

CANADA
PROVINCE OF NOVA SCOTIA
COUNTY OF HALIFAX

1984 S.S.N. No. 03224

IN THE SUPREME COURT OF NOVA SCOTIA
TRIAL DIVISION

BETWEEN:

JOHN F. MACINTYRE

PLAINTIFF

- and -

CANADIAN BROADCASTING CORPORATION,
a body corporate

DEFENDANT

This is the evidence taken by way of Discovery with the consent of all parties, held at Halifax in the County of Halifax, Province of Nova Scotia on the 25th day of June 1984 of HEATHER MATHESON.

R.N. Pugsley, Q.C., Solicitor for the Plaintiff

R. Murrant Esq., Solicitor for the Defendant

MEDIA POOL COPY

JUNE 25th, 1984

10:00 a.m.

2.

IT IS AGREED that this Discovery Examination is held without order by the consent of the solicitors herein with the intention that it have the same force and effect as if all formalities had been complied with;

and

IT IS AGREED that the Discovery Transcript may be used at trial or subsequent proceedings in accordance with the Rules pertaining to Discovery Examination and Rules of Evidence without the necessity of calling the Reporter in formal proof of the Discovery Examination.

HEATHER ELIZABETH MATHESON, duly called and sworn, testified as follows:

EXAMINATION BY MR. PUGSLEY:

1. Q. What is your full name?
A. Heather Elizabeth Matheson.
2. Q. And where were you born?
A. Southampton, Ontario.
3. Q. And when were you born?
A. April 8th, 1949.
4. Q. And are you married or single?
A. I'm single.
5. Q. What is your formal education?
A. The University of Windsor, a 4 year degree in English and Communications, night courses in law and a Fellowship in Law last year at McGill University.
6. Q. You graduated from the University of Windsor with a Bachelor of Arts Degree in Communications?
A. An Honours Degree in English and Communications.
7. Q. And what year was that?

7. A. In 1971.
8. Q. And you said you took night courses in law, and where did you take those?
- A. I took them at Osgoode Hall, York University and at Centennial College, non-credited courses, evening courses, for my own information.
9. Q. What years did you take those courses?
- A. It's on my resumé, it was shortly after I began work at Canada AM 'cause I realized I would need - I wanted to take some law courses. I would suspect somewhere in the mid to late '70s, I can't tell you exactly.
10. Q. Dealing first of all with Osgoode Hall, for what period of time did you take night courses there?
- A. It was simply a 6 month course.
11. Q. And how many nights a week?
- A. One night a week.
12. Q. And what was the length of the lecture, one hour or an hour and a half?
- A. It was an hour, an hour and a half, yeh, I can't recall.
13. Q. And what were the subjects that you took?
- A. It was covering - the Osgoode Hall was a special set of courses set out by people like Allan Borovoy and it was 4 lawyers who gave a series of lectures on Criminal Law and on - I think one of the areas was Civil Liberties and that sort of thing. It was just a general interest thing for people who were interested in that area.

14. Q. Were there any lectures given on defamation?

A. Not that I recall, nothing specifically.

15. Q. And then York, how long were you there attending a course?

A. That was the Osgoode, that was the Osgoode Hall at York University. The Centennial College was a business, Canadian Business Law and we studied landlord/tenant, that sort of thing, the York - Osgoode at York University was the one with Borovoy and a couple of other Toronto lawyers.

16. Q. Osgoode Hall is a part of York University is it?

A. I think that's the name of their law school, I'm not sure.

17. Q. And in addition to that you have graduated from university in this last year you say with a Fellowship in Law?

A. The Canadian Bar Association awards two journalists every year a Fellowship in Law and I won the Fellowship and studied at McGill University for - I came back here last year, I've been in Toronto for a year so it was last year.

18. Q. And how long was that course?

A. That was a full year.

19. Q. And that is to say from September 'til April.

A. Yes.

20. Q. And you received a certificate upon completion?

A. You receive nothing, no, you receive a handshake.

21. Q. You attend classes like 5 days a week, 9 to 5 sort of thing.

A. Do papers, write exams.

22. Q. What courses did you take?

22. A. I took courses from first year right through to fourth in everything from the basics of Canadian Law to a standard, how to go through the library and research briefs, I took Labour Law, I took a charter course, Constitution, Criminal Evidence, I did a course - I did 12 courses altogether.
23. Q. Did you take any course in Torts?
A. I didn't take Torts, no.
24. Q. And you didn't take any instruction in defamation or libel?
A. I wrote a paper for my charter course on a journalist's right to protect sources and I did a lot of reading on cases that had gone through the American and Canadian court systems.
25. Q. On defamation?
A. On defamation.
26. Q. Are you familiar with any of the Nova Scotia cases on defamation?
A. I am vaguely familiar with a couple of cases, not Nova Scotia but a New Brunswick, a couple of New Brunswick cases, not Nova Scotia specifically.
27. Q. You're generally familiar with the distinction the courts make between fact and opinion?
A. Yes.
28. Q. Do you have a copy of the paper you -
A. Not with me, no.
29. Q. Could you produce that to your solicitor -
A. If I could.

30. Q. and he'll decide whether or not it's relevant for me to see it but I would request it. All right, getting back to the University of Windsor, you graduated in 1971, what did you do after that?

A. I worked as a waitress for a few months and then I began work at a radio station in Sarnia as a copy writer.

31. Q. What does a copy writer do?

A. A copy writer writes commercial copy.

32. Q. And for what period of time were you there?

A. About 3 or 4 months.

33. Q. And then?

A. I moved to Toronto to work for CFTO, which is the Toronto affiliate of CTV, initially in their Promotion Department writing copy, and then I went into Production.

34. Q. How long were you with CFTO?

A. I was with CFTO until 1973 or '4 when I went to CTV, I still worked out of the same offices but began work with Canada AM.

35. Q. And what is Canada AM?

A. Canada AM is a national morning current affairs program.

36. Q. And for what hours is it shown?

A. 7 'til 9, and now it's 6:30 'til 9 I understand but at that time it was from 7 'til 9 every morning.

37. Q. And for what period of time were you with Canada AM?

A. Until 1977, October of 1977.

38. Q. What did you do there?

A. I was a story editor, then I became senior story editor and eventually remotes producer, I produced programs when we went on location.

39. Q. In any of these positions that you have was there any training or information given to you about libel and defamation and the kinds of things that you could do on the air and the kinds of things that you could not?

A. Well it was something that was discussed, especially once I got into CTV, there were a lot of senior people who were very credible and it was something that we were always aware of.

40. Q. Did you read any books on the matter, were you given any formal instruction by way of documents, any brochures to read?

A. I wasn't given any brochures to read that I recall. It was something that I took it upon myself to take law courses only because I knew, and people - I was always careful.

41. Q. And after you left Canada AM in October of 1977 what did you do?

A. I went to Global Television for a period of a year and a half where I created and produced a morning program very much like Canada AM.

42. Q. Global Television is an Ontario television system is it?

A. It's regional, m-hm.

43. Q. In the Province of Ontario.

43. A. M-hm.
44. Q. And what was the name of the program that you -
A. The morning program was called Daybreak, I then went to work on their nightly newscast, their 6 o'clock news.
45. Q. How long were you on Daybreak?
A. I believe it was about a year.
46. Q. And this program is for what, an hour or so in the morning is it?
A. It was two hours.
47. Q. What, 7 to 9 or something?
A. Yes.
48. Q. And what kind of things did you do there?
A. Well I was the producer, the main producer on the program so I was in charge of deciding what items would be on the program, how they would be treated, I had a researcher working for me, it was a very low budget program but it was fairly responsible.
49. Q. And what kind of stories would you do?
A. Basically the same kind of stories as on Canada AM, anything from features, light features to reacting to news events.
50. Q. Of national or international significance.
A. Basically because it was Global it was more regional and domestic, we didn't do as much international.
51. Q. I'm sorry, you said after you left the morning show you went to do the nightly news at Global, for what period of time?

51. A. A brief period, a few months.
52. Q. Did you produce that night TV show?
- A. No, I was one of the people producing it, I was an associate producer, I was really in charge of the look of the program more than anything, packaging.
53. Q. And then after that what did you do?
- A. I went to a program at CTV called Live It Up.
54. Q. And what was Live It Up?
- A. Live It Up was a very popular consumer type of program, for a year.
55. Q. And what kind of coverage did it have?
- A. What do you mean by coverage?
56. Q. I'm sorry, where was it shown?
- A. It was shown across the country, a national program.
57. Q. A daily program?
- A. No, weekly.
58. Q. And what, a one hour show?
- A. Half an hour.
59. Q. And when was that shown?
- A. I believe it was Wednesday or Thursday evening from 9 to 9:30.
60. Q. What did it deal with?
- A. Consumer things, really, very light, it was a very light program.
61. Q. And you were there for how long?

61. A. A year.
62. Q. And after that?
- A. I travelled in Europe for 6 months and then I came back, did some freelance writing for CBC Radio and moved to Montreal as the producer of a CBC Radio program called Cross Country Check-Up.
63. Q. For what period of time did you produce Cross Country Check-Up?
- A. A year and a half.
64. Q. And that was - can you just give me those dates approximately?
- A. Would have been January 1st, 1981 through until the time I began law school, which would have been September '82.
65. Q. And what was Cross Canada Check-Up?
- A. Cross Country Check-Up was a national phone-in program that dealt with usually news or current affairs, issues where you posed a question and you had a guest in the studio somewhere, whether it was here or in Europe or in the States, and you took people's responses.
66. Q. And for what period of time?
- A. The program ran each Sunday from 5 'til 7.
67. Q. Originating in Montreal and you were -
- A. It originated in Montreal.
68. Q. And you were the producer of that program.
- A. Yes, I was.

