the police point, not a medical investigational problem.

Q. So when you then do a examination and you...do you approach the question by saying, first of all, are there any other injuries that may tell us a little bit more information about what, in fact, transpired? Is there evidence of an altercation? Do you do that kind of examination?

A. Yes. First of all, get the history, whatever is available. Secondly, the body is examined. You examine it the usual types of findings, such as how tall is he, what's his weight, whether he has clothing on or not, the colour of his hair, the colour of eyes, the teeth, any scars, any congenital problem.

Q. You fill out the form.

A. This sort of thing and then you look for surgical or medical intervention. Then you describe that. And then you look for evidence of injury. The first, and again if this boy had not been operated on, if he been found dead at the scene then this is different. You say there is a stab wound and then you describe it, and then if there are any other injuries these would be described, these would be examined. And during the course of the examination, during the course of the autopsy then blood, urine if he's got any or other body specimens would be examined. The clothing would be

examined.

Q. Yes.

A. And then whatever other information had to be checked...

Q. So let's...

A. ...then this would all be done.

Q. Right. Now, let's work back from there. You are now are in a much more difficult situation from a medical/legal perspective because the person has been in the hospital and they've had massive intervention. But you'll agree with me, and let's just follow it through, certainly a medical examination would have examined the clothing, would have preserved the clothing.

A. Ah, I doubt it in 1971. The police would have had the clothing.

Q. Well, you would have taken the clothing...

A. The pathologist would have had the body.

Q. Yeah. But you would have taken the clothing.

A. I would have, yes.

Q. And you would have handed it over to the police in the circumstances where they would have decided what they may wish to do with it.

A. After I examined the clothing.

Q. Yes.

A. It would be passed over to the police and then they would do with it what they would do.

Q. And further to that you would have looked at the body to determine not only in terms of the stab wounds, but whether there were any other indications of injuries, even minor bruising would be recorded by you. Is that a fair statement?

A. Yes, which...

Q. Minor lacerations would be recorded.

A. Yes, or major laceration, I mean.

Q. Yes.

A. Of course, all of those things.

Q. All of it, okay, and all of that could have...

A. Some of which...

Q. Excuse me, all of that could have been recorded twenty hours after as well, indeed, you would have done it if you were doing this examination twenty hours after.

A. If there had been anything else, yes, and...

Q. Yes.

A. You'd certainly expect that they're be some bruising of the body after twenty hours of handling and a boy who is, as I say, at death's door for most of the time, so there would be all kinds of...or I shouldn't say all kinds, but there would likely be bruising from the handling of the patient while he was alive.

Q. And some of that bruising might be inconsistent with the handling of the patient and indicate it may have occurred

earlier, or may simply look as though it occurred earlier because of the age of the bruise itself. All I'm ...all I'm doing, Doctor, is to put this proposition to you in general terms. When you say that a post mortem, an autopsy in this case wouldn't have given any further information, it's all to say...also important to note that because there was no general examination of the body there may have been other information of the kind and character we don't know, outside the...on the body. Would you agree with that?

10:37 a.m.

A. Yes, oh sure, yes.

Q. Okay. That's my sole point. And I guess the other question is in the ordinary course in terms of... you've noted there would be no point taking a blood specimen. If you were involved in a case like this, would there be any point in taking any tissues specimens in terms of an urine analysis or drug analysis...

A. Well, he wouldn't have any urine. This is the other thing. I'm sure that they would have had a urinary catheter...

Q. Sure.

A. So there'd be no urine...

Q. How about tissue?

A. The only thing that I would have taken would be eyeball fluid, in all likelihood. Eyeball fluid is somewhat separate from the rest of the body and it may give some indication of whether alcohol was present though I'd be extremely

surprised after 20 hours whether this would be...

Q. Certainly questionably reliable.

A. So if I hadn't done it, I don't think I would have missed a thing. There's no specific tissues you have to take in a 16-year old kid who's healthy, not only healthy, he was a very good athlete from what I've read. So you're talking about a healthy teenager and you describe the injury that he has, but it's all documented, or sort of documented if you look through the chart, as to what he had when he got in the hospital before he was altered.

Q. And I guess the last question, sir, is it obviously requires some training and skill to know what evidence to obtain and what evidence to preserve in the medical/legal case. Are the people...

A. Yes.

Q. Who are the medical examiners outside of yourself given any training or direction as to what they ought to do in cases of homicide or violent death?

A. Yes, I've talked to quite a few of the medical examiners but they're not the ones who deal with this. They get the call and then usually what happens is the body is sent to the morgue and then the pathologist does the examination.

