

783. Q. Just to make sure that I have it right, it's page 4 of Exhibit Number 3 and it's section 4 starting in regards to the Ebsary and Marshall portions of this file.
- A. M-hm.
784. Q. Just that I may check with you, take a look at page 4 and page 5, the typing is entirely different on those two pages, but these are as they were given to you.
- A. Yes. I gave him this entire document to look at. In terms of backing up or substantiating Parker Barss Dunham's comment, in terms of not the cover-up but the coercing of witnesses I showed him the two documents, in this I believe that they are the first and the second statements that were taken, original statement and then the second statement that was taken in 1981 on the re-investigation.
785. Q. Can you show me where you find that on those documents?
- A. I don't see the statements in here.
786. Q. Now these are statements of whom?
- A. Of the three witnesses.
787. Q. That would be Chant, Pratico and Harriss.
- A. That's correct.
788. Q. And statements given when? _____
- A. In 1981.
789. Q. '71 or '81?
- A. '81, or '80 during the re-investigation I'm sorry, in '82. Oh here it says "statement of", I'm sorry, it's right here.

790. Q. Those first two pages then.
- A. That's right, statement of Patricia Harriss and Maynard Chant.
791. Q. And you showed -
- A. I showed him these two pages. I also showed him the note from D.B. Scott, Inspector Commander Sydney Subdivision.
792. Q. And that would be - where do we find that?
- A. Sorry, page 10 and 11. "It would appear from this investigation that our two eyewitnesses", beginning at that paragraph.
793. Q. Sorry, what page is that on?
- A. Page 11. After reviewing the tapes.
794. Q. Page 20.
- A. M-hm.
795. Q. "It would appear from this investigation that our two eyewitnesses to the murder lied on the stand and that the other main witness, Harriss, lied as well under pressure from the Sydney City Police".
- A. Yes, I showed him the entire thing, not just that statement but the entire document. And the report by H.F. Wheaton.
796. Q. And that is found on page?
- A. I believe it begins very early on, because this report concludes on page - looks like page 10 of your documents, no, it can't be. 19.
797. Q. Page 19, yes, pages 10 to 19 inclusive I think.

797. A. M-hm. And his comments.
798. Q. That would be found on page - sorry his comments are found on page what?
- A. Well this entire thing as well, I'm not sure where in this, if you'd like we can take the time and find out that he questioned the police practices in this particular investigation, which was actually quoted in this script.
799. Q. Oh yes, quoted in the script, yes. Where is it quoted in the script, that might be easier to find?
- A. "According to a memorandum from an RCMP investigation officer there was no complete record of the investigation, no autopsy, no photographs and no list of who was in the police line-up."
800. Q. And where is that found, Miss Matheson, what page of Exhibit 2?
- A. Page 6.
801. Q. And that's your dialogue.
- A. Yes it is.
802. Q. Anything else?
- A. I believe that is basically what I showed him.
803. Q. And what did he say when he was shown that?
- A. He asked - he is familiar with both Michael Harris and Parker Barss Dunham and just clarified that, you know, we chatted briefly about both those gentlemen, we both agreed that they were credible and objective journalists and decided that we

803. A. (cont'd) still wanted to check with a lawyer about the one statement.
804. Q. This was pretty sensational stuff that was being said, was it not, about the police chief?
- A. Yes, it was.
805. Q. I mean this must have been the most sensational news item that you'd ever been involved in.
- A. I don't think so but -
806. Q. You don't think.
- A. No.
807. Q. Could there be anything more damaging to a man who headed an investigation into the murder of another person that he coerced witnesses into lying and as a consequence the wrong man was found guilty?
- A. No, I don't think so.
808. Q. There would be nothing that would be more damaging to a man's reputation, who was a police chief, than that kind of a comment would there?
- A. That's why I was so concerned about wanting to speak to him.
809. Q. Did anyone say look, before we air this aren't we taking an awful chance without having had any comment at all from Police Chief MacIntyre, was that raised in the discussion?
- A. We were concerned that we didn't - we hadn't been able to speak to him on tape, that's always a concern.
810. Q. But mind you at the time you spoke to Police MacIntyre you

810. Q. (cont'd) didn't know that Parker Dunham was going to come out with quite what he came out with I take it.
- A. That's true.
811. Q. Was there any thought given by anyone at the meeting to the effect look, perhaps we'd better phone the Police Chief and ask him to comment on these allegations that Parker Dunham has made, or these facts that Parker Dunham has made, was there any discussion of that?
- A. I don't recall any discussion at that stage.
812. Q. At any stage?
- A. No, at that stage.
813. Q. I see, was there a discussion at any stage?
- A. I told my executive producer that my understanding was that the Chief did not want to speak at all, no matter what information we had. Most of this information had come out in previous stories. I had the feeling that even trying to get hold of the Chief was difficult, but getting him to comment even on Parker Barss Dunham's comment would have been futile, but I did try right up until I left. I would have been glad to have arranged a studio interview, even once I'd been back in Toronto.
814. Q. I get the impression that there was an incredible amount of haste to get this thing on the air, you were given the assignment on a Tuesday, you went to Halifax on Wednesday, you went to Sydney on Thursday, you were back in Halifax on

814. Q. (cont'd) Friday, you were back in Toronto Friday night, you were up at 5 o'clock in the morning and you worked for 26 hours straight to get something on the air.
- A. We do that every week.
815. Q. You do it every week.
- A. M-hm.
816. Q. Has this program ever been sued for libel before?
- MR. MURRANT: Well again I object.
- A. I'm not aware.
817. Q. What did your producer and executive producer say to you after you finished - they finished hearing this script, did they say terrific job Heather, super job, great reporting, I assume they must have.
- A. I don't recall what their comments were, I don't think they said super job, great reporting, they said it was a good story, that it was obviously - we were concerned and they said continue and continue editing and fixing it up and we will wait to hear from our lawyers.
818. Q. And they heard from the lawyers, I take it, you were not talking to the lawyers.
- A. They spoke, that's right.
819. Q. And then after they talked to the lawyers they came in to see you and said -
- A. Or I went in to see them or whatever.
820. Q. And this would be about what time?

820. A. 4.
821. Q. In the morning.
A. M-hm.
822. Q. And they said go ahead I take it.
A. They did. They listened to it again as well after it was mixed.
823. Q. Did they?
A. M-hm.
824. Q. When you say after it was mixed you mean -
A. Once the script was put to tape and it was all put on one tape.
825. Q. This would have been about what time?
A. 5:30.
826. Q. This was after they spoke to the lawyer.
A. That's correct.
827. Q. What did they say to you after they heard the whole thing at 5:30 in the morning?
A. They said fine, it's been checked with the lawyers so we'll put it to air.
828. Q. All right. And then it went to air at 10 o'clock that morning or whatever.
A. Yes.
829. Q. And where did it go to air, where was it aired, across Canada I take it?
A. Yes.

830. Q. What kind of listening public did this program have?

A. I'm not positive, it was in the response I believe that - we did have someone in the office look it up. The stations broadcasting the program would have been 24 CBC stations together with 14 affiliates, 29 national public radio stations in the United States and shortwave transmissions by Radio Canada International. The measurable listening audience would have been approximately 500 thousand people.

831. Q. How many of those would have been Canadian, do you know?

A. I have no idea what our American listening audience is.

MR. MURRANT: It's hard to read this but if I can help.

MR. PUGSLEY: Certainly.

MR. MURRANT: The approximately 500 thousand is a Canadian statistic and we're not aware of any measurement for the United States or shortwave. There's no figure that we can get for that so you can take the 500 thousand possible -

MR. PUGSLEY: As being Canadians.

MR. MURRANT: As being Canadian.

832. Q. This program obviously is a very popular program.

A. Yes, it is.

833. Q. Would there be any program in Canada that would be more listened to than this program?

A. On radio?

834. Q. Yes.

A. I would think that both As It Happens and Morningside have equal audiences.

835. Q. But this would be one of the top listened to programs in the nation.
- A. Yes, it would.
836. Q. As far as the shortwave is concerned, where does Radio Canada shortwave go, it goes to the Caribbean I know.
- A. Yes, it does.
837. Q. It goes to Europe as well I assume, England, where else does it go?
- A. I don't think it goes to England, I think it goes to the continent and to Central and Latin America, or Central and South America, sorry.
838. Q. Did you get any response to the program?
- A. As I recall a few letters, nothing extraordinary, no, we normally get a few responses to pieces we do.
839. Q. Do you have the letters with you?
- A. I don't and we searched and they don't keep a file.
840. Q. Are they thrown out?
- A. I'm not sure what happens to them.
841. Q. The tape that your solicitor was good enough to give to me was taken off the master tape I take it, taken off the program tape.
- A. Yes.
842. Q. Are there many of these in existence?
- A. No.
843. Q. Is this the only one?

843. A. There is one that's kept on file at CBC, that's the only one that I know of.
844. Q. And this one. Was this made particularly as a consequence of my request?
- A. Yes, it was.
845. Q. Off the master tape.
- A. M-hm.
846. Q. I'll get that marked as Exhibit 4 and we'll listen to that in a few moments just to identify it. So at 7 o'clock, 7 a.m. you pack it up and went home and had a sleep I take it.
- A. Well I listened to the show.
847. Q. Did you?
- A. Yes.
848. Q. And Tuesday morning there was another story conference and you were off again I take it.
- A. That's right.
849. Q. Let's go back to your diary, the first exhibit we introduced, and let's review those pages that we've not already touched on. Perhaps it would be easiest, Miss Matheson, at least easiest for me, if we started right at the beginning and just went through them page by page, and I think we discussed the first page.
- A. We did.
850. Q. And the second page.
- A. M-hm.

851. Q. Now I don't think we talked about the third page.
- A. Wednesday, Thursday and Friday are simply the dates that I had that I was in Nova Scotia, notes to myself, interviews - in red pen are notes that I made to myself after, possibly on Friday, or Thursday rather, where I made a note that I was going to be talking to Mayor MacDonald, so it must have been after about 1:30 on Thursday that I made these. Questions, more questions that I wanted to ask to Mr. Cacchione, do you want me to go over these?
852. Q. If you wouldn't mind, yes.
- A. "Will Donald Marshall come to Sydney with me for sentencing interview in Wentworth Park"?
853. Q. Was that at your expense.
- A. Yes, at our expense.
854. Q. Was that discussed with Mr. Cacchione?
- A. I spoke with him briefly over the phone about that and he said that that was not possible, and then "interview Friday in Halifax or Wednesday re: public inquiry into why police and RCMP acted the way they did. His view was this malfeasance on part of - was there malfeasance on the part of the police or the RCMP"?
855. Q. What did he say about that?
- A. I don't recall as I asked him that, I can't recall frankly what his direct answer was. I think he thought that there should be an investigation into the police - investigation

856. A. (cont'd) or an inquiry rather into the police investigation.
857. Q. But did he say that there was any malfeasance on the part of the police?
- A. Yes he did.
858. Q. He said that there was malfeasance on the part of the police.
- A. I don't think he used the word malfeasance.
859. Q. What word did he use?
- A. I think he said that there was a problem with the way the investigation was carried out and he questioned the witnesses and the witnesses who were used and the two statements that each made.
860. Q. Did he say there was a police cover-up?
- A. I don't recall that he used the word cover-up.
861. Q. Did he say that the police coerced witnesses into lying?
- A. Yes, he did.
862. Q. He did say that did he? You're sure of that?
- A. He said that the statements were changed, that there was an initial statement made by the witness and then the statements were changed, were forcibly changed.
863. Q. Forcibly changed.
- A. Yes.
864. Q. What do you mean by forcibly changed?
- A. I don't know what he meant by that.

865. Q. Those were the words he used were they?
- A. I don't recall whether those were his specific words, that's what I gathered from what he said.
866. Q. That there had been deliberate course of conduct by the police that was improper that caused witnesses to change their story, to change their statements?
- A. He was questioning that.
867. Q. No, that's not my question to you. My question is did he make a statement that the police coerced or bullied or threatened witnesses and as a consequence those witnesses perjured themselves?
- A. I don't think I can answer you directly on that, I can't remember his specific words so I don't think I can say.
868. Q. For example did he say the same things that Parker Barss Dunham said on the radio for these 500 thousand Canadians who were listening to this? Did he say the police covered up contrary evidence of eyewitness evidence, did he say that?
- A. I don't recall if he said that. I think he was concerned about possible coercion of witnesses.
869. Q. Concerned about possible coercion is vastly different, I suggest to you, than the categorical statements that Parker Barss Dunham made, would you agree?
- A. Yes, I would.
870. Q. May I suggest to you that he was not as categorical as Parker Barss Dunham.

870. A. He may not have been as categorical but I believe that he had the RCMP document in his hand and he was aware of what had been discovered on the re-investigation, so even using the words of the RCMP re-investigation the word coercion is used.
871. Q. Everything breaks down, doesn't it, if the RCMP investigation was not carried out properly, your whole thesis about Chief MacIntyre goes to pieces if the RCMP investigation was not carried out properly, if this person who you spoke to in Halifax, and this person who took these statements that we see in these documents, was not accurate.
- A. I don't think everything breaks down, I think that's an important part of our -
872. Q. It's the keystone, isn't it, of your case? It's the keystone of your broadcast that what you were told by the RCMP was truthful and accurate and responsible.
- A. The RCMP as well as the people we spoke with, yes.
873. Q. Well Parker Barss Dunham had no first-hand knowledge of this, he wasn't there, he didn't carry out an investigation in 1971.
- A. That's correct.
874. Q. Either did Mr. Harris, correct?
- A. That's true.
875. Q. So am I not correct in suggesting to you that the keystone of this broadcast is the accuracy of the RCMP investigation?
- A. It's certainly the most vital part.