69. Q. Which meant that you what, chose the topics that people would discuss?
- A. Well I had a very intelligent host and a very intelligent researcher and we worked the issue out every week but yes, I was the final word.
70. Q. And did you choose the guests who would appear, or have the final word on that?
- A. I had the final word but I trusted my researcher, she was very good. I suggested, I made suggestions.
71. Q. So you were then at law school from September '82 to April 1983 -
- A. That's right.
72. Q. And what did you do then?
- A. I accepted a job at the National, the CBC National Television News as a writer, I worked there for 6 months and then took the position at Sunday Morning, which is where I work now, and a job that I quite wanted.
73. Q. When did you cease your work as a writer for the CBC TV National News?
- A. November 1st.
74. Q. '83, and you then started work with -
- A. Immediately for Sunday Morning.
75. Q. And what is Sunday Morning?
- A. Sunday Morning is a radio magazine program that's on every week from 9 until noon, it's heard, as you know from the

103. Q. And who was that?
- A. In November or now?
104. Q. In November of 1983.
- A. In November there was an interim head who was Brian Slemming.
105. Q. Would Brian Slemming have been present at this meeting?
- A. No, he would not have.
106. Q. Would Brian Slemming have known anything at all about this program prior to it being aired on November 27th?
- A. He may have been told that we consulted lawyers prior to the broadcast, I'm not sure.
107. Q. Did you in fact consult lawyers prior to the broadcast?
- A. Yes, we did.
108. Q. Who did you consult?
- A. We consulted our lawyer in Ottawa.
109. Q. And who would that be?
- A. I believe it was Peter Robinson.
110. Q. Is he an in-house counsel of the CBC or is he in a private practice?
- A. Yes he is, he's in-house.
111. Q. What was the nature of the consultation you had with Mr. Robinson?
- A. Before I left Halifax I called my executive producer and told him that I wanted the item listened to by our lawyers when I got back to Toronto and edited and wrote the piece. At 3 or

113. A. That's right.
114. Q. Who would these other people be?
- A. All people who hold the same position that I do on the program, who are all producers and reporters for the program. They're all senior journalists that work on that program.
115. Q. How did you happen to be assigned this particular program?
- A. Really I'm not privy to the meeting where they decide who does what item, I sometimes ask.
116. Q. Who would have been present at that meeting?
- A. Senior producer, who is Doug Grant, who was at the time Douglas Grant, and Roger Bill and one other producer, possibly the foreign editor.
117. Q. Sorry, when you say the senior producer, of the 10 producers one person is designated senior producer?
- A. That's correct.
118. Q. And what does that mean, does that mean he has more authority than the other producers or gets paid more or what does it mean?
- A. It means that he has possibly - yes, has more authority, likely does more assigning than actual reporting, and is involved in actually deciding who does what program and helping you - helping reporters on the road work the story out if they need assistance.
119. Q. So that before you went to this meeting on the Tuesday, if my

124. A. Well no, they didn't discuss with me who we should be talking to. I ask them how long they wanted this item to be.
125. Q. What did they advise you on that?
- A. Generally the pieces that are done on our program range from between 10 and 15 minutes, some are longer but it depends and I thought that this would be between 10 and 15 minutes. That's all, then they - obviously I was going to the library to do some research and make some calls and before I leave I wanted to have as much information as I could.
126. Q. Do you know why you were selected for this particular program?
- A. I certainly thought that I could do the best job on it.
127. Q. Had you been to the Maritimes before? Where you the Maritime
- A. In the past, no, there's really no experts, I mean we've all travelled, if not for this show but for other shows, are supposed to know.
128. Q. Had you, in fact, done other reports for this show prior to the Marshall story?
- A. I had done one other documentary and I'd worked in the office on in-studio stuff.
129. Q. What was the other documentary you had done?
- A. The first documentary I did was on the problem that the boat people were having in Toronto and across the country with the Immigration Department.
130. Q. Had you had any association with or familiarity with the

130. Q. (cont'd) Marshall story before you were assigned this particular program?
- A. I knew of the story. I remember the issue being brought up as it came up in the news, I didn't know anyone involved.
131. Q. Would your knowledge of the Marshall story be the same as any member of the public's prior to your assignment?
- A. Possibly a little better than most members of the public, only because that's what we're supposed to be doing.
132. Q. Did you know Parker Dunham?
- A. No, I didn't.
133. Q. So you were assigned the topic on Tuesday afternoon and you say you went to the library -
- A. M-hm.
134. Q. and the library being what library?
- A. The CBC Research Library.
135. Q. And where is that located?
- A. That's on Church Street just south of College.
136. Q. And what did you find there?
- A. I found newspaper files on Donald Marshall and on the case.
137. Q. Anything other than newspaper reports?
- A. No, I looked for magazines - I may have found a MacLean's item, because I could only use the Canadian reference system.
138. Q. You have a computer there, is that how it's done?
- A. No, it's all just files and microfilm.
139. Q. Do you punch anything, I mean how long would this take you to do?

151. A. (cont'd) down, or that was the focus, what had happened, why Donald Marshall had been sent to prison for 11 years for what seemed to be no good reason.
152. Q. When you say that, "for no good reason", whose conclusion was that?
- A. That was a conclusion that was drawn after it was found that someone else was brought to trial and convicted.
153. Q. Yes, drawn by whom?
- A. Drawn by the public and I suspect anyone who was reading the
154. Q. Drawn by you?
- A. Drawn by - I was interested in what had happened. -
155. Q. Did you come to a conclusion after you read the articles as to the guilt or innocence of Donald Marshall?
- A. I thought he was innocent.
156. Q. Did you come to a conclusion as to - before you came to Halifax, as to why he had been convicted?
- A. No.
157. Q. Have you come to such a conclusion now?
- A. I don't think I have come to an actual conclusion that I could write down on paper.
158. Q. Or at any time since November of 1983 have you come to any conclusion as to why Donald Marshall was convicted?
- A. I have ideas that I drew from speaking to people, but in terms of broadcasting something I think there are only questions that can be raised, I don't know about conclusions

158. A. (cont'd) at this time. I think there are just questions that have to be raised, or that had to be raised at that time.

159. Q. Are you telling me then that you have never come to any conclusion at any time as to why Donald Marshall was convicted? And when I say that I mean as to who should be blamed for his conviction.

A. I find that a difficult question to answer.

160. Q. Why?

MR. MURRANT: Well, if I may, she'd almost have to be on the jury to know why he was convicted.

MR. PUGSLEY: Well I've listened to the broadcast, I don't have any difficulty in understanding the broadcast that Miss Matheson was responsible for and the blame is clearly apportioned to my client.

A. I think that the broadcast, rather than blaming any particular person, raised questions that possibly something should be looked into in the original investigation. I think that from the reports that we were handed there appeared to be improprieties and techniques used that should have been questioned then and possibly should be questioned now, used by both the police force and - by the police force.

161. Q. And by the police force you mean the Sydney Police Force.

A. That's right.

162. Q. Under the leadership of John MacIntyre.

181. Q. Oh yes, of course, you told me you spoke to Havoc Franklin, and who else did you speak to?

A. I can't recall whether I spoke to Felix Cacchione or not because I knew that it would be - if we were going to do a story on Donald Marshall we should have an interview with Donald Marshall, and then I took a plane for Halifax.

182. Q. Coming down on the Tuesday?

A. Tuesday evening.

183. Q. And you remained in Halifax until?

A. I believe Wednesday evening, then I flew into Sydney Wednesday evening.

184. Q. And who did you first see, or what did you first do on the Wednesday morning?

A. If I can refer to my notes -

185. Q. Of course.

MR. PUGSLEY: Do you have the original, Bob, of your documents here?

MR. MURRANT: No, but we have the original notes.

MR. PUGSLEY: Perhaps if you wouldn't mind producing those.

MR. MURRANT: My original is a Xerox as well.

MR. PUGSLEY: Yes, all right.

Q. (cont'd) If you wouldn't mind producing those Miss Matheson.

A. I only have my copy, I don't have his.

186. Q. I appreciate that, you have the original though.

186. A. Yes.

187. Q. Exhibit 1 is a notebook that you have passed to me, Miss Matheson, a steno notebook, Canadian Broadcasting Corporation appears on the front, Marshall Case "Little Rock", "railroaded" and that is the only handwriting on the cover, and all the handwriting in Exhibit 1 is your handwriting is it?

A. Yes, it is.

188. Q. Marshall case, I understand that, what does Little Rock mean?

A. That's what someone, and I don't recall who, that I spoke to called this case. Suggested that it was like Little Rock, Arkansas.

189. Q. What's Little Rock, Arkansas?

A. Little Rock, Arkansas, I suspect what the person meant was that there were some racial problems in Little Rock, Arkansas.

190. Q. This goes back to the '60s does it?

A. It does.

191. Q. President Kennedy.

A. Late '60s.

192. Q. And the word "railroaded" -

A. Another quote from someone who I spoke with.

193. Q. Who was that person?

A. I don't recall, I didn't use either of those terms in my piece.

194. Q. Do you recall who used either one of those terms?
- A. No, I don't, they would be one of the people that I spoke to and interviewed in my notes.
195. Q. Did you make any of the notes in Exhibit 1 prior to coming to Halifax?
- A. I may have made some on the plane and some prior to arriving when I was told the players, that would be all.
196. Q. Can you help me in that regard, that would just be page one would it and page two?
- A. I would think possibly just page one.
197. Q. Let's take a look at it, at the top of the page it says "one, focus, did police and lawmakers in Sydney and Nova Scotia", sorry, you'll have to help me there.
- A. "contribute".
198. Q. "contribute to miscarriage of justice", would this have been written prior to coming to Halifax do you think?
- A. Yes.
199. Q. Look at "one, Sydney Police, 2 RCMP and 3 Nova Scotia Supreme Court".
- A. M-hm.
200. Q. Did you at any time in fact look at the Decision of the Nova Scotia Appeal Division?
- A. I didn't look at the actual copy of their Decision but I spoke to people about it and read newspaper reports on the Decision.

201. Q. Why did you not go to the original source, why didn't you read the Decision?
- A. I didn't have a copy of the Decision and I was - although I was at the court house for sentencing -
202. Q. The court house for the sentencing of Ebsary.
- A. Yes, that's true.
203. Q. When was that?
- A. That must have been on the Thursday.
204. Q. Oh yes, the court house in Sydney.
- A. M-hm.
205. Q. Were you ever at the court house in Halifax?
- A. No, I wasn't.
206. Q. Well surely it would have been within your competence to obtain a copy of the Decision of the Appeal Division.
- A. I didn't feel that that was necessary at that point, that that wasn't going to be - the focus of this piece was not specifically going to be the Nova Scotia Supreme Court or Appeal Court Decision. It's necessary certainly to read in brief what they said but in a piece, or in a documentary that is 8 to 10 to 15 minutes long I wouldn't have been able to quote specifically from the report.
207. Q. But it might have given you some insight into determining who was to blame.
- A. I spoke to people about the report, about the document, and I really figured that the, and still believe, that the

207. A. (cont'd) newspaper reports were sufficient at the time, they were fairly concise and fairly well documented.
208. Q. What does that mean?
- A. Well the Globe and Mail report at the time, I believe, plus the local newspaper reports here, newspaper file.
209. Q. Yes, but did you read the Globe and Mail report?
- A. Yes, I did.
210. Q. And how long was the Globe and Mail report?
- A. I don't recall, it was a normal length for a newspaper article.
211. Q. Yes, that would be in the CBC library would it? Your research library in Toronto.
- A. Yes, or else I read it here, I don't recall where I got that particular document.
212. Q. The documents that you read in your research library in Toronto, how many pages would you say they would be, would they consist of at that time?
- A. 15 pages approximately.
213. Q. I would ask you to, when you go back to Toronto, to photostat those that existed at the time and send those to Mr. Murrant so he can forward them to me. And you say that in addition to reading an article in the Globe and Mail you would have read an article in the local newspaper. Well you only could have read that in Toronto in your library I assume.
- A. Or else there was a file kept at the CBC in Halifax, as well