Q. So they don't do an original examination themselves as well as the general pathologist.

A. They may, yes, at the scene or they may even come to the

morgue, but they don't actually do the examination of the body. This is left to the pathologist and...

Q. So really...

A. A lot of the pathologists, because of their training, 95 percent of the time or so, is in clinical pathology, they tend to look at the bodies in a clinical manner rather than a medical/legal manner and this is not to demean the pathologists, because they are doing this, again, as a public service because of the areas in which they practice, but their usual outlook is for clinical, from a clinical perspective rather than a medical/legal perspective.

Q. Do you authorize, for example, in terms of the system that's established, do you engage in any kind of contract with the pathologist? People agree to go on contract with you for a fee-for-service base, on a fee-for-service basis or...

A. Well they're on a fee-for-service basis.

Q. How, do you designate them?

A. Oh, I don't. I mean I, sometimes I plead for them to do the work.

Q. You have a long line of...

A. I mean it's not something that these people want to get involved with. They, and it's a natural feeling. They don't want to do a case where they think they may have to come to court and be confronted by a lawyer. I don't know why but...

Q. Some of us are so nice. In terms of the resources available to

you, I understand the natural reluctance of the medical profession to find themselves in a legal forum, but then the next question, sir, is in terms of the resources available to educate, to provide education about what ought to be preserved and how things should be dealt with and handled, do you have those resources available to you?

A. Well, I have talked to pathologists about how autopsies and how medical/legal examinations should be conducted. But my problem is being full-time medical examiner, I also am still doing all the work around this area. So in order to also go around and do educational lectures and that sort of thing, it makes it very difficult. So at the moment there is a problem there.

Q. An education problem.

A. Yes. Oh yeah, by far.

Q. Are there any, other than yourself, who may have over the years acquired the expertise, is there anyone in the province who works with you, or is there to advise you who might be regarded as exclusively a forensic pathologist?

A. No. If there's any advising, I do it, because none of the pathologists have the medical/legal experience that I have. As I say, some of them are very good. The ones around here who cover for me are excellent because they have more opportunity to see a lot of medical/legal cases whereas the pathologists out in the smaller areas don't have the same

opportunity so it's a problem there. But as I say, they do a very good job and in cases in which they have to go to court in homicides, I can't recall any case offhand where the medical evidence caused any problem with the normal running of the case.

MS. EDWARDH

Thank you, those are my questions.

A. Maybe you remember some in particular.

Q. No, not in Nova Scotia.

A. Okay.

Q. Elsewhere there are rumours.

A. Well, it doesn't happen in Nova Scotia.

CHAIRMAN

Mr. ...

MR. PUGSLEY

I have no questions, My Lord, thank you.

MR. MURRAY

No questions, My Lord.

MR. SAUNDERS

Nor do I, My Lord.

CHAIRMAN

Mr. Ross.

EXAMINATION BY MR. ROSS

Q. Just a couple of arcane questions, My Lord. Dr. Perry, my name is Anthony Ross. I take it from your testimony that you

become involved in these investigations after being notified by the police. Am I correct?

A. Are you saying in this case?

Q. No, generally.

A. Yes.

Q. Generally.

A. Well, it doesn't have to be the police, although it's usually the police when we're talking about homicides. It can be if the person has arrived in the hospital, it can be hospital staff. It can be an ambulance attendant if they're there before the police arrive. So those are the three groups who usually call the medical examiner. The medical and/or surgical nursing people, the ambulance attendants and the police.

Q. And Dr. Perry, have inquiries ever been directed at you as to whether or not there's a difference in attitude when the victim is black or white?

A. Sorry, what, would you repeat that?

Q. I'll try. Have inquiries ever been directed to you as to any difference in attitude when the victim is black or white, attitude of the police or anybody like that?

A. I can't say that I ever have had...

Q. That inquiry...

A. In my experience and I mean I wouldn't take it. I mean to me a person's a person and I don't care what...

Q. But I'm asking you about if inquiries have been made of you.

I take it no inquiries have been made.

A. No, I'm not sure what type of inquiries you mean with regard to race but...

Q. Anybody asking you whether or not you, as the medical examiner, have found a difference in attitude of perhaps the police, ambulance attendants or anybody, in the situation of a black as opposed to a white victim.

A. No, I haven't.

MR. ROSS

Thank you very much, that's my question.

MR. WILDSMITH

No questions.

WITNESS WITHDREW

MR. MacDONALD

I only have one other witness, My Lord. I don't anticipate he'd be very long.