876. Q. And if that most vital part is inaccurate or irresponsible then you have very seriously defamed my client.

MR. MURRANT: Well excuse me but don't answer that.

MR. PUGSLEY: Why?

MR. MURRANT: It's a question of law.

MR. PUGSLEY: All right, I won't frame it as a question of law let me put it this way.

Q. (cont'd) If the information given to you by the RCMP is inaccurate then you have done a great -

MR. MURRANT: No, I still have the same objection, that doesn't follow at all.

MR. PUGSLEY: I see, all right.

MR. MURRANT: I mean they are not the only people that have investigated this.

MR. PUGSLEY: Oh yes, but as far as Miss Matheson is concerned - well I'll leave her -

MR. MURRANT: In the context of the preparation of her program.

MR. PUGSLEY: That's what I meant.

MR. MURRANT: She says it's a central piece of it.

MR. PUGSLEY: Yes, that's really what I was getting at.

MR. MURRANT: I don't think it follows that if that's not right everything's wrong.

MR. PUGSLEY: No, it does not, I agree with that.

MR. MURRANT: I don't think she would have knowledge of that.

MR. PUGSLEY: I agree with what you say.

876. A. I'm also relying on - to a certain extent on the fact that, although Mr. Dunham and Mr. Harris were not there in 1971 for the investigation, they have read, I know Mr. Harris has read the Supreme Court Appeal Documents, Mr. Dunham has and that's why he commented the way he did I suspect.
877. Q. Who do you think is a more responsible person between Mr. Harris and Mr. Dunham?
- A. I think they're both equally responsible.
878. Q. You know there's a wide discrepancy on what the two of them say on your program. Mr. Harris, as I recall it, I'm not even sure if he blames the police at all, he certainly blames the RCMP for doing a lousy job, but I - and we'll get to this, but I don't think he blames the police, whereas Mr. Dunham is scathing in his indictment of the police, did you notice that?
- A. I had a tape from Mr. Harris where he was critical of the Sydney Police.
879. Q. I don't think that's included in your final -
- A. No, it's not.
880. Q. Why is that?
- A. Well I didn't want to have every person I spoke to saying critical things about the Sydney Police.
881. Q. Do you know anything at all about the 5 Supreme Court judges who sat on this Appeal?
- A. Anything personally about the men?

882. Q. About their reputation as jurists.

A. No, I don't.

883. Q. As responsible men. You know nothing about them?

A. Well I assume that as jurists they're very responsible.

884. Q. Did you have any thought about the comments that Mr. Parker Dunham made about the 5 Supreme Justices who sat on this case, his opinion, you know, if I may categorize it as the statements of a lunatic, did it not -

A. Can you tell me where you're referring to?

885. Q. Certainly. Page 7, "they took a kid who had been sent to the slammer for 11 years for something he didn't do and basically they said it's really not the system's fault, it was that kid's fault because on that particular day he didn't confess to a crime the judges have apparently concluded that he committed. They say that he was trying to rob Roy Newman Ebsary. The judges have the incredible, yeah, the incredible heartlessness to say the system of which we are a pillar should not be called to account for this, it's really this young punk that caused it all. It wasn't the police who bullied three witnesses into lying on the stand, it wasn't the police and the Attorney General and the RCMP and the Crown Prosecutor who covered up contrary evidence of eye-witness evidence that someone else had committed the murder. 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,

885. Q. (cont'd) he shouldn't, we can't be sure he was guilty of murder but any injustice is more apparent than real because he was the author of his own misfortune, and that'll be the legal system's final word on the case. Well that's a lie, that's not true, it was the whole judicial system that put him in jail". You don't consider that those comments were extreme?
- A. Both Mr. Harris and Mr. Dunham had voiced similar opinions on the one line, or the Decision of the Supreme Court of Nova Scotia.
886. Q. Just a little higher up on page 7, "their Decision", that's the Supreme Court Justices, "was an entirely political Decision. They went out of their way to give Nova Scotia an out to make it possible for Nova Scotia to abdicate it's responsibility". You don't consider that as defamatory, 5 men who sat on this Hearing? Did you consider that was responsible comments by a person?
- A. I thought it was fair comment.
887. Q. You thought it was fair comment, notwithstanding the fact that you did not read the evidence that was heard by the Appeal Division, you did not read the Decision and you knew nothing about the men.
- A. At that stage, because of the time that we were given to do this documentary, which is the time we're given to do most documentaries on the program, I was relying on the knowledge

887. A. (cont'd) and the objectivity of 3 or 4 people, this is without being able to speak to a prime person involved in the case, who I consider to be credible and objective and who knew the case.
888. Q. Miss Matheson you never met the RCMP source in your life before the Wednesday, you never met Parker Dunham in your life, and I don't know, maybe you knew Michael Harris, I don't know, but these are the people you spoke to. You didn't know Donald Marshall before, you didn't know Christmas before, you didn't know Gould before, you didn't know any of these people before. How can you make a value judgement on whether or not they're responsible people, in view of the extreme statements they have made, without at least going to source materials and know something more about the people you are dealing with?
- A. I knew both Mr. Dunham and Mr. Harris by reputation, and their reputation, their reputations as journalists are both very good.
889. Q. And you feel that anything these fellows say is something you should put on the air.
- A. I feel that anything they say is worth considering, and thinking about, and if both of them were saying similar things then it would be certainly worth considering.
890. Q. Did Michael Harris say that Chief MacIntyre had coerced witnesses into lying on the stand, sending an innocent man to jail?

890. A. I don't know if those were his specific words.

891. Q. Did he convey that intent to you?

A. He conveyed that intent to me.

892. Q. Now we're back on page 3, I think, of Exhibit Number 1 and if you'll just take me - I guess we were about the middle of the page and we were talking about Felix Cacchione.

A. M-hm, we were down to what I've written as Plan B, "interview Friday in Halifax or Wednesday re: public inquiry into why police and RCMP acted the way they did. Point 3, his view, was there malfeasance on part of police and RCMP. His reaction to Supreme Court Decision and Ruling".

893. Q. Did you get any reaction from him apart from what you've told me that he felt that there should be an inquiry into this matter?

A. And he also reacted basically the same way Mr. Dunham did about the Supreme Court Decision and Ruling.

894. Q. What did he say about that?

A. I don't recall specifically, I know that his reaction was comparable to both Mr. Harris's and Mr. Dunham's.

895. Q. That it was a cop-out by the judges.

A. I don't think that's what he said.

896. Q. Well what did he say?

A. Well he objected to the same thing that Mr. Dunham objected to, just a second and I'll find this, that "he was the author of his own misfortune", if you want to call that, if you want to

896. A. (cont'd) say that they were copping out, that's not what he said, but he objected to that statement.
897. Q. Anything else he said about the Supreme Court Decision?
A. Not that I recall.
898. Q. And page 4.
A. This was just a list of events as they happened, "May 28th, '71, Sandy Seale murdered in Wentworth Park, Donald Marshall convicted. November 5th, '71 found guilty, 10 days later MacNeil goes to police with his story, Ebsary brought in, told okay and not to say anything about the questioning".
899. Q. Sorry, what's that mean?
A. The person who was telling me this, frankly I don't recall who it was, it must have been either Michael Harris or -
900. Q. On the telephone it must have been I suppose, well no I guess it could have been on - you saw Michael Harris on the Wednesday didn't you?
A. Yes.
901. Q. "Ebsary was brought in and he was told okay" -
A. After the polygraph he was told fine, don't say anything about being questioned.
902. Q. Ebsary was told not to say anything about being questioned.
A. Correct.
903. Q. And who told him that?
A. I was told that the police told him not to say anything about being questioned.

904. Q. But you don't recall who told you that.
- A. I believe it was Michael Harris. "December '71" - oh, "Marshall and Marshall's lawyers never told about this. December '71, in '71" -
905. Q. You are aware, of course, that it was the RCMP who carried out the polygraph test.
- A. Yes, I am.
906. Q. Not the police at all.
- A. I was told that it wasn't the RCMP who told him not to say anything. I was told that it was the Sydney Police who told him not to say anything.
907. Q. Was an individual identified?
- A. No. "December '71 re: investigation", that must have meant lie detector test, the polygraph, "December '81 formally reopened. MacNeil was called by the RCMP. Ebsary stabbed Seale at re-investigation to RCMP" and I'm not sure what that word is by Marshall "March '82 Marshall released. July '82 Chretien asks Supreme Court to review the case because the RCMP had found new evidence", being MacNeil, "December '82 Supreme Court Hearing, Appeal Hearing, 3 witnesses admit they lied in '71. Donald Marshall Appeal Hearing witnesses said police bullied them into it. May 10th, '83 Donald Marshall acquitted. Harsh Supreme Court Decision. November the 9th, '83, Roy Ebsary convicted".
908. Q. Did it ever occur to you, Miss Matheson, that the Supreme

908. Q. (cont'd) Court Decision was not harsh at all, that it was entirely accurate?
- A. These are the words of Michael Harris and the interpretation of harsh was simply because in the view of the people that I was allowed to speak to it was viewed as a harsh Decision.
909. Q. Harsh yes, but did it ever occur to you that the Supreme Court was entirely accurate in the comments that it made about Mr. Marshall, about the fact that he perjured himself, that he lied as to the reason why he went?
- A. It occurred to me, but I knew that he wasn't being tried for robbery, that he was being tried for murder.
910. Q. Oh no, and when I say that "he was the author of his own misfortune", did it ever occur to you that all the court may have meant by that was that if Marshall had told the truth to his own lawyers that he may never have been convicted? Did it ever occur to you that's what the court may well have meant?
- A. Yes, it occurred to me.
911. Q. Did you not consider that was a viewpoint that might have merit, and that Harris and Dunham might well be wrong in their characterization of that Decision as being a harsh one.
- A. That did occur to me.
912. Q. Now on page 5.
- A. These are just notes to myself on sound, that's all, and they were notes that I took so that I could describe the court room.

913. Q. Yes, you say "open", would that have meant to open the program with a court room outside as people file out after sentencing, meaning the sentencing of Ebsary?
- A. Yes, of Ebsary.
914. Q. "The final step in courts for the Donald Marshall case" -
- A. "he has a distinction, first time in Canada murder conviction's been overturned after person has served long sentence. Still were some question, why was an innocent man convicted? Did police and RCMP actions lead to a miscarriage of justice?"
915. Q. Were these thoughts that you had about being sort of an intro into the program?
- A. They were more thoughts on the focus of a program or the introduction, certainly. And the Park scene, I wanted Donald Marshall to recall or recount events of the night, and I wanted to be able to counter that with the police, with the constable's memories as well but -
916. Q. I know you recorded ambient scenes in the Park but did you ever record any interviews in the Park?
- A. No.
917. Q. In listening to the tape is it a fair comment to say that one has the impression that some of the interviews took place in the Park, was that the intention -
- A. No, it wasn't, no, no, it wasn't intended.
918. Q. That was not intended eh?

918. A. None of the interviews were outside in fact, I believe they were all inside. The opening was supposed to sound like the Park, the opening script, but that's all.
919. Q. Yes, and that was done in Toronto of course.
- A. No, that was done - I recorded that sound - I recorded the sound in the Park but I recorded the voice in Toronto.
920. Q. With respect to the use of the professional actor and actresses do you often use this kind of approach?
- A. Yes.
921. Q. Do you ever reveal to the listening audience that you're using professionals rather than the people whose statement they purport to give?
- A. I felt that it was obvious from the script and the sound effect that it was going to be an acting, a re-enactment.
922. Q. Oh yes, but was not their deliberate intention to create the impression that the people who were talking in the script were Patricia Harriss -
- A. Yes.
923. Q. and Maynard Chant.
- A. Yes.
924. Q. And my only question is that it is not considered responsible journalism when you practice this kind of deception, for want of a better word, to indicate to the listening audience that it is professional actors and actresses that are being used rather than the people who purport to say these things?

924. A. Sometimes that's done, sometimes that's not done, if these are - this is a specific quote from the person and it's set up with a sound effect like that it often is not indicated, it's assumed that people will know.
925. Q. Will know what?
A. Will know that this is not the person, these are actors.
926. Q. That's certainly not, there's no way people can know that by listening to your program though.
A. It's possible, it wasn't - we were more interested in having the actual content of the scripts rather than -
927. Q. Yes, but I suppose one - the way one could have done that, Miss Matheson, would have been for you to have continued talking and said Patricia Harriss said on the statement, or Maynard Chant said, and the audience being familiar with your voice already would know very well that it wasn't Patricia Harriss talking.
A. It's possible, but that isn't done in all cases. Quite often it's done where actors are used and even in translations where actors are used and you don't say that that's the person necessarily, it's just a dramatization.
928. Q. All right. Back to page 5 in the middle, number 2, that's the Reservation "what was it about, what was life about there", and then "Donald Marshall recounts the night's events. Why the injustice occurred" -
A. "was he angry".

929. Q. And then "why were you convicted".

A. "convicted, did police actions lead to this. Some people say you weren't liked well, that the police had it in for you, there seems to be scuttlebut that people were saying. Why would that be? Why would the witnesses lie? Do you think, as Harry Porter, Chairman of the Police Commission, says that the air will be cleared".