213. A. (cont'd) as in Sydney, the CBC office in Sydney.
214. Q. You surely though, by virtue of your training in radio and television, and certainly your training in law school, have been directed to go to original source documents.
- A. That's correct, there was also a matter of what I considered to be absolutely necessary to be read at that time, sometimes one can't read every single document available.
215. Q. Miss Matheson I can't not consider anything that would be more important for you to get background for this case than a Decision of our Appeal Division, which consisted of 5 judges who heard the key people who gave evidence at these trials. Would you not agree that that would be the most important document for you to see of any document?
- A. I didn't believe so at the time.
216. Q. Have you ever read it?
- A. No, I have not.
217. Q. Don't have any idea what the members of our Court said -
- MR. MURRANT: That's not what she said, excuse me.
- MR. PUGSLEY: I'm sorry.
- MR. MURRANT: She said she read concise reports of it.
- MR. PUGSLEY: Yes she did, yeah.
- MR. MURRANT: Which she thought were well done and to the point. That she thought were well done and accurate reports.
- Q. (cont'd) Of course you have no way of knowing whether they were accurate or not, or whether they were well done or not

217. Q. (cont'd) unless you read the original, you have no basis to make the judgement.
- A. I have to trust the credibility of people like Michael Harris and Allan Story who write these articles, and assume that their editors wouldn't let something go to press that wasn't checked thoroughly.
218. Q. Did any of these articles say anything at all about the credibility that the court found of Patricia Harriss, Maynard Chant, John Pratico?
- A. I don't recall.
219. Q. And then next "Reason, after 11 years Marshall", sorry?
- A. "out".
220. Q. Oh "out of prison" that means.
- A. Yes.
221. Q. And November 24th, "Ebsary sentenced for killing Sandy Seale May 28th, 1971", would that note have been made in advance of your trip to Nova Scotia?
- A. It could well have been.
222. Q. "Push for public inquiry over this".
- A. "grounds".
223. Q. "grounds equals malfeasance", now what did you mean by that?
- A. Well "push for public inquiry over this", that was in the papers, and malfeasance was the word used in one of the articles I suspect.
224. Q. Malfeasance of whom?

224. A. I suspect they mean malfeasance on the part of initial investigation I would imagine.
225. Q. Conducted by the Sydney Police Force.
A. And any other people who were involved at the time.
226. Q. Who was involved at the time, apart from the Sydney Police Force?
A. The Sydney Police Force initially and then the RCMP.
227. Q. When did the RCMP become involved?
A. They were called in, as I understand it, after Donald Marshall was sentenced to prison, a few days after.
228. Q. So anything up to that point in time would have been malfeasance of the Sydney Police Force.
A. Yes, correct.
229. Q. Under John MacIntyre. When I say under John MacIntyre I mean the investigation under John MacIntyre.
A. Yes.
230. Q. What does the word malfeasance mean, what did you mean by the word malfeasance?
A. I was copying a word from the newspaper at the time obviously.
231. Q. What did you think that the word malfeasance meant in November of 1983?
A. I thought that it meant that there should be questions raised over what had gone on.
232. Q. Yes, but what does malfeasance mean, what did you mean by the use of the word malfeasance?

232. A. Bad practice.
233. Q. "Players", players meaning the people involved I take it, and then "one, Donald Marshall - Halifax" and the word is - what is immediately after the word "Halifax"?
- A. "how he feels why it took so long inquiry".
234. Q. And these were notes to you on the way down to Halifax just to develop areas of discussion with each one of these people.
- A. That's correct.
235. Q. And then "2 his lawyer, Felix Cacchione, Halifax", and then the word is?
- A. "Need for focus, need for inquiry".
236. Q. And then "3 Frank Edwards, Crown Prosecutor Sydney", how would you have got his name, how would you know that?
- A. Frank Edwards?
237. Q. Yes.
- A. I must have, I believe his name came from articles, from newspaper articles as well.
238. Q. And "4 Sergeant Harry Wheaton, RCMP", I'm sorry what is the word after that?
- A. "question".
239. Q. "why have", sorry? It looks like "why have Sydney", does it "Syd"?
239. A. Well no, Sydney's the location I thought, but I was incorrect. "Do not come forward with a recommendation either for or against a public inquiry".

240. Q. That is a question that you wanted to direct to Sergeant Harry Wheaton.
- A. That's correct.
241. Q. And "fifthly Noel Doussett".
- A. That's correct.
242. Q. Who's he?
- A. Noel Doussett was involved, or is involved in the Indian Movement here.
243. Q. Where does he reside, in Halifax?
- A. Yes, he does.
244. Q. And the next words are "what's at stake".
- A. "what is at stake".
245. Q. Does that mean for the Indian community?
- A. That's correct.
246. Q. And then "plus" -
- A. "for background and comment".
247. Q. These are the people that you would want to discuss on the program generally the background.
- A. M-hm.
248. Q. And "Parker Barss Dunham" and that's his phone number I take it?
- A. Yes, it is.
249. Q. And "secondly".
- A. "Glen Wanamaker".
250. Q. Who is that?

250. A. He's the CBC broadcaster in Sydney, and Michael Harris.
251. Q. Of the Globe and Mail.
- A. That's correct.
252. Q. And immediately to the right of Parker Barss Dunham's name is "A.G. Ast, i.e. May, it's now November".
- A. Oh that's just a continuation of the notes from Sergeant Harry Wheaton.
253. Q. And then "locations", that would mean the locations of the program, "firstly the court room, November 24th in Sydney", that's for the sentencing of Ebsary.
- A. That's correct.
254. Q. And "secondly the police station in Sydney, thirdly Wentworth Park opener".
- A. Correct.
255. Q. "Will he be there for" -
- A. "Ebsary's sentencing", will Marshall be there. These are all just notes to myself.
256. Q. May I just borrow your book for one second because there's some notes on the right-hand side that I can't read, oh I see "A.G. N.S.", you've got "A.G. N.S." meaning Attorney General of Nova Scotia.
- A. That's correct.
257. Q. And that's directed to Frank Edwards and Sergeant Harry Wheaton.
- A. M-hm.

258. Q. And then the second page, "Wednesday 7 wake-up, call EPA re: flight, call Helen or Barbara".
- A. These are people in my office.
259. Q. No relevance to this matter.
- A. They arrange travel.
260. Q. "9 CBC".
- A. "Havoc".
261. Q. What's that mean?
- A. Havoc Franklin.
262. Q. And his numbers and then "11 o'clock call Felix Cacchione re: Donald Marshall", then "pre 11 call Glen Wanamaker in Sydney re: Frank Edwards, Sergeant Harry Wheaton" and then "Ian MacNeil brother of former Crown Prosecutor".
- A. Yes.
263. Q. Who was Ian MacNeil?
- A. Ian MacNeil is the editor of a paper.
264. Q. Of the Cape Breton Post is he?
- A. I believe so, yes.
265. Q. Of the paper in Sydney, Nova Scotia.
- A. That's correct.
266. Q. And your note is "where did he stand".
- A. Right.
267. Q. And then "call Parker re: sentencing". I'm sorry, I may have asked you this but I've forgotten your answer, how did you get Parker Barss Dunham's name or why did you -

267. A. He was a broadcaster who's been used by the CBC and is well thought of by the CBC, I had not used him before.
268. Q. How did you know that?
- A. In the calls that I made.
269. Q. To CBC people?
- A. That's correct, and Havoc Franklin, I suspect, suggested I speak to Parker Barss Dunham.
270. Q. On the middle of the second page "call Parker re: sentencing whereafter Thursday noonish call Noel Doussett and then call A.G.'s office, also ex-A.G. Harry Howe and Harry Porter, Chairman of the Nova Scotia Police Commission, Public Investigation", I guess.
- A. M-hm.
271. Q. Did you speak to Harry Howe?
- A. I tried to get through - no, I did not speak to Harry Howe. I tried to get through to Harry Porter and I could not get through, I called several times, and I tried to get through to the present Attorney General and was told that he had no comment.
272. Q. And then you say "said 'so air can be cleared'", who said that, is that something that someone reported to you?
- A. I'm not sure, I did not use that in my consideration of this story, whatever it was.
273. Q. "What are you waiting for" and then "Flight 8:30 p.m. to Sydney, Glen what time sentencing". All right, let's just go

273. Q. (cont'd) back to what you did in Halifax, you've told me that you met a person at RCMP Headquarters and talked to them for about 40 minutes. What time was that, was that your first meeting of the day?

A. My first - I went to the CBC offices first.

274. Q. And what did you do there?

A. I tried to arrange an interview with Donald Marshall. I tried to find out the logistics of people who I should be seeing in Sydney, among then Chief MacIntyre, and realized that there was a lot of territory that had to be covered to speak to everyone in this case to get both sides of the story. I then, I believe it was around noon that I spoke to the person at RCMP.

275. Q. Did you do anything else in the morning that is relevant?

A. Was quite awhile ago, I'm trying to think. I know I made a number of phone calls, I eventually arranged the interview with Marshall in the afternoon, I spoke to the person at the RCMP office I think around noon.

276. Q. Tell me, what did he tell you? And you're now referring to page?

A. Page 12.

277. Q. Page 12 of Exhibit Number 1. All right, you go ahead, just tell me what he told you rather than me reading your notes.

A. He told me that he first became involved in the case in February of 1982. He gave me some of the details that were

277. A. (cont'd) set forward for him in a letter by Aronson, who was Marshall's first lawyer I believe.
278. Q. Did you see the letter?
A. I did not, he showed me no documents.
279. Q. Were you alone at the time Miss Matheson?
A. Yes, we were. He gave me information, he spoke fairly openly but making sure that he wouldn't be named in this.
280. Q. What did he say in that regard?
A. He said he'd rather not be named, and as you can see at the bottom of page 12 I made a note to, if I used any of the information that he gave me to refer to him only as a source close to the investigation.
281. Q. Did you in fact use any of the information he gave you?
A. Not on - no, not on the broadcast at all, no, I didn't quote him at all.
282. Q. What did he say, tell me what he said to you?
A. I asked him about the polygraph test and he said that the RCMP was guilty of putting too much confidence in the polygraph test that was given to both Mr. MacNeil and Mr. Ebsary.
283. Q. This was a polygraph test given in 1971 I believe was it not?
A. Yes.
284. Q. Did you know what the results of that polygraph test were?
A. He told me that the results of the polygraph test given to

284. A. (cont'd) Mr. Ebsary showed that Mr. Ebsary was telling the truth and that Mr. -
285. Q. Sorry, telling the truth when he said what?
- A. That he was not involved in the murder that evening, and that the results given to - the test given to Mr. MacNeil were inconclusive, and so on those grounds nothing was done.
286. Q. Have you had any experience with polygraph tests in the past, either people commenting to you on their accuracy or seeing them or having experts talk to you about them?
- A. Yes.
287. Q. And what generally was your attitude about them prior to the time you had this discussion with this particular RCMP officer?
- A. My attitude was not really an attitude but I understood that for a long time they were not allowable as evidence because of the fact that they were sometimes not reliable, I'm not sure, I don't know the technology of polygraphs, but I didn't have a given attitude at all.
288. Q. Well did the RCMP officer imply to you that they were not taken properly, that the tests were not administered properly?
- A. No, he didn't. He indicated to me that simply that there was too much confidence put in those tests, that possibly the people who gave them were new or that there should have been something else done.

289. Q. Did he suggest that the results of the polygraph test were indeterminate or inconclusive, or did he attack the use of polygraphs and the results achieved from them generally?
- A. I think his was a more general criticism.
290. Q. About polygraphs in general.
- A. Quite possibly, yes, I didn't read it as a specific complaint.
291. Q. How did you know about the polygraph test, I'm just trying to recall where you would have read about them. Were they in the newspaper reports that you had read?
- A. No, possibly if I had already done a pre-interview with Michael Harris, or with Parker Dunham, they had raised that to me and I had noted it, I'm not sure.
292. Q. Could you have done that, could you have -
- A. It's quite possible.
293. Q. Well you saw this RCMP constable on the Wednesday morning.
- A. It's possible that I could have spoken to Havoc Franklin. I did have the information when I went there.
294. Q. What other things did he say to you?
- A. We talked about the statements.
295. Q. What statements?
- A. The statements of Maynard Chant and of Pratico and Harriss.
296. Q. And what did he say to you about those statements?
- A. He said that Chant, I have an arrow, said pressured but that Chief MacIntyre had denied that. He explained the statements a bit and then -

297. Q. You're looking at what page now?
- A. I was looking at page 14 and page 13.
298. Q. The notes that we see in Exhibit 1 were made at the time of your interview with the RCMP officer.
- A. Yes, they were.
299. Q. And that is your usual practice, to make notes at the time you're talking to people.
- A. That's correct.
300. Q. The pages that refer to the RCMP constable would be 12, 13 and 14 would they?
- A. And 15 and 16 I believe.
301. Q. So firstly dealing with the statement of Maynard Chant, he said that - did the RCMP constable say that Chant - say that he had been pressured or did the RCMP constable say that that he had come to the conclusion that Chant had been pressured?
- A. No, he said that Chant said he had been pressured.
302. Q. And the RCMP constable further went on to say that he had discussed this with Chief MacIntyre and the Chief had denied pressuring Chant.
- A. That's correct.
303. Q. And then Pratico? I'm sorry to interrupt you but just dealing with your notes, Exhibit 1, page 12 we see that at the bottom "Chant - said pressured, new line, "MacIntyre denied it", then it says "'biggest travesty of justice ever'".

303. A. That's a quote from the RCMP.
304. Q. The RCMP officer, and what did he mean when he said that?
- A. I think he was referring to the fact that someone had been sent to prison for 11 years and someone else was convicted of the same crime.
305. Q. And then immediately above that, on page 12, we see the word "source close to the investigation", is that how you identified the person?
- A. Yes, that's how he asked to be identified.
306. Q. Sorry we might as well do this in some kind of order, Miss Matheson, dealing with page 12 we've got "source, February '82", that's when the RCMP officer first became involved, you refer to a letter by Aronson and then "Michael's brother doing time", what does that mean? Who is Michael first of all?
- A. I believe this is someone, again this is information that because I didn't have full access to this, and because I wasn't going to quote this person, I didn't investigate. What he told me was that this was, I believe, that this was someone who had met Ebsary, stayed with him or was a roommate of some kind, Sarson, Michael Sarson, and that Donald Marshall had met this person's sister in jail and the person and the sister had told - yeah, and the person had told Donald that Ebsary had originally been, I don't know, brought in for the polygraph, that there was some involvement that Ebsary should be investigated.

307. Q. Then we see the words "Ebs" meaning Ebsary, dash "Gay", dash meaning homosexual I take it.
- A. Yes.
308. Q. That being Ebsary being homosexual. Then the word "Sarson" being this person you've mentioned.
- A. That's correct.
309. Q. Then the word "stabbed, newspaper", what do they mean?
- A. I don't recall.
310. Q. And then "Frank", what's that mean?
- A. I'm not sure unless it means Frank Edwards.
311. Q. Have you ever been involved in any libel cases before where you've had to give evidence?
- A. No, I have not.
312. Q. Have you ever had any complaints made of any reporting you've done being libelous or defamatory?
- A. No, there was a case at Global Television but it was by a cult.
313. Q. Involving you?
- A. Not me personally, no, it's Global.
314. Q. And then around the middle of page 12, I can't read that word.
- A. "Interview".
315. Q. "Interview - '82".
- A. Right.
316. Q. And then what follows that?
- A. This is the polygraph.

317. Q. And what does it say?

A. It says "went to MacNeil, guilty of putting too much confidence in polygraph".

318. Q. What does "went to MacNeil" mean?

A. I suspect this is where the RCMP person spoke to Mr. MacNeil.

319. Q. Oh yes, Mr. MacNeil, the witness, right? And then the word appears "distorted".

A. Yes.

320. Q. What does that mean, the results were distorted?

A. No, I suspect that he was again discussing the polygraph test and how sometimes the results of the test can be difficult to read.

321. Q. And then the word appears "John gave him statements", what's that mean, who's John?

A. I believe that was Chief MacIntyre. The statements of the witnesses. It may not have been Chief MacIntyre, I'm not positive.

322. Q. And then one, is that Sarson?

A. Yes, it is.

323. Q. Then the words "thought he was lying", what does that mean?

A. I believe these are the RCMP officer's recollections of his interview with these people, I don't recall.

324. Q. Sarson is the fellow we mentioned up at the top of the page -

A. Yes, it is.

347. Q. "3. public pressure".
A. M-hm.
348. Q. That there was public pressure on the police to solve this murder, is that what this means?
A. I think that he likely simply meant that after any murder there's a certain amount of concern and pressure to get it solved, worry on the part of the community.
349. Q. And then the word "Chant - was coming home through park".
A. "missed last bus, Marshall ran into Chant, stayed with Seale, Marshall called police".
350. Q. Then the word "Practico" appears "through park in".
A. "not in through park.
351. Q. "Not in through park", in something, in "dancehall".
A. Yes.
352. Q. And these are again notes made by you as a consequence of what the constable told you.
A. That's correct.
353. Q. And then he told you further that the police told Chant to get lost.
A. Yes.
354. Q. And that there was a road block.
A. Correct.
355. Q. And you just carry on and tell me what these notes mean if you would Miss Matheson.
A. That the police at the roadblock, that Chant came up and said

355. A. (cont'd) I saw it all, just where he was cut, page 14 was tactics used.
356. Q. Tactics used by the police, is that what that means?
- A. In questioning I suspect, "pounding the desk, verbally threatening", this was in regards to Mr. Chant, threatening that he'd be sent to Dorchester unless you tell me the truth which is, "worst interview was with Harriss".
357. Q. Sorry, just going back a bit, do I take it from these notes that Chief MacIntyre, in the course of interviewing Mr. Chant, pounded the desk and verbally threatened to send Chant to Dorchester unless he told him the truth.
- A. That's what I was led to believe by the RCMP person.
358. Q. Then you go on to say "which is", which is what, there's sort of a blank after the word "which is", why is that, or is that just sort of an unfinished sentence?
- A. An unfinished sentence.
359. Q. Meaning that the Police Chief said unless you tell me the truth which is, and leaving it up to Chant to finish the -
- A. That's what the RCMP officer believed, yes.
360. Q. Now "worst interview - Harriss", what does that mean?
- A. The RCMP officer was concerned with the way Patricia Harriss was questioned. She was kept from 6:50 in the evening until 2 in the morning.
361. Q. That is what he told you eh?
- A. That's what he told me. And these are just the notes that I was given by the RCMP officer.

362. Q. Let's just go through these if we may, "no physical evidence or corroboration", what does that mean?
- A. Well no physical evidence I suspect.
363. Q. No physical evidence involving Marshall in the murder, is that what that means?
- A. Well corroboration, I take it from what the RCMP officer told me, when he said "no physical evidence or corroboration" meant that there was no evidence to indicate that Harriss had seen what came up in her second statement, or corroboration, or no one else who could corroborate that. "She had walked down Crescent Street, Wentworth Street, Marshall had talked to them on her way to the first movie before 7 p.m. She knew Junior, she recalls in first statement to police there were two people needlessly harping, changed statement on her, didn't see him in park, hollered at".
364. Q. Let's just see, you say "felt hollered at", does that mean that Patricia Harriss told the police and the RCMP constable told you that she felt that the police had hollered at her, is that what that means?
- A. The felt I don't think has any relation to hollered at, I'm not sure, it was just the beginning of a sentence that I didn't complete.
365. Q. But the person, the RCMP person was telling you that she said that she was hollered at by the police.
- A. Correct.

442. A. What does what mean, "the only result generates more fatalism", I think he was telling me that there was a sense of fatalism on that Reservation and in terms of leaders he was telling me that there were - some people stood out as leaders in the community and some didn't.
443. Q. And anything else in Halifax?
A. Just the interview with Michael Harris.
444. Q. And what page is that found on, 19?
A. 19.
445. Q. Did you know Michael Harris before?
A. I knew of Michael Harris, I had never met him personally.
446. Q. And where did this interview take place?
A. It took place at the CBC office.
447. Q. And how long did it last?
A. It was about 15 to 20 minutes.
448. Q. Anyone else present?
A. No.
449. Q. And what was the discussion?
A. The discussion was his view of the case.
450. Q. And what was his view?
A. Michael has been following this for a long time. He indicated to me that he thought an investigation was in order. He had certain reasons. It says here "May 5th, '82, report" -
451. Q. On page?

451. A. 20. These are just brief notes, "if there's an inquiry it will have an effect on Sydney, Membertou, the black community". I was going to ask Michael about the travesty of justice quote.
452. Q. Did you ask him about it?
- A. Yes, I did.
453. Q. And what did he say?
- A. He agreed. "Court system Sydney, hung jury prosecution RCMP", these are just notes that I took down from speaking to someone.
454. Q. What do the words "hung jury" mean?
- A. A jury that couldn't come up with a decision.
455. Q. Was there any such kind of jury in the Marshall case?
- A. I don't recall.
456. Q. What did Michael Harris say about the court system in Sydney?
- A. I'd like to see if I have more specific notes on Michael. Page 21 he says "an inquiry has to be solved, compensation for miscarriage of justice", he said that an inquiry "elegant way, critical conclusion, can't bear freight or weight of facts, didn't look at police side, responsibility is shared, police are more responsible for what happened to him", meaning Donald, "MacNeil 10 days after", this is presumably where Mr. MacNeil came in and said that he had been in the Park with Mr. Ebsary.