930. Q. Did Harry Porter say that?

A. I must have taken that from a newspaper clipping where he said that the air would be cleared if there was an investigation. "What would you like to happen now? What's it like for you now at work? Those were important years you spent locked up, what did you miss? Court said any miscarriage of justice was apparent, not real, that by lying you or Donald Marshall helped secure your own conviction by planning a robbery with the aid of Seale, triggered a series of events which unfortunately ended in the death of Mr. Seale. What did happen that night?".

931. Q. What did Donald Marshall say to that, did Donald Marshall deny that he was planning a robbery?

A. He did deny that he was planning a robbery.

932. Q. Did you believe him?

A. I wasn't sure, but I didn't think that was what was at issue, although the robbery was - the motive of robbery was certainly brought up on a number of occasions by a number of people.

942. Q. Well I guess I'm asking you the question and I guess -
MR. MURRANT: You have the same difference.
Q. (cont'd) You're refusing to answer.
A. Yes, I refuse to answer.
943. Q. And so you went on to say you did -
A. Investigate in '82, "What did you find? Who did you talk with?" These are just questions that I wanted to ask him. "Why not witnesses?"
944. Q. What's that mean?
A. I'm not sure. "Why ignore MacNeil's testimony? Came 10 days after. Why was MacNeil's statement withheld from Marshall's lawyers?"
945. Q. What was the response to that?
A. Again I don't think I got a response from anyone on why MacNeil's statement was withheld by the police from Marshall's lawyers, that was one of the aspects of -
946. Q. Or by the RCMP Police?
A. By the two RCMP officers who did the polygraph?
947. Q. Yes.
A. I got no response on why.
948. Q. Did you interview Khattar or Rosenbloom?
A. No, I didn't.
949. Q. Any reason for that?
A. I asked about both of the lawyers through Mr. Cacchione but I felt, because Mr. Cacchione had all the files of Khattar and

949. A. (cont'd) Rosenbloom and Aronson, that he could give me the information I needed. "Parker Supreme Court, even judges seemed to be against this man. Why?" That was from Parker's response. Michael Harris felt the same thing, that the judges seemed to be against him, plus police, "why reluctance over grounds for public hearing? Afraid of people. Witnesses. Why would they have been bullied? What did they have against Donald Marshall? Did the case against him look convincing from the beginning?" And then Kevin Christmas, this is when someone gave me Kevin Christmas's name.
950. Q. Then on page 9.
- A. Just some notes to myself, "do I need sentencing, call Roger Bill the executive producer, if I can't get there get Glen to collect sound of people coming out, voices et cetera", that was if I could not -
951. Q. Could not be present.
- A. Could have interviewed the Chief. Oh "Ian MacNeil", this is a reference to the fact that the then Crown Prosecutor had died so it was just a note on that. "RCMP leaking. Jim MacNeil, racial tension, Roy Ebsary", oh I see, Jimmy MacNeil and Roy Ebsary were just two names and then "racial tension, ethnic tension at time", oh, I was told that Ian MacNeil would be a good person to talk to, he could describe the atmosphere in the town. "Public inquiry Sydney Police. Was there injustice? What kind of pressure eyewitnesses, Sydney

951. A. (cont'd) Police Department, Cape Breton Post, Born Again Christian, Chant in Louisbourg. 10. Mroz went to hospital with Seale, died 20 hours later, call Faye", oh, apparently these were his last words, and the Supreme Court trial. Then "Chretien", that was just a note from someone I spoke with, "said it had been unanimous".
952. Q. Or it had to be unanimous.
- A. "it had to be unanimous", I'm sorry, "fortuitous, paces".
953. Q. What's that, do you know?
- A. I'm not sure what he meant by fortuitous. 11. This was the address where I was to meet Kevin Christmas, and then an address for Mr. Cacchione and then an interview with Michael Harris, "Chant help", this was someone, "help me, my buddy has been stabbed", something that he apparently said. "Sergeant Harry Wheaton on improprieties RCMP Halifax", that was the phone number where I could reach him. "Michael Sarson, Thorndale", the location of the RCMP office, "source".
954. Q. Is that where you went for the RCMP interview?
- A. Yes, it is. This is information that we've been over.
955. Q. On page 12?
- A. Yes, and 13, and 14, and 15, and 16, and 17, and 18, and 19.
956. Q. If I could just interrupt you for one second, would you go back to 13 and on the left-hand side of the page it says "background MacIntyre", what's that refer to?
- A. That was just to find out, to try to find out from him how

956. A. (cont'd) long he'd been on the force and just that sort of thing.
957. Q. Then on page 19, I don't think we've done 19.
- A. "Patricia Harriss, meet through, have had police report, Attorney General, May 5th, '82 report to officer in charge, RCMP Criminal Investigation Branch".
958. Q. These notes on page 19 were made as a consequence of an interview you had with someone?
- A. I believe so.
959. Q. Would that have been the RCMP source?
- A. Either the RCMP source or Michael Harris. Page 20, I believe we've been over this.
960. Q. I believe so.
- A. Page 21, we've been over this, 23, 24, 25 we've been over, 26 we've been over I believe, 27 were the questions I wanted to ask Chief MacIntyre, 29 was - what follows from page 29 to page 35 are just notes made at the sentencing. Page 36 is - at the top is the word "Alabama" which was what someone used to describe again, compare it to a racial situation.
961. Q. Who used that word do you know?
- A. I don't recall. Page 36, "Mayor Manning MacDonald", this is where I phoned him to make an appointment to see him at his Council Chamber. 37 may have been more notes from the actual - yes, they were from the sentencing. More notes on trying to call the Chief, tried to arrange - I was supposed to be

961. A. (cont'd) interviewing Leo Mroz at 2:15. I did interview Roy Gould, Mayor Manning MacDonald and then Parker Dunham. Harry Porter, Nova Scotia Police, I tried to get through to him. Here it is "Nova Scotia Police Act, Leo Mroz told me that he'd been told that under the Nova Scotia Police Act he can't confer with the media", and I asked him who told him that and he said the Chief did, so I made a note and I called the Nova Scotia Police Commission and was, I believe, told to call the Attorney General's office, or I couldn't get anyone to speak to me so I called the Attorney General's office and I wasn't allowed to speak to the Attorney General, whether he was in a meeting or unavailable I'm not sure. I told his secretary what it was that I needed. Parker Dunham, notes from pre-interview with Mr. Dunham, "Appeal conviction tomorrow in Halifax. Mroz useful source".
962. Q. Mroz being a police constable?
A. That's right.
963. Q. Parker Dunham told you that he would be a useful source.
A. Well he said that he had spoken to him on previous occasions. "MacNeil friend of Parker's businessman, friends, community oriented, public investigation would do to town - what a public investigation would do to town. Brother", this is Parker's quote, "Crown Prosecutor".
964. Q. Sorry, he says brother is a disgusting slob, that was Donny MacNeil, the Crown Prosecutor?

964. A. Yes. "(inaudible) refuse to abide by court decision to pay wife, jail", this was just comments that he made that were not in reference to the story.
965. Q. If you don't mind I'll just ask you about those, he refused to abide by a court decision to pay wife after, sorry, what's the word?
- A. "giving her ghonorhea".
966. Q. Venereal disease.
- A. "jail brought shame to family. Giffin will", I don't know, "investigation", I'm not sure what "rec" at that stage meant, "Attorney General's monument establishment".
967. Q. What's monument establishment mean?
- A. I'm not sure. "Indian, Parker".
968. Q. Thinks there will be what?
- A. Possibly an investigation and then just "one hour to Parker's".
969. Q. One hour to get to his house you mean?
- A. Yes, I believe so. And then "Like Alabama" from the notes someone else had given me.
970. Q. Then on page 40.
- A. "Roy Gould interview 4 p.m. Ian MacNeil" I was trying to see him at 5 p.m.
971. Q. Did you ever see him?
- A. No, I spoke to him, we tried to set up an interview and he just had a meeting at 5 and I was going to go over there but

971. A. (cont'd) he was in another meeting when I called so I couldn't see him. "Manning MacLeod, Parker Dunham, Attorney General, will he announce an investigation? Giffin says in a couple of weeks" and then a 7 a.m flight in the morning back to Halifax. And then this was questions that I wanted to ask the Mayor about how he felt what an investigation would do to Sydney and -

972. Q. What did he say to that?

A. He didn't answer, he didn't think that - I believe I asked him in fact and I think that he just said he doesn't think that it would cause any problem, that he doesn't think that there was any need for an investigation so he didn't see any need to extrapolate. "People are calling for public inquiry, Attorney General expected to make an announcement mainly because of irregularities in original investigation. It does not look good for the Sydney Police Force accountability." I imagine the police, "pressure tactics, do you believe these accusations? Should there be an inquiry?".

973. Q. Then page 41.

A. "Questions for Roy Gould. Was the sentencing of Ebsary the final chapter in this as far as you are concerned, and the feeling of the MicMacs over this. Of Marshall's imprisonment. Has justice been done? Will an inquiry clear anything up do you think?" And he said he didn't think it would by the way.

974. Q. Did he elaborate on that?

A. I asked him and he said he felt that enough damage had been done to Membertou and he just thought that they should leave well enough alone. That's his title, Donald Senior and Carolyn is the parents of Marshall so I never -

975. Q. Sorry, you never saw them did you?

A. No.

976. Q. And 42?

A. Is all directions on how to get to Mr. Dunham's house. This is the second person I spoke to that I'd rather not disclose, who's simply -

977. Q. Where is that one?

A. Page 43.

978. Q. Sorry, this is an - I see, source number 2, this is a person you saw in Sydney?

A. I spoke to in Sydney.

979. Q. By spoke to I take it you mean by phone rather than face-to-face.

A. That's correct.

980. Q. What did that person tell you?

A. Just basically - shall I read these notes?

981. Q. If you would, yes.

A. "Bendix Crescent, Seale's body".

982. Q. What's Bendix mean?

A. Bendix Crescent was apparently the street in the Park where

982. A. (cont'd) the body was found. "No one else, feet to curb, head to the center of the street, in white shirt, looked at first like he was concealing something and then he said that it was the results of the stab wounds".
983. Q. Is the word "intestines"?
- A. "intestines", yeah. These were his words, "Oh God, no. Painful look".
984. Q. Just sort of "Oh God, no, Oh God, no".
- A. "Oh God, no, oh Jesus. Painful look few minutes before the ambulance arrived, then the patrol unit, high beam", lights I suspect, "300 feet from the area laying against a tree favouring an injury".
985. Q. Who did that refer to?
- A. Donald Marshall. "Patrol Number 3 hospital, followed ambulance, unloaded injured Seale, stretcher, surgeon standing by with a gurney".
986. Q. What's that, a bandage of some kind?
- A. No, no a gurney is a portable cot. "Entire abdomen and chest region forcing out inserted and turned and twisted", I take it that's the knife, "to create that much damage, not much of that" oh he'd not seen anything of that magnitude before. In his opinion it was a large knife. "Ask Mroz, how is he. Nac V" I'm not sure what that is. "Shook head", I guess it was the doctor, "surgery. Whitney Pier, Oscar".
987. Q. What do those mean?

987. A. I'm not sure. "searching for vehicle, an all-out hunt, VW type vehicle, convertible". I'm not sure what the next two lines mean, it looks like "occupation, accent of people responsible", I'm not sure what that means. "Chant no go, refutes that and recollection of 8 p.m. Saturday night".
988. Q. You refuse to advise me who that source is.
A. Yes. "As a group they're irrational".
989. Q. Meaning what?
A. Is a comment made by the people who were in charge at the Police Department.
990. Q. This source number 2 said to you that as a group the police who were in charge of this investigation were irrational.
A. That's right, however I did not use that quote. "Hung jury at a point of 11 to one guilty, Ebsary created hung jury originally. Juvenile Chant if guardian, high tone of voice".
991. Q. What's that mean?
A. I'm not sure what any of this means.
992. Q. End of source 2 eh?
A. That's right.
993. Q. Then on page 46?
A. Oh these were just when I was waiting for the Mayor I wrote the names of the people who had been formerly the Mayors and the Aldermen in Sydney, I was just interested in the Scottish background. "Findlay MacDonald" and here's information on

993. A. (cont'd) Parker Barss Dunham, his home number.
994. Q. 47?
- A. "Halifax Felix Cacchione as soon as possible, sound".
995. Q. What's that mean?
- A. I needed the sound of his office, I hadn't collected it for the Donald Marshall interview at his interview, and call Douglas, the senior producer, was the senior producer at the time. "Flights, Roy Gould", I take it, "ask about Donald's intention that night and any talk of robbery. Mayor MacDonald, police acted", oh Mayor MacDonald said police acted on the information that was presented to them and here's the note that I again tried to get the Attorney General's office and there was no answer, or he wasn't available. Then just ambient sound, this would be my notes for asking Felix Cacchione questions. 48, "Appeal" -
996. Q. Just on that, the first point is "What do you want for your client" and then it says "Chief MacIntyre", what does that mean? Does Felix want his head or something?
- A. No, no, it means "have said no suits have been laid yet" but at that time they were thinking of suing the police force.
- "Appeal going on, Marshall and counsel not notified".
997. Q. What was that, not notified of what, what appeal was that?
- A. I'm not sure who I was speaking to at this time. "Donna Ebsary in 1974 saw father wash blood off of knife but no one" well the notes here say "no one" and then "S police as indicated".