457. Q. That's Mr. James MacNeil I believe.
A. Yes.
458. Q. My notes say "Knew robbery attempt", which was the robbery attempt spoken about in the Park.
A. That's right. "No original investigation".
459. Q. The robbery attempt of Marshall and Seale against Ebsary.
A. That's right. "No original investigation".
460. Q. What does that mean?
A. I recall Michael was talking about - of the robbery.
461. Q. Oh I see, no original investigation of the robbery.
A. M-hm.
462. Q. What do the words mean "didn't look at police side"?
A. I think that what Michael meant was people hadn't been speaking to the police and asking them for their side of the story to get an objective story on this, and he continues on the next page "nobody has made an attempt to find out what happened".
463. Q. Did you consider that it was important to speak to the police to get an objective view?
A. We all did.
464. Q. And without having the police side of it you would not have an objective view.
A. You certainly wouldn't so you try very hard to speak to the police.
465. Q. What do the words mean "responsibility is shared"?
A. The responsibility for Marshall being sent to prison.

466. Q. What did Michael Harris mean when he said that, shared by whom?
- A. I'm not sure who he meant on one side, I think that he wanted to look into the police actions but he also wanted to hear from them what had happened.
467. Q. Then going back I guess to page 20 of Exhibit 1, are these -
- A. To 22 actually.
468. Q. If you'd just carry on then and read your notes.
- A. "Nobody's made an attempt to find out what happened that night".
469. Q. This is what Michael Harris told you.
- A. That's right.
470. Q. What did he mean by that?
- A. We were just talking about journalists and the type of press this has had and he said it would be good to go back and actually go over that investigation, and what happened, the actual, follow the footsteps. "Junior 20 minute conversation, James MacNeil".
471. Q. What does that mean, "Junior 20 minute conversation"?
- A. I don't recall right now. "James MacNeil no conversation, Ebsary 1971 20 minute conversation".
472. Q. Does this mean that Michael Harris -
- A. Oh this is the police.
473. Q. This is the police.
- A. M-hm. Then he said that the Park was a pick up place for

473. A. (cont'd) gays and for Indians, that Indians hung out there, and that was later confirmed by Kevin Christmas. "Supreme Court Decision entitled to that conclusion, three affidavits, each person claimed that they were pushed", reason that they are coming out now, "Marshall now out", then just the June 29th, '71 date.
474. Q. Up to this point in time had you seen any documents, any affidavits, statements or anything by any of the people involved in this case?
- A. No, this is still in Halifax on the first day.
475. Q. I appreciate that. "The Supreme Court Decision", meaning the Appeal Court's Decision in May of 1983.
- A. Yes. "Oscar Seale".
476. Q. Who's Oscar Seale?
- A. That's Sandy Seale's father. "taken his son, now memory of his son", possibly Michael was suggesting I should speak to Oscar Seale, and then my flight information to Sydney.
477. Q. That's on page 23.
- A. M-hm.
478. Q. That's "10:10", sorry did you go to Sydney on this Wednesday night?
478. A. Yes, a 9:15 flight, I guess, that arrived in at 10:10, I'm not positive.
479. Q. Sorry, going back for a moment to page 20, I don't think we covered all the comments on page 20, we talked about "hung

479. Q. (cont'd) jury" around the middle of the page and then there's something like Wanamaker, that's a person is it?
- A. That's Glen Wanamaker from the CBC, his phone number.
480. Q. Then after that?
- A. "White Commission, Sydney established".
481. Q. What's that mean?
- A. I don't recall. Then "court public inquiry", this was all from newspaper accounts. "What I care about is justice, a mile and a half from them, 7th year persists in his innocence".
482. Q. What's "a mile and a half from them", what's that?
- A. I don't recall.
483. Q. And the comment "what I care about is justice", is that Michael Harris's comment?
- A. It could be, I'm not sure.
484. Q. The comment at the top of the page, page 20, "travesty of justice", is that Michael Harris's comment?
- A. I believe that's where I asked Michael about, to remind myself to ask Michael about the comment made by the RCMP officer.
485. Q. And what did Michael Harris say?
- A. I said it a minute ago, he concurred and said that an inquiry has to be sought.
486. Q. At the bottom of page 20 what is that, "Corporal James Carroll"?

486. A. M-hm.

487. Q. Who was that?

A. James Carroll was also involved in the investigation and I eventually called him in Sydney.

488. Q. All right, going to page 23 then, did you do anything more that night? Had you sort of got the broad outline in your mind by Wednesday night of what the program was going to be, or had you come to any conclusion?

A. I had an outline in my mind but I knew that I needed to speak to Chief MacIntyre because I wanted to ask him a number of questions, I wanted to hear his side of the story.

489. Q. Up to this point in time when you went to Sydney that night, on the Wednesday night, you had I guess two things recorded on your tape, you had the interview with Christmas and the interview with Marshall and that's all.

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

490. Q. Did you do anything else that night?

A. No, I flew to Sydney and prepared to go to court the next morning to hear the sentencing.

491. Q. Is that the first thing you did the following morning on the Thursday?

A. No, I believe I called the police station trying to set up an interview with Chief MacIntyre and I took a drive to Membertou, I had a rented car.

492. Q. Had you been in Sydney before?

492. A. Never.
493. Q. Had you been in Nova Scotia before?
A. Yes.
494. Q. On CBC business?
A. No, CTV business.
495. Q. What programs had you done before in Nova Scotia?
A. Canada AM.
496. Q. How many times had you been in Nova Scotia before?
A. A couple of times I believe, just in for a matter of 4 or 5 days at a time doing a series of programs out of Nova Scotia.
497. Q. What on, do you recall?
A. On everything from culture to news.
498. Q. And so you went to the Reserve at Membertou in the morning.
A. Yes.
499. Q. And who did you see there?
A. No one, I just drove to look, I drove through the city to look and went to - then I went to the Hearing, the sentencing, and took notes on the sentencing.
500. Q. And are those notes found on page 23?
A. No, this is more comment from Michael Harris.
501. Q. Let's go through this then. The words appear about the middle of the page, "Roy Gould".
A. Roy Gould is involved in putting out a newspaper for the Membertou Reserve, that was just a number that I'd asked for,

501. A. (cont'd) and was supposedly with Junior that night, then I got an address and a time, 4 p.m., and just directions, and then Michael Harris's name.
502. Q. Michael Harris is writing a book on the Marshall story is he?
- A. Yes, he is.
503. Q. Has that been published yet?
- A. I don't believe it has, no.
504. Q. June 2nd, '72, what does that refer to?
- A. I don't recall specifically.
505. Q. And then the word that appears next is?
- A. I'm not sure what that word is. "March 29th, '82 to now, starting point".
506. Q. Looks like "admission of guilt" -
- A. Yes.
507. Q. "until he lied", what is all that about?
- A. Apparently this was when Marshall was in prison, "took a plumbing course at Dorchester, said I did it but he wanted out".
508. Q. This is Marshall himself said that he - meaning he committed the murder, is that what that means?
- A. As it was explained to me he admitted his guilt, or he admitted that he had done it, but it was just out of a sense of there was nothing he could do about it and he wanted -
509. Q. And this is something that Harris told you is it?

509. A. These are notes from Michael Harris. I don't recall specifically, I can't recall specifically what each of these phrases refers to, all I know is that it says "starting point, admission of guilt until he lied to prison authorities, he wanted out so he said I did it. He took a plumbing course to get the training in Dorchester". This is a quote from someone that Michael heard.
510. Q. This is page 24.
- A. That said "he's a typical Indian buck and enjoys a bout of drinking", and it was Michael's way of showing me that there was a certain sort of sense of we and them. He told me that there was a jacket that went missing that was in the Sydney City locker or lock-up, these are all things that Mr. Harris has found out. "Fibres, white fibres, Marshall's slide number 6 knife murder weapon. Questioned all the Ebsary's except Donna Ebsary".
511. Q. Does that mean Michael Harris questioned all the Ebsary's except Donna?
- A. No, that means the police investigation. She tells Kung-fu expert that he went to police and they said go away or that she went to police and they said go away.
512. Q. She tells, meaning Donna Ebsary told the police -
- A. That's right, her Kung-fu expert that she went to police and they said go away. This is just that Donald Marshall's grandmother died and he wasn't allowed out at Christmas and

512. A. (cont'd) "threat to witness", I'm not sure what that meant, didn't use that.
513. Q. And page 25?
- A. This is the scheduling for Thursday, November 24th, the sentencing was at 9 "pre-call Chief MacIntyre and try to make an appointment for around 10, 2:15 see", I had an appointment with Leo Mroz who was the first policeman on the scene and that was the number, and these are just directions to myself.
514. Q. And the directions are "in between" -
- A. Oh this is in between the two "record ambience sound of the court room or outside, Wentworth Park at night", and I'd already looked at Wentworth Park. "Call Parker Dunham, Frank Edwards RCMP" and I spoke to him and he had no comment.
515. Q. Sorry, Frank Edwards had no comment.
- A. That's right, he didn't want to speak.
516. Q. Did the RCMP talk to you at all?
- A. In Sydney?
517. Q. Yes.
- A. No.
518. Q. Did they refuse comment? _____
- A. Yes.
519. Q. Sorry, just going back a bit, "ambient sounds, court room or outside", did you record ambient sounds outside the court room?

519. A. Yes, I did.
520. Q. On your tape recorder.
A. Yes.
521. Q. What kind of a tape recorder did you have?
A. Just like that.
522. Q. A Sony.
A. That's right.
523. Q. Are you taping today as a matter of fact?
A. No, I have no recording device on me. These are questions that I wanted to ask Parker Dunham.
524. Q. Why did you record the ambient sounds outside the court room?
A. I do it for the documentary.
525. Q. What is it?
A. The documentary is not just interviews but it's sound so that you can bring, give people an idea of the sound of a city or a town or an occasion.
526. Q. I see, you made the choice on all the ambient sounds did you?
A. M-hm.
527. Q. Do we describe the background noise that we hear on this tape as ambient sounds?
A. Yes, or sound effects.
528. Q. Or sound effects, right, sure. And part of the sound effects you used were -

528. A. Street sounds of Sydney, sounds outside the court room.
529. Q. What other ambient sounds did you use?
- A. For each person I spoke to I used the sound of where they were, so I used office sounds in Felix Cacchione's office, I used the sound of Sydney street noise for setting up the sentencing, I used sound outside Parker Dunham's house and inside for that interview and office sounds for Michael Harris. It's just practical, it's just normal procedure for documentaries.
530. Q. When you say documentary, what do you mean by documentary, what do you classify as a documentary?
- A. Well a documentary is a longer piece than a minute 25 newscast. In radio it gives information and flushes out a story possibly, more than a minute 25 news story would do, and it also brings the sounds of an occasion or an event to people who are listening.
531. Q. Did you use any other ambient sounds apart from what you've described?
- A. No. Oh yes, I did. I used sounds in the testimony of the witnesses that was a gavel sound.
532. Q. How was that reproduced?
- A. We have a recording of a gavel on a table.
533. Q. This would be in Toronto.
- A. Yes. I recorded, I don't recall if there was a gavel, you're not allowed to record in the court room but there is a gavel

533. A. (cont'd) that we had for recording of so I just used the gavel and did a sound effect with it to indicate - it's usually, a sound effect like that is usually used to indicate to someone to listen closely.
534. Q. To heighten listeners attention I suppose is it?
A. M-hm, yes it is.
535. Q. The middle of page 25, the words, is that "safe city, was and still is"?
A. Yes, that's right.
536. Q. And who told you that?
A. Parker Dunham.
537. Q. Well let's just try and find out where we are, the first thing you did you drove down to the Membertou Reserve, you drove through the streets of Sydney, had you been in Wentworth Park at this time prior to the time you went to the sentencing?
A. Yes.
538. Q. And what did you do there?
A. I just walked, I wanted to get a look at it and a sense of it.
539. Q. And you went to the sentencing and what did you do after that?
A. I arranged to drive out to Parker's - I obviously took notes and then I arranged to drive out to Parker Barss Dunham's house.

540. Q. And where was that located, somewhere in Sydney?
- A. Away outside of Sydney.
541. Q. And would this have been your first meeting with Parker Dunham?
- A. Yes, my first meeting, I spoke to him, as I told you that I do with most people, over the phone first.
542. Q. And you spoke to him from your hotel room in Sydney or Halifax?
- A. I don't recall, I believe that I spoke to him first from Halifax to confirm that I could speak with him when I got to Sydney, and then from Sydney to confirm a time and get directions, and likely it was from the CBC office in Sydney, not from my hotel room.
543. Q. Would you have done anything in those conversations, or said anything, other than arranging for (a) would you appear in the program, I'm doing a program on Marshall, (b) can I come out and have a chat with you, was there anything else discussed?
- A. I would have done a brief pre-interview with him, that's the amendment to your interrogatory.

MR. PUGSLEY: Is that in a position that I can see it Bob?

MR. MURRANT: Well the answer for you here, this will save us a little time maybe, the draft says there was no prior discussion of the remarks of Parker Dunham other than a brief telephone conversation with him in order to arrange a time and place for an

MR. MURRANT: (cont'd) interview, which conversation took place 3 or 4 days prior to the broadcast. In actuality there were a couple of calls and what we've described here is a pre-interview.

544. Q. What was said in the pre-interview Miss Matheson?
A. I asked him about what he knew about this and how he felt, he'd been living in this area for a long time.
545. Q. What did he say?
A. Well he said that Sydney was a safe city, it was and it still is.
546. Q. And you're looking page 25 of Exhibit 1, I see, these notes were made in the course of the telephone interview.
A. I believe so, yes. I didn't make any notes when I actually went out to his home.
547. Q. What else did you discuss on the telephone?
A. The red ink is a quote from Parker, underneath in blue are the questions that I wanted to raise with him.
548. Q. Sorry, the red ink is?
A. Is an actual comment from him, what he said.
549. Q. Just read to me the red ink.
A. "Safe city, was and still is".
550. Q. And the blue are questions -
A. Are questions that I wanted to raise with him.
551. Q. Did you write these questions down before you phoned him?
A. I'm not sure, I could have, I suspect that I wrote these

551. A. (cont'd) questions after having spoken to the people prior to this page, these were questions that were raised in my mind and from conversations and articles.
552. Q. And did you raise these questions with Parker Dunham on the telephone?
- A. Yes I did.
553. Q. And let's just go through these.
- A. "How did an innocent man get sent to prison"?
554. Q. What did he respond to that?
- A. I suspect they're somewhere else, if we can wait until I get to his responses. On page 39, there's some of his notes, I don't think he answered it in this but he did - I don't think he gave me a specific answer to how an innocent man got sent to prison, certainly a lot of what he wanted to say was on the broadcast. I asked him whose fault it was or "could blame be laid on one or two people".
555. Q. What did he say about that?
- A. He said the judicial system was at fault and I wrote, "it seems with as much that there were some irregularities in the questioning of the witnesses. Why do you think that happened? Why wasn't it questioned in court or when the RCMP were brought in later on the James MacNeil issue?"
556. Q. What did he say about all those things?
- A. He said basically what Michael Harris had said and what I'd already heard about the questioning of the witnesses, that they had changed their statements.

557. Q. What did he say specifically on that point?
- A. I don't recall specifically actually unless I can find my notes, I had the interview that I did with him on tape.
558. Q. How long was the interview that you had with him?
- A. About half an hour.
559. Q. And you just saw him on the one occasion did you?
- A. Yes, I did.
560. Q. And obviously that interview was shortened for -
- A. Broadcast, yes, it was.
561. Q. And do we have the balance of the tape with Parker Dunham?
- A. No, we don't.
562. Q. Did you have a sense, when you talked to him on the telephone and after you interviewed him, that this was a calm, reasoned, judgemental kind of fellow, or an excited impassioned chap, what conclusion did you come to?
- A. My conclusion about Parker Barss Dunham is that he's reliable, that he's credible, he's well thought of. He was emotional on this issue. He raised questions and he seemed to think that there should be answers somewhere. I think he, as a lot of people who I spoke to, seemed to be interested in some sort of an investigation rather than compensation.
563. Q. In addition to raising the questions did you not get the impression that Parker Dunham answered all the questions?
- A. Answered all what questions?
564. Q. All the questions that he raised.

564. A. He seems to be opinionated, I was concerned about that in the notes that's why I called - or made a note to call our lawyers.
565. Q. And indeed, and we'll get to him and what he said, but my recollection of what he said is, and you can disagree if you wish, my recollection is that he not only gave the answers, he gave the answers as though they were facts and there was no opinion in Parker Dunham's statements, these were facts as he gave them and the facts that he gave were that this boy was convicted because of improper acts of Police Chief MacIntyre.
- A. In the quote of the actual script he went beyond that I believe and he said it wasn't just this, it was - he listed 3 or 4 reasons where, in his opinion, Marshall had been convicted.
566. Q. Well you came to the conclusion after listening to him that he was a reliable person.
- A. I felt that he was credible but I waited until I - when I finally received the RCMP document and went through it that's when I thought that possibly what he said could be substantiated.
567. Q. When did you receive the RCMP document?
- A. Back in Halifax just before I returned to Toronto.
568. Q. You were in Sydney on Thursday, when did you return to Halifax?

568. A. Friday around noon as I recall.
569. Q. And when did you return to Toronto?
A. Late Friday afternoon.
570. Q. And did you receive the documents, the RCMP documents, from the same person that you had talked to on the Wednesday?
A. No.
571. Q. A different person.
A. Yes.
572. Q. I will ask you who was that person who gave you those documents.
A. It was Felix Cacchione.
573. Q. So all the documents that we see in Exhibit 1, sorry not Exhibit 1, all the documents that we see in the Booklet of Documents that your lawyer has given to me came from Mr. Cacchione.
A. That's true.
574. Q. What did you do after you saw Parker Dunham in Sydney on the
A. It was late in the evening, I drove back and I listened to the tape, I listened to as much tape as I could, all the tape- I had, and earlier that day I had finally gotten through to Chief MacIntyre, who had told me that I could not take Leo Mroz out and interview him and walk through and do a scene setter and that he would not speak to me. And I was concerned so I spoke with - arranged an interview with the Mayor of Sydney.

575. Q. What did you say to the Police Chief MacIntyre?

A. Chief MacIntyre, I asked him if he would - I told him that I was here in town and that I'd been trying to get hold of him and was it possible to do an interview.

576. Q. What else did you tell him, you said I'm Heather Matheson?

A. Yes, I'm with the CBC, I'm with Sunday Morning and we're doing a documentary on the Donald Marshall case. Can I come and talk to you, there are some questions I'd like to ask you. And he said that he was not available for an interview, did not want to be interviewed and I asked him, I told him that I thought it was important, that there had been questions raised and the other side should be brought out to make it as objective as possible and to set matters straight. And he said no, and I was curious as to why Leo Mroz, the officer who was there at the time, wasn't going to be allowed to speak to me. I don't know whether I raised it with him then, I suspect I did and he said no, that it was - and he listed some sort of Act, Police Act, that it was against the rules of some sort of Police Act for me to speak to this officer, and that's when I called the Commissioner, the Police Commissioner's office to try to find out, and the Attorney General's office, if it was all -

577. Q. The conversation that you had with Police Chief MacIntyre was on the Thursday morning was it?

A. It was after the sentencing, it was at noon time.

578. Q. Before you went to see Parker Dunham.

A. Yes.

579. Q. And the calls that you made to the A.G.'s office and to the Police Commissioner, Mr. Porter, were on Thursday afternoon.

A. M-hm.

580. Q. But you were not able to speak to Mr. Porter.

A. No.

581. Q. And did anyone confirm to you the advice that Police Chief MacIntyre had given to you about being contrary to the Police Act?

A. No.

582. Q. Did you tell Police Chief MacIntyre who you had seen and what information you had?

A. The conversation, my opinion or my feeling was that he didn't want to speak too much to me, he'd been not returning my calls and I got the feeling that he didn't want a long lengthy conversation. I tried to speak to him as much as I could and to tell him what I had, I didn't want to say explosive but -

583. Q. What did you say?

A. I said I had been speaking to people and that there are some questions that have been raised about the investigation that I would like to ask you about.

584. Q. Did you tell him who you had been speaking to?

A. I don't recall if I did or not.

585. Q. Did you tell him what they said?
- A. I may have mentioned a couple of specifics that I wanted to speak with him about, yes.
586. Q. What?
- A. I don't recall, he didn't want to keep me on the line very long quite frankly.
587. Q. How long did you speak to him for would you say?
- A. A matter of two or three minutes.
588. Q. You spoke to him only on the one occasion.
- A. Yes, it was the only time I could reach him.
589. Q. Did you speak to anyone else in the Police Department in Sydney?
- A. I spoke to people when I called, tried to tell them what I was doing, and I didn't get the names of these officers but I spoke to them. I spoke to Leo Mroz briefly to set up this walk through the Park.
590. Q. What did he say?
- A. He said that he would walk through the Park and tell me what happened that night.
591. Q. Yes, did you speak to him before or after you spoke to the Police Chief?
- A. Before, I couldn't get through to the Chief until that afternoon.
592. Q. Did you in fact ever meet with Inspector Mroz or Constable Mroz?

592. A. No.

593. Q. Did you speak to anyone else on the police force?

A. No, I didn't.

594. Q. The pages in Exhibit 1 of your conversation with Police Chief MacIntyre where would we find those?

A. That wasn't a conversation, I was at a payphone, what I had on page 27 are a list of questions I'd like to ask him.

595. Q. Did you ever ask those questions?

A. He wouldn't give me the time to ask the questions.

596. Q. Did you make any notes as a consequence of your discussion with Police Chief MacIntyre?

A. No, I didn't, there was nothing really that was said except his refusal to comment.

597. Q. On page 26 are these questions that you were going to ask Constable Mroz or -

A. Yes.

598. Q. But you never received answers for those either I take it.

A. No. When I did my brief pre-interview with him he gave me a scene, you know, he told me basically what it was like at the time but it was just specifically to ask about the scene at the time.

~~599~~. Q. Did you do anything else in Sydney?