998. Q. What does that mean?

A. Well as indicated previously in these notes by, I believe it was Michael Harris, Donna Ebsary had gone, was the only one not questioned by the police but had gone and said that something was peculiar, I don't know what specifically. Mr. Harris can tell you this. Whether she told them she'd seen her father wash blood off the knife but she'd gone and they said that they - I understand they said they weren't interested or that that's not true because of the polygraph test.

999. Q. Then on page 49.

A. Oh just a list of the people and the information that I had for my own mind.

1000. Q. And then 50.

A. I don't have it - oh that's a page that we've gone over that was on earlier in the book, that's a repetition, that's the end of my notes.

1001. Q. So Mr. Cacchione then gave you, in his office on Friday afternoon, the first 39 pages which we are going to mark as Exhibit Number 3, so you read those, I take it, for the first time on the airplane going back to Toronto Friday afternoon?

A. I suspect I took time in the office to read them over with him and then I read them back at the CBC office and then went over them again on the plane going back.

1002. Q. And if you would just turn to those, and particularly page one, it's at the beginning of Mr. Murrant's volume. If you

1002. Q. (cont'd) would turn to page one, Exhibit Number 3, which is the first 39 pages of the Book of Documents Mr. Murrant filed with me. These 39 pages consist of the material that Cacchione gave you.
- A. Yes.
1003. Q. And the part that you used in the program is the part that is underlined.
- A. That's right.
1004. Q. Why did you choose that and leave out the rest?
- A. Well it would have made the - I had to pick a part of this statement that was concise and basically told the story of what happened without using the entire thing because it would have taken far too much time, and I thought that in my opinion this particular paragraph and a sentence, or paragraph and two or three sentences, was the crucial part of the statement on both accounts.
1005. Q. When you say both accounts you mean?
- A. On both Harriss and Chant.
1006. Q. Dealing with the second and third page of this exhibit I'm missing a line or so at the top of page 3, I don't know whether the copy you have in front of you -
- A. Well it says "I cannot explain what made me lie", that line or another line above that?
1007. Q. I think there must be another line above that because at the bottom of page 2 it says "I remember once the Crown

1007. Q. (cont'd) Prosecutor really" and I don't know whether Mr. Murrant can help us with that.

MR. MURRANT: I'll check.

Q. (cont'd) Now you made a comment a moment ago that you selected from Patricia Harriss's statement, which you considered to be a representative synopsis, well perhaps not synopsis but what you considered to be representative statements from the entire statement.

A. Yes.

1008. Q. And you did the same with Maynard Chant?

A. Yes I did.

1009. Q. What about the comment that appears in the third paragraph of Chant's statement "The fellow that I later learned was Donald Marshall did not go near the body, there was no blood from the cut on his arm", what significance, if any, did you consider it?

A. I'm sorry, is this on page 2?

1010. Q. It is page 2.

A. The third paragraph?

1011. Q. The third paragraph, third sentence and particularly, "there was no blood from the cut on his arm", what did you think of that, or did you focus on that at all?

A. I didn't focus on it, no.

1012. Q. Focussing on it now do you consider that it is a highly significant comment if true?

1012. A. I don't know whether I could say that I consider them terribly significant if true.
1013. Q. Why?
- A. First of all I think it would be difficult - I'm not sure what he's referring to or what he's alluding to in that statement, "There was no blood from the cut on his arm and he showed several people", referring to the person he later learned was Donald Marshall.
1014. Q. Were you not aware that it was a significant part of Marshall's defense that he was stabbed in the arm by Ebsary?
- A. Yes, yes.
1015. Q. And if there was no blood this would be a matter of some significance would it not?
- A. Yes, it would be certainly worth investigating.
1016. Q. What about the following sentence, "I thought his actions were quite suspicious at the time", did you consider that to be significant?
- A. No.
1017. Q. What about the comment in the next paragraph, or the final paragraph, "I really felt Marshall did it", what did you think about that, or did you think about that?
- A. I obviously thought about it.
1018. Q. What were your thoughts?
- A. I thought that at the time the statements were taken it must have been a fairly emotional time for all the people

1018. A. (cont'd) concerned and that feeling that someone did something was one thing, but actually seeing them do it was another.
1019. Q. Mind you this was 9 years after this murder was committed.
A. He said he really felt at the time, felt at the time that Marshall did it.
1020. Q. Didn't say that, does it? He says "I really felt Marshall did it", it doesn't say at the time, those are your words.
A. No, but wouldn't he say I really feel Marshall did it?
1021. Q. I don't know, I didn't interview him, but then again neither did you.
A. That's true.
1022. Q. Why did you not consider putting that comment in the statement read by the professional actor?
A. We had already sent in a script, I believe, that their original statements had been - or their statements, the second statements rather, had indicated that Marshall, that they had seen Marshall perform the murder and this - what we were doing in this was that there had been a turn of phrase. I couldn't use all of it, I thought this was representative of his statement.
1023. Q. Gosh, it would have been entirely inconsistent with your theory and your approach to this whole program to put in a statement to the effect that Marshall really did it wouldn't it, that would be entirely inconsistent with the thrust of this program?

1023. A. I don't think so, I think that I was hoping that the one or two police officers that I could speak to would give me that side of the story.

1024. Q. But if a person who was there, and who was a prime witness at the Hearing, really felt that Marshall did it that's pretty sensational news, and that's entirely inconsistent of course with Marshall being wrongly convicted, and entirely inconsistent with a police cover-up isn't it?

MR. MURRANT Subject, if I may, to its interpretation.

Q. (cont'd) It is inconsistent isn't it?

A. I'm sorry.

1025. Q. Well I'll repeat the question. The fact that one of the prime witnesses at the Hearing really felt that Marshall did the murder is entirely inconsistent with the thought that there was a police cover-up.

A. This man had given evidence, or had made a statement, an initial statement. His second statement said that he had seen certain things. I interpreted this as I really felt at the time Marshall did it.

1026. Q. Is there anything in Maynard Chant's statement that suggests that a confession was beaten out of him, coerced out of him, that there was a police cover-up?

A. He said "I definitely did not see the murder. I told the police I saw everything referring to the cut, I definitely did not see the murder, everything was over by the time I got

1026. A. (cont'd) over to where Seale was. Some time later I was taken to the Park and they asked me where I was standing, I more or less showed them what they wanted to get it over with. I wasn't in the Park around the murder. I was interviewed by two detectives, my mother was there. In the second statement I told the detectives I saw the murder. They told me that another guy had seen me in the Park and I had to see it, so that's what I told them".
1027. Q. Do you consider that amounts to coercion or bullying?
- A. I interpret his line, "they told me another guy had seen me in the Park and I had to see it", as a pressure tactic.
1028. Q. Do you consider it justifies the language that Parker Dunham used?
- A. Not that specific line in his - in Maynard Chant's statement.
1029. Q. Or anything in Maynard Chant's statement?
- A. Not in this statement.
1030. Q. You never saw it, the only thing you saw from Maynard Chant was this statement of two pages. I suggest to you that there's nothing in that statement that would cause one to conclude that Parker Dunham's statements were factual.
- A. I think that the line that begins "they told me that another guy had seen me in the Park and I had to see it" can certainly be read as being pressured into saying something.
1031. Q. Coerced into saying something improperly, he doesn't say that does he?

1031. A. He doesn't say coerced.
1032. Q. He doesn't say bullied, doesn't say threatened, doesn't, I suggest to you, justify any of the extreme statements that Parker Dunham made.
- A. He doesn't in his statement, no.
1033. Q. Well you did an interview with this man.
- A. No, I interviewed someone who did interview him though.
1034. Q. I suppose you could have interviewed Maynard Chant.
- A. I could have.
1035. Q. Did you have his address?
- A. I asked where he was.
1036. Q. Were you told?
- A. I believe I was told, if I didn't write it into the notes that I have here I wrote it somewhere else.
1037. Q. Did you try to get in touch with him?
- A. I did not try to get in touch with him.
1038. Q. I guess the reason was pressure of time.
- A. Time was one reason and also because I - time and the combination of time and having people who I was interviewing who I felt that I could rely on.
1039. Q. Aren't you taught when you're a reporter to go to the source?
- A. Yes, we are.
1040. Q. Who could be more important than Maynard Chant and Patricia Harriss, who could be more important in this entire matter

1040. Q. (cont'd) than two people who gave evidence at the original hearing where Donald Marshall was convicted and who changed their statements. Could there be anyone more important than Patricia Harriss and Maynard Chant for you to see?
- A. I felt the Chief of Police was more important for me to see.
1041. Q. Than Maynard Chant or Patricia Harriss?
- A. At the time, yes.
1042. Q. Apart from the Chief of Police was there anyone more important for you to see than Maynard Chant and Patricia Harriss?
- A. I felt that the people who had done the re-investigation were important to see. It would have been important for me to speak to both of these people. At that time before I left for Toronto, before I actually saw the RCMP document I was not going to put this into the report. Once I saw the RCMP document I decided that I would.
1043. Q. Well you couldn't put it into the report without seeing it of course.
- A. That's true, but I didn't even consider bringing that aspect up.
1044. Q. No, but the fact is you brought it into the report. From the point of view of responsible journalism I suggest to you, Miss Matheson, that apart from Chief MacIntyre there was no one more important for you to see than Patricia Harriss and Maynard Chant and for you to make up your own mind as to what kind of people they were.

1044. A. I knew it was important to read their testimony, to read their statements, other people had been talking to Mr. Chant, he had been interviewed I believe in the past. I was relying on people who had interviewed him on those occasions because of time.
1045. Q. Because of time, yes.
A. Correct.
1046. Q. If you had the time you would have seen both these people.
A. That's true.
1047. Q. And when you say it's important to see their statements, the fact is what you saw were two statements unsworn in April 1982 and did not see the evidence they gave under sworn testimony in December 1982.
A. That's true.
1048. Q. Did you have Patricia Harriss's address?
A. I believe I asked where she lived.
1049. Q. And were you told?
A. I can't recall.
1050. Q. It would have been an easy matter to find her I take it.
A. Oh yes.
1051. Q. Did you attempt to get in touch with her?
A. I don't believe I did.
1052. Q. The next comment on page 2, at the bottom of page 2 of Mr. Chant's statement, "During the time Marshall was in jail a friend told me that Marshall was gloating about killing Seale", what did you think of that?

1052. A. I didn't know what to think of it.
1053. Q. Ever any doubt creep into your mind about this whole thing, that perhaps there was no miscarriage of justice originally, perhaps Marshall did do it, I mean did that thought ever occur to you? And I'm not asking you to be God now, and I'm not suggesting anything by my questioning, I'm simply asking whether or not it ever occurred to you -
- A. It occurred to me up until the stage that the courts decided that he hadn't done it, that Ebsary had done it, had committed the crime and that Marshall had not.
1054. Q. By that you mean the Decision of the Appeal Division in May of 1983.
- A. That's correct.
1055. Q. Once that Decision was down were you satisfied that that was a proper and just result?
- A. I knew that there would be an Appeal but it was the Supreme Court of Nova Scotia and I -
1056. Q. I'm sorry, I don't mean to confuse you, when I say the Decision, the Decision in May of '83, the only Decision reviewing this matter was the Appeal Court Decision.
- A. Yes.
1057. Q. There was no trial Decision on the re-hearing.
- A. No.
1058. Q. Once that Decision was filed in May of 1983 were you satisfied, did that convince you that they came to the right conclusion?

1058. A. Yes.

1059. Q. There is a reference in these documents to other statements and other appendices, all of which are not included with the documents I got and I take it were not included with the documents you got.

A. That's correct.

MR. MURRANT: There are some, if I may, you recall I mentioned the Court of Appeal file, some of the Affidavits of that number were with that group of paper.

MR. PUGSLEY: Oh really, did Miss Matheson see those affidavits?

MR. MURRANT: I presume some she did, some she didn't, it was not complete.

MR. PUGSLEY: Which ones did she see do you know -

1060. Q. Or did you see any?

A. It's difficult for me to recall specifically. This is what I was given here, my original copy that I took from Halifax - there were documents from the Supreme Court - the Court of Appeal.

1061. Q. You saw some of those did you? Do you know what you saw, do you have any idea what you saw?

MR. MURRANT: You see in the List of Documents are the documents, there were others, a new List of Documents that are not part of the Court of Appeal's file.

MR. PUGSLEY: Are not part of the Court of Appeal's file.

MR. MURRANT: None of these are part of that court's file.

MR. PUGSLEY: That's right.

MR. MURRANT: There were other documents kicking around that were affidavits and things.

MR. PUGSLEY: That Miss Matheson was given by Mr. Cacchione?

MR. MURRANT: That were in the group. And what I did was put those in here and then attempt to go back and reconstruct the other.

MR. PUGSLEY: It would be helpful for me to know what affidavits you saw from the Court of Appeal file.

MR. MURRANT: Could you remember at this time.

MR. PUGSLEY: I guess the only way, perhaps during the evening adjournment perhaps a copy of that file could be left with her, Bob, and she could take a look and review them overnight and advise me in the morning which ones she thinks she's seen before, that's probably the best way to do it.

MR. MURRANT: I can do that.

1061. Q. (cont'd) Would you turn to page 10 of this exhibit, Number 3, in the third paragraph it says "It was Chief MacIntyre's feeling and concurred with by Mr. Edwards that an impartial investigation should be conducted by this Force", this Force meaning the RCMP.