A. Not that I recall. Oh yes, I went out and I spoke to the person at Membertou eventually, I didn't use him on the program.

600. Q. Who was that?

A. The editor of the Indian newspaper who had been at the trial.

601. Q. What did he say?

A. I don't believe I kept notes of the conversation, it was fairly brief, Roy Gould. No, I don't think I took notes.

602. Q. Do you recall what he told you?

A. My questions were to him were the Indian community's reaction to what had happened and the family and any of his personal recollections of the night. I don't recall his answers, I didn't use them in the broadcast.

603. Q. How long was your interview with him?

A. Very brief, 15 minutes.

604. Q. You returned to Halifax on the Friday.

A. Yes, I also tried to get an interview in Sydney with the editor of the Cape Breton Post but he was in meetings, and I called several times, eventually spoke briefly with him but not for an interview, just trying to arrange something but he wasn't available.

605. Q. You did speak to the Mayor I guess.

A. I spoke to the Mayor, Morris Manning, just before I left to go see Parker Dunham.

606. Q. And how long was the interview you had with him?

A. It was just arranged so that I would meet him before he was going into City Council, it was 10 minutes.

607. Q. And you taped that did you?

A. Yes, I did.

608. Q. And reduced that to a minute or so on the program.

A. Yes, basically he didn't have too much to say except that he certainly supported the Police Department and said that it was too bad what had happened.

609. Q. Did he consider that their investigation was a proper one?

A. I don't think he commented specifically on the investigation.

610. Q. Did you mention to him the comments of Michael White about a travesty of justice?

A. Michael Harris. I suggested that people had been questioning the investigation, yes.

611. Q. What did he say?

A. And he said that he had no reason to believe that it should be questioned, that he supported his Police Force. And when I spoke to him I thought well if I can't get the Chief to comment for me that possibly the Mayor will - his support of the Police Force, certainly not as good as having the Chief comment but -

612. Q. I take it the Mayor was supportive of the Police Force and the investigation they had carried out in 1971.

A. Yes, he was. He didn't elaborate, he didn't want to comment too fully, but he did answer two or three questions before going into the -

613. Q. Have you ever read the evidence given before the Appeal Division in December of 1982?
- A. I've read the document on the re-investigation but not the evidence.
614. Q. You've read the document on the re-investigation, that was given you by Cacchione.
- A. Yes.
615. Q. On the Friday afternoon.
- A. That's right.
616. Q. But you've never read the evidence.
- A. No.
617. Q. Why?
- A. Because I - first of all when we're doing these stories sometimes we don't have time to read all the documents that are available and the comments that I was getting from both Michael Harris and Parker Barss Dunham I was relying on them as reliable, competent, objective people and on our lawyers, and it would have been - certainly had I had a month to do this documentary I would have read everything that was available.
618. Q. Why didn't you take a month to do it?
- A. Because the sentencing had been on Thursday and normally in any sort of news program there's a deadline when the story has to be completed.
619. Q. Who made that decision?

619. A. The executive producer of the program.
620. Q. Did you go back to them and say look, I'd like to have another week before this program goes on the air just to make sure that all my sources are right?
- A. I felt that my sources were correct and I did say that I wished there was more time.
621. Q. Who did you say that to?
- A. I suspect I said it to the executive producer.
622. Q. When did you say that?
- A. Late Saturday night.
623. Q. What did he say?
- A. He said we'll check with the lawyers and see if this is all right. I felt that the information that I had was - I felt comfortable with it once the lawyers had okayed it. I felt sorry that I hadn't been able to speak with Chief MacIntyre, that was my only -
624. Q. But Miss Matheson how could you possibly feel comfortable with the information you got when you did not even read the evidence that was given before the Appeal Division nor did you read the Decision of the Appeal Division? How could you possibly feel comfortable with what was told you?
- A. Well I was relying on speaking to Mr. Cacchione, seeing that he had read the evidence.
625. Q. Had he?
- A. Yes, he had.

626. Q. How do you know?
A. Because I asked him if he - he had all the documentation from all the trials and -
627. Q. Who is Mr. Cacchione?
A. He is Mr. Marshall's lawyer.
628. Q. You don't know Mr. Cacchione from nothing do you?
A. That's correct.
629. Q. You don't know whether he's a John Robin out of Halifax do you?
A. I don't know his reputation, no.
630. Q. The CBC lawyers in Ottawa who were consulted at 3 o'clock in the morning on the Saturday night.
A. Oh they were consulted as well before that.
631. Q. Oh were they?
A. They were called and told that we would be calling and they were told basically, I understand, what the story we were doing was and they were alerted to be prepared.
632. Q. But were they advised of and did they listen to the tapes of what was going to be said on the program before 3 o'clock in the morning?
A. I'm not sure what time they eventually heard the tapes.
633. Q. But it was late Saturday night or early Sunday morning.
A. That's correct.
634. Q. Was there one lawyer or more than one?
A. I'm not positive, I suspect there was one.

635. Q. To the best of your knowledge had he read the Decision of the Appeal Division?

A. I do not know.

636. Q. To the best of your knowledge had he read the evidence given before the Appeal Division?

A. I don't know.

637. Q. To the best of your knowledge was that information, and I guess you don't know the answer to this but I'll ask it, was that information conveyed to him by anyone on the program? I guess, and perhaps I'll be directing these questions more to Mr. Murrant than to you Miss Matheson.

MR. PUGSLEY: I guess, Bob, I'd like to know what information that fellow had before him on which he made his judgement that this was not libelous, you can take it under advisement and let me know what you think.

Q. (cont'd) You came to Halifax on the Friday morning or Thursday night?

A. I got to Halifax on Friday morning.

638. Q. And did you do anything before you saw Felix Cacchione?

A. I believe that I simply called him and told him that I wanted to come back in to do an interview with him, and then I went to do the interview. I arranged it.

639. Q. Just he alone, the two of you.

A. That's correct.

640. Q. You never used any of his interviews on the radio.

640. A. No, I didn't.

641. Q. Why was that?

A. I think he was basically, he was repeating certain things and I don't think he was necessarily adding anything to the documentary. There's a time that's set for these things and I spoke to Felix actually more for background, Felix Cacchione, more for background than for anything else. I wanted him to clarify a few points for me.

642. Q. What did he clarify?

A. Well here are the questions on page 47. This was when they were asking for compensation and an investigation, "what do you want for your client? No suits have been laid yet. Do you intend to sue? How do you repay someone for 11 years?", I meant what kind of money are you looking for. "Some people suggest legal costs, no money. Why is it being assumed that Donald Marshall had the motive of robbery when he entered Wentworth Park on May the 28th?"

643. Q. Did he give you answers to any of those questions?

A. Yes, he did.

644. Q. What did he say?

A. He said that he was - I don't recall the figure in terms of compensation but we talked about compensation, he said that he was interested in an investigation. He said that he wouldn't give me specifics on suits. He talked about Marshall's background and the kind of money, I guess, that

644. A. (cont'd) they were looking for, re: question 3. He said that simple legal costs wouldn't be sufficient and he said he didn't understand why it was being assumed that Donald Marshall had the motive of robbery when he went into Wentworth Park on May 28th, as I recall.
645. Q. Anything else?
A. No.
646. Q. How long was that interview with Mr. Cacchione?
A. About 10 minutes.
647. Q. And you taped that, that has been destroyed I take it has it?
A. Yes, it has.
648. Q. When were all these tapes destroyed?
A. It's normal that when you're editing tape you keep the tape that you're going to use in the documentary and just throw the rest away.
649. Q. When were these thrown away?
A. The night that this was edited, which would have been the overnight and the morning of the 26th, 27th.
650. Q. The Saturday night.
A. Yes.
651. Q. Did you see anyone else in Halifax?
A. No, I did not.
652. Q. You never saw Patricia Harriss or Maynard Chant did you?
A. No, I didn't.

694. Q. And you had all those put onto one master tape you mean?
A. No, a number of master tapes.
695. Q. Why a number of master tapes?
A. Well because it's easier to edit that way. I had, for instance, the Donald Marshall interview, as they were recorded on cassette if I used one cassette for two of the interviews that would be put onto one tape, so they weren't put onto one big long reel, they were put onto a number of what we call half hour reels.
696. Q. I see, these are reel-to-reel tapes are they?
A. Yes, they are.
697. Q. What did you do with the cassettes?
A. The cassettes were erased as well as is common whenever we do interviews.
698. Q. Would they be erased immediately after you put them on reel-to-reel?
A. Not that night, no, but likely the next week when we collect all our scripts and that sort of thing.
699. Q. Then you had your background noises on the cassette.
A. Yes, something we put on a reel as well.
700. Q. And just so that I have that, the background noises that you had on the cassette were noises outside the court room in Sydney -
A. M-hm.
701. Q. and traffic in Sydney -

708. Q. And you did this on the Saturday morning.
- A. No, that was done Friday night when I returned, that was taped, our technician dubbed from cassette to quarter inch tape.
709. Q. Dubbed simply means translating.
- A. Transferred from one to another, and then as soon as it was finished I would go in and start relistening, writing down and deciding what would go in and what would not go in.
710. Q. And in addition to that you added some ambient sounds in Toronto.
- A. That's right.
711. Q. And the ones you added in Toronto were?
- A. The gavel.
712. Q. Is that all?
- A. That's all I recall.
713. Q. There's a screeching sound, sounds like a jail door opening and closing, I don't know what that's from but we'll listen to it in a moment and you can advise me whether or not that was added in Toronto, but in any event the gavel was added.
- A. M-hm.
714. Q. And in addition to that you had the two actors, the actor and actress do the two statements of Maynard Chant's and Patricia Harriss.
- A. That's correct.
715. Q. Of course there's your own comments and also there's the intro from Toronto I take it.

715. A. That's correct.
716. Q. Did you have typed up the statements that you took in Sydney?
- A. No.
717. Q. So when you went in at 5 or 6 o'clock on Saturday morning you listened to the tapes the technicians had done for you.
- A. I had already listened but I listened again, it's normal practice to take notes for every question and answer and to write them down, they're then discarded, of course, they're just used for helping to prepare the documentary, so I took notes of questions and answers for each of the people and then I would look at them and try to construct the documentary that way.
718. Q. Oh yes, of course, your interjections throughout would not have been done on the site, they would have been done in Toronto.
- A. They were scripted in Toronto.
719. Q. Now obviously it was Saturday you made the decision as to what part of the tapes you would play on your program -
- A. That's correct.
720. Q. and what part of the statements would be read by the actor and actress.
- A. That's correct.
721. Q. What time were the actor and actress brought in?
- A. Late in the afternoon.