A. Yes.

1062. Q. Was that consistent with a man who was doing a cover-up or who had coerced witnesses or bullied witnesses?

A. I don't know, I don't - it certainly doesn't appear to be on this instance, no.

1063. Q. And were you aware that when Mr. MacNeil, James MacNeil, first came to the Sydney Police 10 days after Marshall's conviction and advised Detective Sergeant MacIntyre that he had information to give that he was immediately turned over to the RMC Police?
- A. Yes, I am aware of that.
1064. Q. And that again is not consistent with a man who was involved in a cover-up, is it?
- A. I asked the RCMP officer who I spoke with about that and he indicated that certainly Chief MacIntyre knew that he had a hot potato, that it was a problem that once they had sent someone to prison that someone else should come in and say this is what's happened, so it was quite usual that he would call in the RCMP to do this investigation.
1065. Q. I suggest, without being someone in the RCMP, that it would be a proper thing to do but I suggest to you further that it is inconsistent with a man who's been involved in a cover-up.
- A. Possibly the actual calling in of the RCMP. The RCMP officer who I spoke with suggested to me that something other than just a polygraph should have been done at that time.
1066. Q. But it was the RCM Police who made that choice.
- A. That's right.
1067. Q. Was he being critical of Chief MacIntyre or was he being critical of the force?

1067. A. I'm not sure.

1068. Q. But again I ask you, for Chief MacIntyre to turn that investigation of James MacNeil's statement over to the RCM Police is not consistent with a man who is involved in a cover-up.

A. I don't think it says one thing or another.

1069. Q. You didn't give him any marks for that.

A. Yes, I guess I would give him marks for that. I really wanted to ask him about it.

1070. Q. Were you aware that Patricia Harriss consulted a lawyer after she gave her second statement to Detective Sergeant MacIntyre?

A. Yes, I was aware of that.

1071. Q. Were you aware also that there was a space - well you have some familiarity with the judicial system, you would have been aware that Patricia Harriss and Maynard Chant would have appeared first of all before a Grand Jury to give evidence, and secondly before a Petty Jury to give evidence at the Criminal Trial, and that these two occasions would be some weeks after they gave a statement to Detective Sergeant MacIntyre and some weeks after Patricia Harriss had consulted a lawyer of her own, did that -

A. I believe it was her mother who consulted a lawyer.

1072. Q. Did that not suggest to you that something, perhaps it didn't, I mean it wasn't -

1078. A. The second statement they gave some weeks earlier.
1079. Q. Yes, did you consider it significant that there was a hiatus of two or three weeks between the giving of the second statement and the time they gave evidence at trial?
- A. No.
1080. Q. Did the evidence of John Pratico have any influence on your decision to let this program go ahead?
- A. What do you mean by that?
1081. Q. Well the statements that he gave, his presence, his involvement in this scenario, did you consider that this was another example of a police cover-up, of a coercion of a witness, what part did Pratico's involvement have in this matter play in your final decision to let this program run?
- A. It had little consideration. I was curious as to why someone who has a history of mental problems would be brought in as a witness in the first place, but I didn't bring it up and I asked a few people. A number of people had questioned that.
1082. Q. Yeah, I guess that would be a decision for the Crown Prosecutor presumably, rather than the police.
- A. That's true.
1083. Q. Would you agree with that?
- A. Eventually yes, but the police certainly were the ones who rounded up witnesses initially in their initial investigation.
1084. Q. What knowledge did the police have of Mr. Pratico's mental difficulties?

1084. A. I'm not sure of that.

1085. Q. One of the matters you said in the program itself, Exhibit Number 2, you say on page 6, middle of the page "According to a memorandum from an RCMP investigation officer there was no complete record of the investigation, no autopsy, no photographs and no list of who was in the police line-up". There is no suggestion there that there was not a police line-up, you were not making that suggestion.

A. No.

1086. Q. All right, let's turn to this exhibit, this starts off saying "Hello Halifax, hello Halifax, this is a person in Toronto", and who was that speaking first of all?

A. I don't know who sent this item down to Halifax, this was at our lawyer's request for your purposes I imagine.

1087. Q. Oh, I see, that was not part of the program.

A. Oh no, this was a feed.

1088. Q. So the program starts "On Thursday in Sydney, Nova Scotia Roy Newman Ebsary was sentenced to 5 years in prison for the 1971 murder of Sandy Seale", who did this reading?

A. One of the hosts of our program.

1089. Q. Who would that be, do you know?

A. Either Christopher Thomas or Barbara Smith, we'll telephone you and give it -

1090. Q. And this writing was your writing I take it?

A. Yes.

1091. Q. "A murder for which an innocent man had already spent 11

1110. A. That's the inference that could be taken from that.
1111. Q. That's a fair inference isn't it?
- A. I believe so.
1112. Q. And that was the intent, that's what you intended to convey.
- A. Yes.
1113. Q. "From that RCMP investigation Patricia Harriss's recollection of the police questioning. I don't recall exactly how many times I was taken to the Police Station. I found they were needlessly harping at me going over and over, telling me what they thought I should see, they took statements from me and changed them, this took hours and hours and my parents were not allowed in. They came to the Police Station, they let me out once to see them but that was it. I don't feel their actions were proper. I recall them banging their fists on the desk, I definitely did not see Sandy Seale in the Park that night". Did you play any part in the choice of the actress who read that?
- A. Yes.
1114. Q. What is her name, do you know?
- A. Her name is Nicky and I'm not sure of her last name, she's been used in CBC.
1115. Q. How did you happen to choose her, I mean did someone give you a list of people?
- A. There are lists of actors and actresses who are available to come in on Saturdays to do just brief readings.

1116. Q. And did you go to that list and choose her?
A. Yes.
1117. Q. Did you have any assistance?
A. There are people who know actors and actresses and I suspect someone suggested that she would be good and I called her and she was available so she came in.
1118. Q. And how many times did she run through it with you before she went on the air, I'm sorry before you taped it?
A. Once or twice, once I think.
1119. Q. Did you give her any suggestions as to how it might be read first of all?
A. I told her that it was a statement taken by police officers, by the RCMP, and I don't recall giving her any real direction, she was an actress.
1120. Q. Have you done any acting yourself?
A. No. I think I just told her the girl's age at the time and the situation, that it had been a number of years, and she read it through once, I think, and then we taped it.
1121. Q. Did you make any suggestions to her about Ebsary or anything at all after she read it through once?
A. I don't think I did, no.
1122. Q. How old is she, do you know?
A. This actress?
1123. Q. Yes.
A. She's late 20s.

1124. Q. And the actor who read Maynard Chant's statement do you know who that was?
- A. This wasn't an actor actually, this was someone who worked for us. We couldn't get an actor in so one of the people on the program, in fact the senior producer, went down and read this for me.
1125. Q. Who was that?
- A. Douglas Grant.
1126. Q. Does he do that sort of thing very often?
- A. No, he doesn't, but he has done voice stuff before.
1127. Q. Did you have to give him any direction?
- A. No, not really.
1128. Q. Did he read it through once and then was he recorded on the second run through?
- A. I would say he was recorded on the second run through, possibly the third because he's not a trained actor.
1129. Q. How old is he?
- A. 32, 33.
1130. Q. Then you come back in "The second witness, Maynard Chant, an excerpt from the same RCMP re-investigation. I did not quite make it to the Park and a guy in a yellow jacket came running up to me, he showed me his arm where he'd been cut and told me his friend was stabbed over in the Park. The police interviewed me that night and I repeated what Marshall had told me. I don't know why, I had to say something, I

1130. Q. (cont'd) definitely did not see the murder. Everything was over by the time I got over where Seale was. In the second statement I told the detectives I saw the murder, they told me that another guy had seen me in the Park and I had to see it so that's what I told them", and then you come back in "The third key witness was John Pratico. In 1971 he first told the Sydney Police that he hadn't seen the murder then 5 days later he said he had seen Marshall stab Sandy Seale. RCMP investigators had discovered Pratico had been under psychiatric care and, according to his doctor, he was not a reliable witness. 10 days after Marshall was sent to prison James MacNeil, the fourth man in the Park the night of the murder, walked into the Sydney Police Station. He told officers there that Roy Ebsary had actually stabbed Sandy Seale. The Sydney Police called in the RCMP. They administered lie detector tests to both MacNeil and Ebsary. MacNeil's was inconclusive but Ebsary passed his so the Sydney Police closed the door on the affair". Wouldn't it have been more responsible, Miss Matheson, to say the RCMP closed the door on the affair rather than the Sydney Police closed the door on the affair?_____
- A. I was - I felt or understood that the Sydney Police had called in the RCMP to do that investigation, just in specific the lie detector test, and when I say closed the door on the affair I meant on the entire Marshall case so that the police

1130. A. (cont'd) could have possibly said well this didn't come through but possibly we should look into this, but decided - both the RCMP and the Sydney Police decided not to do anything more, that was just it.
1131. Q. But you say in fact that it was the Sydney Police that closed the affair.
- A. Yes, I do.
1132. Q. There's no implication at all that the RCMP was even involved in that decision.
- A. That possibly should have been added in the script.
1133. Q. You should have made an effort really to find out the facts don't you think?
- A. What do you mean by facts?
1134. Q. Well the facts as to who closed the door on the affair. You state, as a matter of fact, that the Sydney Police closed the door on the affair and I suggest to you that it would have been responsible to determine who in fact closed the door on the affair.
- A. As I understood it from the people I was speaking to it was the Sydney Police and the RCMP who were called in for that specific polygraph test that closed the door on the affair.
1135. Q. And who told you that?
- A. The people that I spoke to throughout this investigation, Michael Harris, Parker Barss Dunham.
1136. Q. Anyone else?

1136. A. Possibly the RCMP officer.
1137. Q. Michael is a reporter for the Globe and Mail, he's writing a book on the Marshall case and then Mr. Harris states "The fact that you get an inconclusive reading when a person is" - just while I think of it, how many times did you hear this thing whole before it went on the air, as it is in the present form in Exhibit 2?
- A. 4 or 5 times.
1138. Q. And your producer and the executive, I'm sorry what were the titles?
- A. Senior producer and executive producer.
1139. Q. They would have heard it how many times?
- A. Very likely 3 or 4 times, which is more often than they hear most stories.
1140. Q. Was that because of the concern about the possible libel?
- A. Absolutely.
1141. Q. Michael Harris says the fact that you get - is it normal for your executive producer and senior producer to be there at 3 in the morning to listen to this kind of thing?
- A. Yes.
1142. Q. I take it it's not normal for them to phone your lawyer though at 3 in the morning.
- A. It's been done on occasion, that's why we have our lawyers standing by.
1143. Q. Where was he, in the office or was he home in bed?

1143. A. Standing by at home I suspect, but we'd notified him earlier in the day.

1144. Q. Harris states "the fact that you get an inconclusive reading when a person is coming to you with an eyewitness account of a murder is not really grounds anywhere that I've heard for closing a book on a case and yet not a single interview by the RCMP with the original witnesses at that trial was ever conducted. Those two polygraph tests represented the full course of their re-investigation and you have to wonder what might have happened if armed with James MacNeil, apparently describing the same man Donald Marshall was describing in his evidence in court, what would have happened if those RCMP guys had gone to the original witnesses and said, you know, 'did you lie, do you stick by your story'? 12 years later they completely welcomed the RCMP asking that question and immediately volunteered that they in fact had lied and had felt very uncomfortable with it for years but no one went back and asked them." Well as I discussed with you earlier there is no suggestion whatsoever of any impropriety on the part of the Sydney Police there but you say that in fact the statement that Harris gave you that was taped did implicate the Sydney Police as much as the RCMP but you deleted that part of it.

A. That's true.

1145. Q. Did you do it deliberately?

1145. A. Yes, because I didn't want to - I mean there has to be some sort of balance in these things and I knew that with the tape that I had from Mr. Dunham that Mr. Dunham implicated the Sydney Police.
1146. Q. Why did you just name Chief MacIntyre then in your program rather than not name the RCMP people who were involved in this '71 investigation?
- A. The two people who put forward the polygraph test?
1147. Q. Yes, and the people who made the decision to close off the investigation at that time.
- A. Because Chief MacIntyre's name was the name that kept coming up in all the conversations that I had with all the people involved.
1148. Q. Well did the names of the RCMP people who conducted the polygraph and who did not carry out a further investigation, did their names come up?
- A. No, they weren't coming up.
1149. Q. Did you know who they were, did you ever hear?
- A. I eventually asked for the names of the people who'd administered the test, was given them.
1150. Q. Did you ever speak to them?
- A. No, I didn't, I spoke to the RCMP officer who I had a discussion with who knew them.
1151. Q. You may not want to answer this question, and I'm not trying to get the answer in a sneaky way, but the source who you

1151. Q. (cont'd) refuse to identify, did he in fact conduct the re-investigation for the RCM Police in 1981/82 or whenever it was?

A. I'd rather not answer that.

1152. Q. Then on page 4 you say "The Indian Community have been following the case carefully, Donald Marshall was the son of their Grand Chief at" -

A. "at Membertou Reserve".

1153. Q. "At Membertou Reserve", correct. "He was known as Junior, Kevin Christmas is a friend", and then on page 5 you state again, "The brutality of the murder of Sandy Seale came as a shock to the people of Sydney. Sydney is a quiet town, a mining center with DEVCO and Sydney Steel the main employers. Parker Barss Dunham remembers what it was like then", and Mr. Dunham states "I think it's crucial to understanding the story is the fact that there is almost no crime in Sydney, it's a town where at least until very recently it's safe to send your child down to the corner store at 10 o'clock at night for a bottle of milk or something. When this murder arose it was a phenominally traumatic event, more so than you think in a city of 30 thousand that is the center of an industrial area of 120 thousand people. People were appalled that a 16 year old could be murdered in the downtown Park and there was enormous pressure on police to solve the case", and you state, "Down the street from Wentworth Park, less than a

1153. Q. (cont'd) mile from the RCMP Headquarters in Sydney, is Membertou Reserve, 400 MicMac Indians live there. Until 1967 there was no running water, no electricity, only shacks. For the Indians it was a source of embarrassment and resentment. Kevin Christmas said there has always been an uneasy relationship between the races in Sydney" and then there's a few lines from Mr. Christmas and then you come back "The man in charge of the Sydney Police investigation back in 1971 was Detective Sergeant John MacIntyre, he was responsible for taking statements from the witnesses and today his detractors want him to account for his handling of the case. According to a memorandum from an RCMP investigation officer there was no complete record of the investigation, no autopsy, no photographs and no list of who was in the police line-up". Did you yourself consider that these matters were matters of significance, the fact that there was no autopsy, the fact that there was no list of who was in the police line-up?
- A. Yes, I thought they indicated that in terms of the first murder in a city in a long time in an otherwise safe city that all stops would be pulled out to put together a thorough investigation and that an autopsy and photographs and a list of people who were in a line-up would be made as regular police procedure.
1154. Q. Would you not have thought that if those matters were relevant and important that that is something that would have

1154. Q. (cont'd) been brought out by Defense counsel at the trial of Marshall?
- A. It was something that I'm surprised wasn't brought up by the Defense counsel.
1155. Q. Did you - prior to this program going on the air did you speak to anyone about the abilities of the two men who defended Marshall?
- A. I spoke briefly to Mr. Cacchione about - and to Mr. Harris I believe.
1156. Q. What did they say?
- A. They were surprised that a couple of things had not been followed up in the investigation prior to the trial.
1157. Q. By the Defense lawyers?
- A. At trial rather. Yes, yes exactly.
1158. Q. Well were they critical of the Defense lawyers, I mean in the sense that they say these fellows have no experience, you know, what are they doing defending a murder charge?
- A. No, I don't think they were critical.
1159. Q. "John MacIntyre today is the Chief of the Sydney Police", you go on, "he refused to discuss the matter and has ordered his men not to comment but Mayor Manning MacDonald stands behind him". Do you sometimes use words decline to comment rather than refused to discuss or are they interchangeably used by you?
- A. I think they're interchangeably used.

1160. Q. The positioning of those words immediately after the first reference to Chief MacIntyre on page 6 of this broadcast certainly infers, and I'll ask for your comment on this, suggests that he had something to hide.
- A. I don't think so, it suggests - I put that there because in a story like this it would have been assumed that Chief MacIntyre would have been on the program discussing it and this is simply a way of saying that we did try to reach him but he did not want to comment, and in fact wouldn't let his police officers comment to us. In other words we did try to get an interview with the police force, both the Chief and people who worked on the force.
1161. Q. If you turn to page 7 please, and the comments of Parker Dunham, about two thirds of the way down the page Mr. Dunham's comment, "The judges have the incredible heartlessness to say the system of which we are pillars should not be called to account for this, it's really this young punk that caused it all, it wasn't the police who bullied three witnesses into lying on the stand, it wasn't the police and the Attorney General and the RCMP and the Crown Prosecutor who covered up contrary evidence of eyewitness evidence that someone else had committed a murder", now the fair inference is, according to that, sarcasm, would you agree?
- A. I would agree that he was being sarcastic.
1162. Q. Yes, and what he really was saying was that it was the police

1162. Q. (cont'd) who bullied three witnesses into lying on the stand, it was the police and the Attorney General and the RCMP and the Crown Prosecutor who covered up contrary evidence of eyewitness evidence, that's what he's really saying isn't it?
- A. Yes.
1163. Q. Would you agree that those are really statements of fact rather than statements of opinion or comment on the part of Mr. Dunham?
- A. Again I would interpret them as statements of opinion but you may interpret them as statements of fact.
1164. Q. Could one reasonably interpret them as being statements of fact as easily as one could interpret them as being statements of opinion?
- A. I don't think the way they are said, no, I think because of the way he says them it's opinion.
1165. Q. Is there anything that anyone has ever told you to indicate that the police covered up contrary evidence of eyewitness evidence?
- A. I believe that what Mr. Dunham is referring to is the fact that Marshall and his attorneys weren't notified of Mr. MacNeil coming to the police station 10 days after Mr. Marshall was put in prison and actually - or Mr. MacNeil coming and saying that he had been in the Park at the time and that Mr. Ebsary had actually committed the crime.

1166. Q. You feel that was a cover-up by the police of eyewitness evidence.
- A. I believe that that is what Mr. Dunham is referring to as a cover-up.
1167. Q. Do you believe that that is a cover-up of eyewitness evidence?
- A. I'm not sure, I'm not sure as I do or not, but I believe that both Mr. Dunham and Mr. Harris had far more information on this case than I have and so I relied upon both of those two people plus the RCMP officer who indicated that there was some sort of a cover-up.
1168. Q. Did the RCMP officer indicate that?
- A. I don't think it was the RCMP officer who may have said specifically cover-up, I know that the word cover-up was certainly used by Mr. Dunham in the pre-interview.
1169. Q. And you think that's what he was referring to.
- A. I believe it is.
1170. Q. Was Mr. Dunham suggesting that there was a conspiracy between the RCMP officers who did the lie detector test and Chief MacIntyre to cover up evidence?
- A. I don't believe he was inferring that.
1171. Q. Well since the RCMP officers had a very significant involvement in MacNeil's statement would that not necessarily be the inference that Mr. Dunham was giving?
- A. That there was a conspiracy between both the RCMP?

1172. Q. Yeah, and the police to cover up.

A. I'm not sure, that's not what he says.

1173. Q. Well I take it, you correct me if I'm wrong, I take it from what you say that you personally had no knowledge, at the time of this broadcast, of any police cover-up of eyewitness -

A. I had been told, by both Mr. Dunham and I believe Mr. Harris, although you'll have to ask him yourself, that they considered that by withholding evidence from Marshall and his lawyers that that was covering up, and there was a mention of a jacket, a yellow jacket missing in the police lockup, or locker, that never appeared again, but I suspect that specifically what he was referring to was the evidence of Mr. MacNeil coming in saying Mr. Ebsary had done the crime.

1174. Q. In view of the information you had at this time that Ebsary passed the lie detector test when he said that he did not commit the murder, and that MacNeil's results were inconclusive, whatever that may mean, do you consider, do you personally consider that there is an obligation on Detective MacIntyre, as he then was, to go to the Defense counsel and advise him of this?

A. I think someone should have advised the other side that someone else had been in the Park, said he was in the Park and seen the murder, and that it didn't involve Donald Marshall, their client, although the polygraph test results were the way they were.

1175. Q. Do you consider that obligation was on Detective Sergeant MacIntyre in view of the RCM Police involvement?
- A. I don't think it was Chief MacIntyre's, possibly Chief MacIntyre specifically who should have gone, but someone should have notified them, possibly someone else in the Police Department, the then chief or -
1176. Q. Surely the RCMP.
- A. Or the RCMP, or the then Chief of Police.
1177. Q. But the inference that one takes from these pages is that it was Chief MacIntyre who was doing the cover-up.
- A. I don't think so, not from these pages, I think it's just the police who were doing the investigation, there was more than one police officer doing the investigation.
1178. Q. But you have stated that Police Chief MacIntyre was the person who was in charge of this investigation.
- A. That's true, he was in charge of the investigation. There was one other person involved in the investigation, Mr. Urquhart.
1179. Q. Well Mr. Urquhart's name is not mentioned at all.
- A. That's true.
1180. Q. So if a person out in Timbuctoo is listening to this program the guy they're going to think you're fingering is Detective Sergeant MacIntyre.
- A. That's true.
1181. Q. On page 8 Mr. Dunham says "Police cover-ups were the author

1181. Q. (cont'd) of his misfortune. Police coercing witnesses into lying on the stand was the author of his misfortune", there's no question that any person listening to this program across Canada would conclude that what Mr. Dunham meant was - who he meant was John MacIntyre, would you agree with that?

A. If you listened to the whole broadcast, yes.

1182. Q. Well you'd only have to listen to that part on page 6 when you fingered John MacIntyre, agreed?

A. Agreed, he was in charge of the investigation however.

1183. Q. On page 9 you say, "Today Donald Marshall is working in Halifax, he rarely goes back to Sydney. John Newman Ebsary was sentenced Thursday to 5 years in prison, his lawyer is appealing the conviction. Chief John MacIntyre is due to retire soon". Tell me, why did you say that, any particular reason for that?

A. I was just trying to say today where everyone is. I'd already said that he was presently the Chief of Police now.

MR. PUGSLEY: It would be convenient if we could adjourn now.

ADJOURN

JUNE 26th, 1984

9:00 a.m.

198.

HEATHER ELIZABETH MATHESON: CONTINUED EXAMINATION BY MR. PUGSLEY:

MR. PUGSLEY: Bob I'd like to examine Doug Grant and Roger Bill some time in the next couple of months at your convenience and at their convenience, if you could speak to them, and in view of the arrangement that we had I would ask you to instruct Miss Matheson not to discuss this examination with them.

1184. Q. Miss Matheson, it's obvious from Exhibit 2, the transcription of the news report, that you knew that Chief MacIntyre was going to retire shortly after this program was aired?
- A. That's correct.
1185. Q. You knew, in view of the allegations that were contained in this program, how serious it would be for a man who had served his community to have statements, such as existed in this exhibit, to be broadcast throughout Nova Scotia and throughout Canada?
- A. Yes, I did.
1186. Q. What attempts did you make to learn of his past reputation in this community as a law enforcement officer?
- A. I spoke to Mr. Cacchione and I believe that was the extent of my -
1187. Q. And what did Mr. Cacchione tell you about the reputation of Chief MacIntyre?
- A. I don't recall specifically except that the Chief had been with the force for a long period of time, and nothing specific actually.

1188. Q. Did he say anything bad about him?
A. Not that I recall.
1189. Q. Did he say anything good about him?
A. I don't recall specifically what was said.
1190. Q. All you do recall is that he was with the force a long period of time?
A. For a long period of time, at the time of the investigation was the chief investigating officer.
1191. Q. Do you consider it to be responsible journalism to have the comments that are contained in Exhibit 2 aired to 500,000 people without making any check into this man's background and his reputation?
A. I consider it responsible, yes.
1192. Q. The information that has been provided indicates that there is a listening audience of 500,000 Canadians. Does the CBC have any breakdown what the audience is in Nova Scotia of that 500,000, and what that audience would be in the Sydney, Nova Scotia area?
A. I'm not sure, there's an entire office in the CBC that takes care of statistics like that.
- MR. PUGSLEY: Could we check into that Mr. Murrant, and if there is any advice available as to what would be the listening audience in Nova Scotia and the listening audience in the Sydney area as well, I would appreciate it.
- MR. MURRANT: Say if we use Nova Scotia.

MR. PUGSLEY: Yeah.

MR. MURRANT: Perhaps Cape Breton Island.

MR. PUGSLEY: Yes, that would be fine, Cape Breton Island would be fine.

1193. Q. You advised me yesterday that although you did not personally know Parker Barss Dunham before you met him, I guess, on Thursday the 24th of November, 1983, people had spoken to you in the CBC about him?

A. That's true.

1194. Q. And who are the people who spoke to you about him?

A. Havoc Franklin and Douglas Grant.

1195. Q. Anyone else?

A. No.

1196. Q. What did they tell you about him?

A. They told me that he was a well thought of good journalist who was used frequently for stories in this area, in this region, and that he'd done other responsible stories in the past, both for our program and other programs.

1197. Q. Did they tell you what those stories were?

A. I'm sure they were mentioned, I don't recall them right now. Stories dealing with this region, like it would be mining or something.

1198. Q. Do you know where Mr. Dunham is from?

A. I did ask and I don't recall at the time.

1199. Q. He's not a native Nova Scotian I take it?

1199. A. I'm not positive.
1200. Q. You indicated that the interview you had with Mayor Manning MacDonald was about 5 minutes in length?
- A. 5 or 10 minutes, it was brief.
1201. Q. And the broadcast part of that interview that is contained in Exhibit 2 is 12½ lines, I suppose that would be 40 seconds to a minute, something like that?
- A. That's correct.
1202. Q. Do you recall what you left out of the interview?
- A. I don't recall, I believe I asked him a question about an Inquiry, if I can just refer to this, I'll find it, recall what he specifically said.
1203. Q. Page 6 I think.
- A. I recall that I asked him about an Inquiry, I don't recall specifically his response. I pressed him, I believe, to elaborate and then he had his meeting so he couldn't - he was pressed for time.
1204. Q. Did he say anything further about, or did he say anything at all about John MacIntyre?
- A. He said only favourable things about Chief MacIntyre. I don't think he said them - or I read this quote as a very favourable response about Chief MacIntyre.
1205. Q. Well this quote that is contained in the broadcast does not refer to Chief MacIntyre by name. Did he speak of Chief MacIntyre in the interview with you?