722. Q. At a time when you had decided what the other statements were going to be cut down to and what you were going to eliminate.
- A. I don't recall specifically the timing, I must have had most of the tape cut down to what I wanted, what I thought would work in the documentary, yes, there was still a lot of work to be done.
723. Q. I'm just trying to remember, I'll give you the names, you tell me approximately how long each one of these segments were, Donald Marshall would have been about how long, and I mean the original interview, roughly?
- A. 25, 30 minutes.
724. Q. All right, let's say half an hour. Felix Cacchione?
- A. 10 minutes.
725. Q. Parker Dunham?
- A. About 20 minutes, 15, 20 minutes.
726. Q. And Michael Harris?
- A. 15 minutes.
727. Q. Manning MacDonald?
- A. Very brief time, 5 minutes.
728. Q. And Roy Gould?
- A. Maybe 10 minutes.
729. Q. And Kevin Christmas?
- A. About 10 or 15 minutes of actual tape.
730. Q. About 100 minutes of tape, about an hour and 40 minutes which

730. Q. (cont'd) were cut down to about 15, well I guess a little less than that because the intro from Toronto and your comments so about 13 minutes, something like that.
- A. That's right.
731. Q. Were you aiming for a particular period of time before you started cutting in, did you know well here I've got 100 minutes I want to cut this down to 13, how did you -
- A. I had an idea that it was about 13 minutes, 13 to 15 minutes.
732. Q. And what did you use as a guideline when you made your decision as to what you were going to eliminate?
- A. Well it's not so much what I was going to eliminate it was what I was going to use. In terms of Donald Marshall I listened for a clip or a segment that would sort of tell his story but as briefly, as succinctly as possible and then I have to script around all this to sort of explain and to clarify anything that needs to be clarified.
733. Q. Does anyone else help you on this or is this your decision?
- A. Not initially, my decision's initially and then the entire story is taken in before it's finally put together or mixed and listened to by the executive producer and the senior producer.
734. Q. And when was that done?
- A. That was done early in the morning of Sunday morning.
735. Q. Just so that I have some idea of timing, you came back to

735. Q. (cont'd) Toronto what, arriving about 9 o'clock on the Friday night?
- A. 7 or 8 I would say, yeah.
736. Q. 7 or 8, went to CBC headquarters.
- A. M-hm, dropped the cassettes off.
737. Q. Dropped your cassettes off, then went home to have a sleep presumably.
- A. Yes.
738. Q. And got up about what, 4 in the morning?
- A. Yes.
739. Q. And you went down to the CBC at 5 and worked right through 'til when?
- A. About 7 in the morning.
740. Q. You worked almost - well you worked more than 24 hours.
- A. That's pretty standard for the pieces that we do.
741. Q. Really.
- A. M-hm.
742. Q. Do you have food brought in during that interval?
- A. No, we sneak out.
743. Q. All right, you told me about Marshall. You decided to eliminate Felix Cacchione and why was that?
- A. I felt that I could script in anything that Felix had said. Certain decisions have to be made at this stage when you have all this tape and it was a decision I made to not use Felix Cacchione in the piece but to use Donald Marshall, as Donald

743. A. (cont'd) Marshall was his client, and to use Mr. Cacchione as well as Donald Marshall it would have been too much pro Donald Marshall and I was trying to get stuff that would counter that, information to counter that.
744. Q. As a matter of interest how do you physically do it, you've got 20 minutes of Donald Marshall talking, how do you take two sentences here, three sentences here, do you press a button and record those sentences you want on another tape, is that how it's done?
- A. No, it's done on an editing machine with a razor blade and editing tape, so it's all physically done by me as well, and it's done just with a razor blade and with headsets.
745. Q. That is to say you physically cut -
- A. It's just like film editing only with -
746. Q. I don't know how to film edit.
- A. Oh well it's just like you physically cut the tape.
747. Q. So that you have the pieces, the sentences that you want -
- A. That's right.
748. Q. and then you put them together.
- A. That's right.
749. Q. How long would it have taken you to do these 7 statements from people, well I guess you didn't use 7, you didn't use Felix, you didn't use Roy Gould -
- A. But they all had to be listened to. It likely took me until close to - I would have done a rough cut of the people that I

749. A. (cont'd) was using by 9 at night and then the next step would be to script around what - look at the sentences and the questions and the answers and then script around -
750. Q. That is to say when you mean script, you mean put in the part, your comments.
- A. My comments.
751. Q. And then you have to note in your sound, including your gavel sounds.
- A. That's right.
752. Q. And then you take your final script to your executive producer.
- A. And the tape.
753. Q. And were any changes made by him, or any suggestions made by him when he listened to your finished product?
- A. There were two people listening to the finished product.
754. Q. And they were who?
- A. They were the executive producer, Roger Bill, and the senior producer, Doug Grant, Douglas Grant, and we - there was some minor changes in scripting or in putting - who to put first, who to, you know, how to place a certain person inside a documentary, just really more a matter of form than anything.
- In terms of content there were a few minor scripting changes.
755. Q. For you?
- A. Yes.
756. Q. Do you recall what those were?

756. A. No, they were not -

757. Q. Of any relevance.

A. No, we went over the script thoroughly, we were all realizing that the piece would not reflect well on Chief MacIntyre and were concerned about that.

758. Q. Why concerned?

A. Because responsible journalists are always concerned about throwing bad light on people.

759. Q. In what way did you consider - and what was the discussion concerning the bad light that Chief MacIntyre would be thrown into?

A. Obviously the comments of Parker Barss Dunham was the one that people were most concerned about.

760. Q. And which comment was that, do you recall?

A. That was the comment that on the copy of your script (Exhibit 2) I believe is on page 6 or 7.

761. Q. Now you said that there was -

A. At the bottom of page 7, starting at "I mean if the situation rests now the final word will be" and going down "until called to account".

762. Q. All right, just for the purposes of the record, if you don't mind, I'll read that, "I mean if the situation rests now the final word will be the word of the Supreme Court of Nova Scotia which says 'well yes he shouldn't, we can't be sure he was guilty of murder but any injustice is more apparent than

762. Q. (cont'd) real because he was the author of his own misfortune and that will be the final, the legal system's final word on this case'. Well that's a lie, that's not true, he wasn't the author of his misfortune, racism was the author of his misfortune, police cover-ups were the author of his misfortune, police coercing witnesses into lying on the stand was the author of his misfortune. It was the whole judicial system that put him in jail and it is the whole judicial system that needs now to be called to account". Now I take it the part that you referred to that did not reflect nicely on Chief MacIntyre were the comments "police cover-ups were the author of his misfortune, police coercing witnesses into lying on the stand was the author of his misfortune".

A. That's right.

763. Q. Well was there any discussion between the three of you about dropping that from the program?

A. We discussed it and thought that the lawyer should be called in to see whether it should be kept in or not.

764. Q. Those words are pretty clear words in the sense that I don't need a lawyer, if I wasn't a lawyer, to let me know that those are extremely severe comments to make about anyone, "police coercing witnesses into lying on the stand" is an incredibly, if I may use the word, savage comment to make about anyone. I take it that - I'll ask you with your background, and indeed you had some legal background, is

764. Q. (cont'd) there any question at all in your mind that that is a defamatory statement?

MR. MURRANT: Well I'll let her answer but subject to an objection.

A. I realize that they were potentially defamatory statements. I showed my executive producer the copy of the RCMP document and said that - showed him comments from the document and from the investigation, and suggested that all of this be made clear to our lawyer, that that be made clear and the fact that we wanted to make sure that this statement was cleared for broadcast.

765. Q. I talked with you earlier about the difference between fact and comment, and you understand, or you indicated to me that you understood the difference between the two.

A. Yes.

766. Q. May I suggest to you, may I ask you that what -

MR. MURRANT: Maybe just before you do that let me say that the witness may understand it but I don't understand what the courts have done with it, and inasmuch as it's a legal question I have a bit of an objection.

MR. PUGSLEY: Sure, I don't expect her to give a legal definition at all but I - and I think it's proper to ask her about her own opinion on it.

MR. MURRANT: In the journalistic sense.

MR. PUGSLEY: Yes, precisely.

766. Q. (cont'd) Okay, I'm asking you in a journalistic sense then, is not the statement that appears on page 8 of Exhibit 2 by Parker Dunham "police coercing witnesses into lying on the stand was the author of his misfortune" a statement of fact by him?

A. I read it as a statement of comment.

767. Q. What about "police cover-ups were the author of his misfortune", is that not a statement of fact?

A. Again I would have to admit that I - when I heard this comment, when I went over it I didn't think in terms of in the legal sense either is this fact or is this comment, I was concerned enough to seek a lawyer's advice on what he determined it would be.

768. Q. All right, perhaps that's a sufficient answer. Now the other thing you mentioned were what you showed to the executive producer were some documents that you got from Mr. Cacchione in Halifax and I'd like to introduce those as Exhibit 3.

MR. PUGSLEY: Exhibit 3 is the first part of the Document List that you gave to me and it goes up to Miss Matheson's handwritten notes. Well the first 39 pages then will consist of Exhibit 3. But if you would give to Miss Matheson, Bob, your copy and she can advise me what she showed the executive producer.

A. I gave him the entire document and showed him -

769. Q. This was at what time that you gave this to him would you say?

769. A. I think I gave him a copy of it as soon as I arrived back.
770. Q. From Halifax?
- A. Halifax.
771. Q. I see, you had an extra copy had you?
- A. And then specifically about the script, well I showed him a copy, I didn't Xerox an extra copy, and specifically -
772. Q. I see, the script was typed was it?
- A. Eventually.
773. Q. Before the program, well of course it would have to be.
- A. Yes.
774. Q. And the script, as we see in the form of Exhibit 2, that was typed like that, like Exhibit 2.
- A. No, just my part of the script was typed, the rest was all on tape.
775. Q. What does the executive producer do, he has a piece of paper in his hand that has your comments.
- A. That has my script.
776. Q. And by your script you mean your comments.
- A. My comments and then he has a tape of the -
777. Q. And what does the script say, Miss Matheson, for example the intro, the intro was typed was it on a piece of paper?
- A. He would have had a written introduction, yes.
778. Q. He would have had on page 1 of Exhibit 2 the comments under the heading Heather Matheson.
- A. That's right, he would have had all the scripts under the

778. A. (cont'd) heading Heather Matheson and then he would have had a tape, which I would have played for him, with Donald Marshall, Parker Dunham and the script - I would have given him a script of the comments from the statement by Patricia Harriss and Maynard Chant and then he would have heard the tape of Michael Harris, Kevin Christmas and all the other people I used in the documentary.
779. Q. As a matter of interest why wouldn't he have the tape of Maynard Chant and the actress that played Patricia Harriss?
- A. Well that may have been on a sound effects reel, it may have been recorded on tape by that time, it just depends when it was.
780. Q. In any event he had a statement, a written statement of the comments you selected.
- A. Yes.
781. Q. Well did you show him anything in particular in the meeting that you had with him that you felt justified the inclusion of Parker Dunham's comments on page 7 and 8?
- A. Yes.
782. Q. What did you show him?
- A. I showed him the report - I'm sorry it'll take a little while to find. Well I would have shown him that the report indicated on point 4 of page 2 of the report that there was an investigation in regards - well that entire, I would have shown him that paragraph.