1205. A. I don't believe he did.
1206. Q. You don't think he mentioned his name?
A. I don't recall, frankly I don't recall.
1207. Q. Did you mention Chief MacIntyre's name in the interview with him?
A. I believe I told him that I tried to reach Chief MacIntyre, and that the reason I was speaking with him was because I couldn't reach Chief MacIntyre, and asked him specifically about an Inquiry and how he felt an Inquiry, what effect it would have on the community and his reaction, his feelings about the force and this was his response. I don't recall, I believe there was perhaps one other question asked that he, as I recall, didn't answer on point, or something, so I didn't use it, but I wanted to use as much as I could.
1208. Q. Did Mayor Manning say anything at all about Chief MacIntyre being a fine Police Chief who had performed extremely well for the City of Sydney for many years and had done a first rate job, words to that effect?
A. He may have done, I don't recall.
1209. Q. If he did do that -
A. I believe I would have put it into the broadcast if I did have it on tape.
1210. Q. It certainly was not in the broadcast?
A. No.
1211. Q. You're satisfied, are you, that there are no comments that

1211. Q. (cont'd) Mayor Manning made about Chief MacIntyre that were
laudatory that you eliminated from the tape?

A. To the best of my knowledge, yes.

MR. PUGSLEY: Bob, do you have any objection showing to me the
draft response of the interrogatories that you have?

MR. MURRANT: No.

MR. PUGSLEY: I know that you're going to be filing a formal one,
but if I could take a look at that it would be helpful to me in
directing some questions to Miss Matheson.

MR. MURRANT: What we were going to do is treat Item 5 as amended
by the oral evidence she's given.

MR. PUGSLEY: Quite right.

MR. MURRANT: Which is the pre-interview matter. The rest is -

MR. PUGSLEY: Is satisfactory is it.

MR. MURRANT: We're happy with, yes.

MR. PUGSLEY: In the interrogatories directed to the Defendant,
Miss Matheson, I asked what fee was paid to Mr. Dunham for
appearing on the program and your response is "I say that a
normal freelance fee was paid to Parker Dunham to appear on the
program but object to state the amount as the same is
irrelevant". That's the position of the Defendant is it, that
it's irrelevant?

MR. MURRANT: Yes, she may have alluded to it previously.

MR. PUGSLEY: I think she did, yes.

1212. Q. And then you say that Parker Dunham appeared on the program

1212. Q. (cont'd) at other times being December 9, 1979, February 10, 1980, February 10, 1980, September 27, 1981, January 30th, 1983, and November 27th, 1983, and when we say the program we mean Sunday Morning do we?
- A. That's correct.
1213. Q. In the notebook, Exhibit Number 1, the name appears underneath. Attached to the inside cover there is a blue piece of paper which says "Havoc's home number 423-7511" and underneath that is the word Jim Carroll, who is Jim Carroll?
- A. Corporal James Carroll.
1214. Q. And who is he?
- A. Corporal James Carroll was one of the people involved in - he is in Sydney now with the R.C.M.P.
1215. Q. Did you have any discussion with him at any time?
- A. I called Corporal Carroll and on two occasions tried to get through. One he was not there and the second instance I don't recall whether he was unavailable to see me or would not see me, I don't recall.
1216. Q. So you never talked to him?
- A. No, I didn't. Well if I did he said he was unavailable or wouldn't comment.
- ~~1217.~~ Q. In the Defense document that has been filed by the CBC, have you seen that document?
- A. I'm not sure which one you're referring to.
1218. Q. This is a document dated the 22nd of March, 1984. I direct

1218. Q. (cont'd) your attention to Number 5 which reads "In further alternative the Defendant states that many of the passages of the alleged broadcast which are claimed to refer to the Plaintiff are in fact not referable, or to be fairly interpreted as referable, to the Plaintiff." Can you refer to me, by reference to Exhibit 2, what passages of the alleged broadcast are not fairly referable to John MacIntyre?
- A. This is, I take it, whenever mention of the police is brought up?
1219. Q. Yes, may I suggest to you that because of the reference to John MacIntyre being responsible for the police investigation that any reference to the police in Exhibit 2 is fairly interpreted as being referable to John MacIntyre?
- A. I don't agree in all cases.
1220. Q. All right, tell me which ones you do not agree with.
- A. My interpretation of that on page 2 of Mr. Dunham's statement "two of them actually testified that they watched him do the crime and those three witness now say that they were bullied or coerced by the police into changing their story." I believe it could have referred to either Chief MacIntyre or the other police officer involved in the questioning.
1221. Q. But since that other police officer is not named in the program would not it be reasonable for a listener to assume that what was intended was disparaging remarks about Chief MacIntyre?

1221. A. I think it's possible, but I don't think that it's necessarily - that it's absolutely necessary that someone would infer in that particular statement. I think there are other statements as well.
1222. Q. Well let's take a look at page 6 where you pin the Chief, you say "The man in charge of the City Police investigation back in 1971 was Detective Sergeant John MacIntyre, he was responsible for taking statements from the witnesses." Now is not the fair inference there that when you refer back to page 2 that the person who is responsible for bullying or coercing witnesses was Chief MacIntyre? That's a fair inference is it not?
- A. Because he was the one person in charge I think saying that he was responsible is a fair comment in that case.
1223. Q. Oh yes, but my question to you is this, when you read your comments on page 6, or listen to your comments on page 6, is it not reasonable to infer that the person who is being criticized on page 2 by Parker Dunham is Chief MacIntyre?
- A. I don't think so. I think that in the reference of by the police that he's not naming a name and I think that because I named that Chief MacIntyre was in charge of taking statements that the audience would assume that there more people involved than just one person in taking statements from witnesses.
1224. Q. Would they assume that Police MacIntyre either took the

1224. Q. (cont'd) statements from or impliedly or expressly agreed to the bullying or coercing?

A. They may have believed that but I'm not sure that they would. I suspect that they believe that he was in charge of the investigation and in charge of taking statements from the witnesses.

1225. Q. And as a consequence either bullied or coerced himself or knew of the bullying or coercing of those witnesses by the police if he didn't take their statements?

A. Or did not know of them.

1226. Q. Or did not know of them. Who possibly could know of them? Surely to goodness to eliminate a reference to Chief MacIntyre you would have had to say Chief MacIntyre did not know of the bullying or coercing. Is not the fair inference that Police MacIntyre either did bully or coerce or knew of the bullying or coercing and impliedly agreed to it?

A. That's a fair inference.

MR. MURRANT: I may get an objection in while we're on the script. The script does speak for itself, and what she intended to say -

MR. PUGSLEY: Yes, but she wrote the script, she wrote her own script and she approved the comments of the other people, and let's clear this up.

1227. Q. Miss Matheson, you take responsibility for everything that was said in the script don't you?

1227. A. Yes, I do.

MR. MURRANT: The point I'm making is that what she intended to say is not relevant, the script speaks for itself.

MR. PUGSLEY: I agree with, well, yes.

MR. MURRANT: It's not a defence for her and it's not an advantage to the Plaintiff, I mean it's for someone else to interpret.

MR. PUGSLEY: That's right.

MR. MURRANT: Subject to that I don't mind you, you know, pursuing your inquiries as long as I have that on the record.

1228. Q. Again there's a reference, Miss Matheson, at the bottom of page 2 to the police "An R.C.M.P. investigation last year", this is in your words, "revealed that all three had been questioned at least twice, each time under pressure to stick to the story that the police wanted to hear". Is it not a fair inference for a listener to conclude that the person that you meant there when you used the word police was John MacIntyre?

A. Up to this stage in the script Chief MacIntyre's name had not been mentioned. I think that every reference to the police, up until the stage until he is referred to specifically, ~~is a~~ general statement about the Sydney Police and the police investigation. One could infer, after the reference to Chief MacIntyre, that the word police included the Chief MacIntyre. I don't believe that the phrase "to stick to the story that

1228. A. (cont'd) the police wanted to hear" in this script instance specifically refers to Chief MacIntyre.
1229. Q. Would you not agree that by building up suspense, if you like, for five and a half pages, and not mentioning any name at all, the audience is going to be wanting to know who is the guy who's done all these terrible things, and then when a name is revealed on page 6 immediately the light's going to go on in the listener's mind, it's John MacInyre, that's who they mean?
- A. I think that the thing that they can infer from that is that Chief MacIntyre was the person who was, at that time, in charge and responsible for the investigation.
1230. Q. And responsible for all the bad things that are said about this investigation.
- A. Yes.
1231. Q. And am I correct in suggesting to you that you were building up suspense in a way, or having the listener wait until half or three quarters of the program was over before mentioning Chief MacIntyre's name or -
- A. No, there was no intention to do that. The intention was to give a background to the story and to explain the various aspects of the case and then take a look at the recent developments and reaction in the community to the call for an Inquiry.
1232. Q. On page 6, in your comments, the last sentence, "He refused

1232. Q. (cont'd) to discuss the matter and has ordered his men not to comment, but Mayor Manning MacDonald stands behind him." The word "but" that appears in that sentence, that was an obvious deliberate choice on your part?

A. I don't know if I gave any thought to the word "but". I certainly meant to say that it was intended that although Chief MacIntyre wouldn't speak there are certainly people who will speak in favour of him, and of the police force and the job that they were doing in the community in terms of the investigation.

1233. Q. The inference I took from listening to it and reading this sentence was that MacIntyre had something to hide but nevertheless that -

A. Unfortunately when people don't comment it's left to us to find someone who will, so in order to explain to the audience that, of course, we should have had Chief MacIntyre commenting on this because of the charges or the references earlier on, the word "but" I don't think intends any malice at all, and is simply a word to bridge the fact that the Chief is not speaking to us, however, but or however would be interchangeable there.

1234. Q. Do you not agree that it would have been fair to say that he refused to discuss the matter and has ordered his men not to comment. Mayor Manning MacDonald stands behind him. The introduction of the word "but" implies, may I suggest to you

1234. Q. (cont'd) creates the impression that MacIntyre had something to hide, notwithstanding that the Mayor still stands behind him?
- A. I certainly don't read it that way.
1235. Q. The reference to police that is contained on page 3, in the comments of Patricia Harriss obviously refers to John MacIntyre, and the impression that would be created in the mind of a listener after hearing your reference to John MacIntyre on page 6 would be that it was John MacIntyre who did these things that Patricia Harriss alleges were improper?
- A. I don't think that's fair to say. I think that whenever in a reference like this "the police interviewed me" had she said a police officer interviewed me, or the Inspector interviewed me, or the man in charge interviewed me then it certainly would have been a specific reference, but I think that an audience would read from the police interviewed me the police, more than one person I believe.
1236. Q. Fair enough, but certainly including John MacIntyre?
- A. It's possible, yes, of course.
1237. Q. May I suggest to you it's not only possible but it's the likely conclusion?
- A. Yes. On page 7, the reference to police investigation, I -
1238. Q. I'm sorry where is that now.
- A. In the script from "the police investigation" up to "the way the case was handled".

1239. Q. What line is that, I'm sorry?
A. 6 lines from the top.
1240. Q. Oh yes, your comments.
A. Referring to that simply that's again a reference to all the investigators, people who were involved, not just the two people, but the people on the force who were out finding witnesses and all the people in the investigation.
1241. Q. But certainly including John MacIntyre?
A. John MacIntyre was on the force at the time.
1242. Q. He was head of the investigation?
A. That's correct.
1243. Q. So the fair inference in the mind of a listener is that you would be meaning certainly John MacIntyre among others?
A. I don't believe that the audience would actually say John MacIntyre among others. I believe that they would be thinking the police force.
1244. Q. Yes, but you have made it very clear who the person is.
A. On page 6, named him as the person in charge of the investigation.
1245. Q. And the person responsible for taking statements, and again you go on to say "and today his detractors want him to account for his handling of the case." I mean there's no question that the person pinned in this news report was John MacIntyre? It has to be, Miss Matheson, -
A. That's true.

1246. Q. Did you ever give any thought to not naming him, any thought or discussion?
- A. No.
1247. Q. Why was that?
- A. Because he was the person responsible for the investigation at the time. There was possibly some thought given once I realized that he wasn't going to speak with us. There was possibly some thought given to not using his name once I realized that he wasn't going to speak with us.
1248. Q. Did you discuss this with anyone?
- A. I don't think I did, except by expressing my concern once I handed in my script and tape to my Senior Producer and Executive Producer.
1249. Q. Going back to the Defence Document, number 6, section number 6 of the Defence Document. As you realize, this is an action for damages and section 6 says "As to the claims for relief, and those relief, and in part being damages, in the Statement of Claim the Defendent states that the character and reputation of the Plaintiff is such that if the alleged broadcast occurred, as alleged, then the same did not materially affect the character or reputation of the Plaintiff." Well we certainly know, you agree with me that the alleged broadcast did occur?
- A. Yes, I do.
1250. Q. Do you say that this broadcast did not materially affect the character and reputation of the Plaintiff?

1250. A. I read from this statement that because there had been public calls for inquiries into the original investigation that this particular broadcast would not have changed the attitude of listeners or people familiar with this story.
1251. Q. Did anyone ever say before that Donald Marshall was sent to jail because of a police cover-up by John MacIntyre? Did anyone ever say that before?
- A. I'm not aware of whether someone has said that or not.
1252. Q. Did anyone ever say to a listening audience of 500,000 people?
- A. I'm not aware. I understand that there have been other national broadcasts on this case.
1253. Q. Most of us, and would you not agree that the public attitude in Canada toward the CBC is one of very substantial respect. We don't consider the CBC, most of us don't, and I ask you to comment on this, some fly-by-night radio station out in Timbuctoo. It's considered to be a responsible organization, would you agree with that?
- A. Yes, I would.
1254. Q. And to some extent under the aegis and supervision of the Government of Canada?
- A. That's true.
1255. Q. So that when something comes out over the CBC people treat it with respect.
- A. People who are CBC listeners are fairly loyal listeners.

1255. A. (cont'd) They may not like what they hear, they may not agree with it.
1256. Q. May not, but nevertheless they treat the views expressed by people on the CBC with respect. It's something to be considered seriously?

A. I would suspect so, or to be argued with, I'm not sure. In fact there's sometimes negative response to things, people don't want to hear various issues brought up.

MR. PUGSLEY: Bob, in the Reply to the Demand for Particulars, in Item 2, it says "As to Item 2 of the Demand for Particulars, the judicial proceedings in question include Regina versus Donald Marshall one, tried before Dubinsky J. with jury at Sydney, Nova Scotia on November 2nd, 3rd and 4th and 5th, 1971 and a subsequent rehearing of the matter in the Supreme Court of Nova Scotia Appeal Division under S.CC. No. 00580 heard on the 16th day of February, 83. That should be December '82 should it not, unless I'm missing something. Did you mean February 16th, '83?"

MR. MURRANT: I think it completed that day.

MR. PUGSLEY: I see, okay, that's the reference to it.

MR. MURRANT: It's one and the same.

1257. Q. Has the program been played only on the one occasion?

A. That's correct.

TAPE OF CBC'S SUNDAY MORNING BROADCAST:

Hello Halifax, hello Halifax, we have an item to the attention of Havoc Franklin from Sunday Morning. The item is coming over to

TAPE: (cont'd) you in 5 seconds. On Thursday, in Sydney, Nova Scotia, Roy Newman Ebsary was sentence to 5 years in prison for the 1971 murder of Sandy Seale, a murder for which an innocent man had already spent 11 years in prison. That man was Donald Marshall Junior and his case is unprecedented in Canadian legal history. It is the first time a murder conviction has been oveturned after an innocent man has spent so long in prison. Donald Marshall is free today but his case has sparked demands in Nova Scotia for a full public inquiry.

1258. Q. The opening lines "On Thursday, in Sydney, Nova Scotia" read by a male -
- A. Christopher Thomas.
1259. Q. In Toronto?
- A. Yes, in Toronto, and the female is Barbara Smith.
1260. Q. In Toronto?
- A. Yes, in the studio.
1261. Q. Why was that done, why did they do the intro?
- A. They always read introductions to documentaries in the studio.
1262. Q. We discussed briefly what you meant by the word documentary yesterday. You classify this as a documentary and what do you mean by that as distinct with what? I mean what do you compare that with.
- A. A news story.
1263. Q. A news story, what's the difference between the two?

1263. A. A news story is on the newscast and it's about a minute and 20 seconds, and a documentary is a longer treatment of a story, whether it's a news story or -

1264. Q. And that's the only difference that you see between the two?

A. A documentary sometimes involves investigations, sometimes just more explanation of an issue, just a longer treatment I believe.

TAPE: (cont'd) This is Heather Matheson at Wentworth Park in Sydney, Nova Scotia. It was here on the night of May 28th, 1971 that Sandy Seale was stabbed to death. At the time of the murder there were four people in the park. Donald Marshall, a 17 year old Micmac Indian from a nearby reserve; Roy Newman Ebsary, a short older man with white hair and a long cape; James MacNeil, his companion, and the victim, black teenager Sandy Seale.

Donald Marshall remembers the night.

DONALD MARSHALL: I wasn't going down the park to rob nobody. I was going down there to start with to look for Indian guys. That's where we hung out and that's what I was doing, going down there and looking around right, to see if I could find my buddies, and I happened to bump into Sandy Seale and I told him why don't you make some money with me.

HEATHER MATHESON: At midnight Marshall and Seale met up with Ebsary and MacNeil.

1265. Q. You read your script in Toronto didn't you?

A. Yes, I did.

1266. Q. Yes, that's right, you would have recorded that on the Saturday afternoon I guess?
- A. Or late Saturday night.
1267. Q. And the background noises for your first comments on page 1 were background noises of Wentworth Park?
- A. That's correct.
1268. Q. And Marshall's statement was actually recorded in Felix Cacchione's office?
- A. That's correct.

TAPE: HEATHER MATHESON: (cont'd) Words were exchanged and within moments Seale lay dying on the pavement. When the first police car arrived Donald Marshall was leaning against a tree with a gash in his forearm. Ebsary and MacNeil had fled.

1269. Q. What is that?
- A. That's a gavel.
1270. Q. That's a gavel, and you just took that off another tape?
- A. Yes.
1271. Q. And what is the purpose of that?
- A. Well basically it's used for pacing or to keep people's attention.

TAPE: HEATHER MATHESON: (cont'd) Five months later Donald Marshall was sentenced to life in prison for the first degree murder of his friend, Sandy Seale.

- A. (cont'd) Excuse me, can I interrupt and say that it's also used in this case to show a change in time.

TAPE: HEATHER MATHESON: (cont'd) Parker Barss Dunham is a Cape Breton journalist. He's been following the Marshall case ever since. He says the evidence against Marshall was flimsy.

1272. Q. Is that a fact that Parker Barss Dunham has been following the Marshall case since 1971? Do you know that?

A. He's followed the case from, I don't know whether he, in 1971, started clipping newspapers but I know that he has total, or I know that he has extensive files and has done investigations on his own dating back to '71. I'm not sure whether it began in '71.

TAPE: PARKER BARSS DUNHAM: Marshall was a young indian with a reputation as a tough kid, and really, when he showed up as a suspect, I think the police's problems were over. Now since then you've had three witnesses come forward whose testimony was crucial in convicting Donald Marshall, two of whom actually testified that they watched him do the crime, and those three witnesses now all say they were bullied or coerced by the police into changing their story. We know also that another individual came forward 10 days after Marshall's conviction and fingered the real killer, fingered Roy Newman Ebsary, said he was with Ebsary that night at the park and told what is now accepted as the real version of the story.

1273. Q. Dunham gives a dramatic reading, would you not agree, or is a dramatic interviewer. He uses a lot of emphasis in his topic?

1273. A. He's known as a good radio broadcaster. He wasn't reading he was just commenting.

1274. Q. I shouldn't say a dramatic reader but he speaks with emphasis.

A. Yes, he does.

1275. Q. And emotion.

A. When the emotion moves him he speaks with emotion.

TAPE: HEATHER MATHESON: The Crown's case against Donald Marshall rested on the testimony of the three witnesses.

1276. Q. The background noise there was, I guess, just courthouse noise was it, outside the sentencing -

A. I believe that it was, yes.

TAPE: HEATHER MATHESON: (cont'd) Patricia Harriss, Maynard Chant and John Practico. An R.C.M.P. investigation last year revealed that all three had been questioned at least twice, each time under pressure to stick to the story the police wanted to hear. It was their revised incriminating statements that put Donald Marshall behind bars. From that R.C.M.P. investigation Patricia Harriss' recollections of the police questioning.

1277. Q. What's that noise?

A. That's again another sound effect that we use just to indicate that this is going to be a dramatization or something different than what people have heard so far. Also I'd like to point out that yesterday you were remarking that this sounded like the voice of Patricia Harriss. The

1277. A. (cont'd) phrase here and prior to Maynard Chants statement "from that Police R.C.M.P. investigation recollections" and then the second witness, Maynard Chant, "an excerpt from the same R.C.M.P. investigation", both are sound effects, they're certainly meant to set it up as a dramatization and not the real people speaking. I think that was something that you were concerned about yesterday.
1278. Q. Oh yes, I was concerned about it and may I suggest that you didn't say 'here is a professional actor', or 'here is a professional actress, reading part of the statement that Patricial Harriss or Maynard Chant gave'. I mean there was no advice like that to the audience, right?
- A. There was no advice like that but I believe that in scripting and sound effects it's established that this isn't the voices of the people, I believe that.
1279. Q. What kind of listeners have that knowledge of the radio broadcasting technique do you think?
- A. Well on Sunday Morning it's not the norm to set up a dramatization and say this is a dramatization.
1280. Q. No, I agree with that, but on the other hand, and I agree with you, you didn't say 'here is Patricia Harriss reading her own statement', you didn't make that allegation, but is not the fair inference, listening to this, that it is, in fact, Patricia Harriss and Maynard Chant who were talking?
- A. I believe the inference is that it's a dramatization and that's why it's set up the way it is.

1281. Q. And the reasons you say that are what?
- A. Are first because of the words "from that R.C.M.P. investigation recollections" and then an excerpt from the same reinvestigation, and the sound effects.
1282. Q. And how do the sound effects indicate that it's not Patricia Harriss talking?
- A. It's a commonly used technique in radio broadcasting, that is sound effects like that is used to set aside. I agree that it's quite possible to have said that this is definitely a dramatization but, instead of doing that, decided that I would set it up this way.
1283. Q. You think the screeching noise would indicate to the audience that this a dramatization and a professional actress reading Patricia Harriss' statement?
- A. I thought it would.
- TAPE: PATRICIA HARRISS: I don't recall exactly how many times I was taken to the police station. I found they were needlessly harping at me, going over and over telling me what they thought I should see. They took statements from me and changed them.
1284. Q. Pretty heavy stuff isn't it? I mean the emphasis of this professional actress is, you know, a pretty dramatic version, goodness knows whether Patricia Harriss talks this way or not.
- A. That's true.

TAPE: PATRICIA HARRISS: (cont'd) This took hours and hours and my parents were not allowed in. They came to the police station and they let me out once to see them, but that was it. I didn't feel their actions were proper. I recall them banging their fist on the desk. I definitely did not see Sandy Seale in the park that night.

HEATHER MATHESON: The second witness, Maynard Chant, an excerpt from the same R.C.M.P. reinvestigation.

MAYNARD CHANT: I did not quite make it -

1285. Q. As a matter of interest, how do you make that sound? What is it?

A. It's a sound effect that Sunday Morning has had on tape for quite a long time. It's done with a reverberation technique and just a single sound and then they just carry it on.

TAPE: MAYNARD CHANT: (cont'd) to the park and a guy in a yellow jacket came running up to me. He showed me his arm where he had been cut and he told me his friend was stabbed over in the park. The police interviewed me that night and I repeated what Marshall had told me. I don't know why, I had to say something. I definitely did not see the murder. Everything was over by the time I got over where Seale was. In the second statement I told the detectives I saw the murder. They told me that another guy had seen me in the park and I had to see it, so that's what I told them.

1286. Q. And that was Mr. Grant, or Mr. -

1286. A. Yes, it was.

TAPE: HEATHER MATHESON: The third key witness was John Pratico. In 1971 he first told the Sydney Police that he hadn't seen the murder. Then five days later he said he had seen Marshall stab Sandy Seale. R.C.M.P. investigators discovered that Pratico had been under psychiatric care and, according to his doctor, he was not a reliable witness.

1287. Q. What's that, that screeching noise and it sounded like steps walking.

A. I'm not sure, if I could hear the rest of it I could tell you.

TAPE: HEATHER MATHESON: (cont'd) Ten days after Marshall was sent to prison -

A. (cont'd) That's a prison, walking prison sound.

TAPE: HEATHER MATHESON: (cont'd) James MacNeil, the fourth man in the park the night of the murder, walked into the Sydney Police Station. He told officers there that Roy Ebsary had actually stabbed Sandy Seale. The Sydney Police called in the R.C.M.P. They administered lie detector tests to both MacNeil and Ebsary. MacNeil's was inconclusive but Ebsary passed his, so the Sydney Police closed the door on the affair.

1288. Q. Why the use of the word "so", any particular reason for it?

A. As opposed to what?

1289. Q. As opposed to saying anything, as opposed to just starting the sentence the Sydney Police closed the door. The

1289. Q. (cont'd) inference, I suggest to you, is that because of the results of these lie detector tests, in the one case Ebsary passing, in the other case MacNeil's being inconclusive that the Sydney Police just closed the books and forgot about this thing, when really they should have done something more.

A. I don't think that the inference, or I - the inference is not there that they should have done something more, "so the Sydney Police closed the door on the affair" simply means that this issue came up, a polygraph test was administered, the results indicated that nothing else should be done, or that Ebsary passed his test and that the results of Mr. MacNeil's were inconclusive, and given that information, Mr. Marshall was already in prison, there was nothing new at that time to indicate that anything should go on so they closed the door on the affair.

TAPE: HEATHER MATHESON: (cont'd) Michael Harris is a reporter for the Globe & Mail. He's writing a book on the Marshall case.

MICHAEL HARRIS: The fact that you get an inconclusive reading when a person is coming with an eyewitness account of a murder is not really grounds, anywhere that I have heard of, for closing a book on a case, and yet not a single interview, by the R.C.M.P., with the original witnesses at that trial was ever conducted. Those two polygraph tests represented the full course of their reinvestigation and you have to wonder what might have happened if, armed with James MacNeil apparently describing the same man

TAPE: MICHAEL HARRIS: (cont'd) Donald Marshall was describing in his evidence in court, what would have happened if those R.C.M.P. guys had gone to the original witnesses and said, you know, did you lie, do you stick by your story? Twelve years later they completely welcomed the R.C.M.P. asking them that question and immediately volunteered that they, in fact, had lied and had felt very uncomfortable with it for years, but no one went back and asked them.

HEATHER MATHESON: The indian community had been following the case carefully. Donald Marshall was the son of their Grand Chief at Membertou Reserve. He was known as Junior. Kevin Christmas is a friend.

1290. Q. Is the background noise there in your speech Wentworth Park again?

A. Either Wentworth Park or the street outside, the main street.

TAPE: KEVIN CHRISTMAS: You know, you're here in this court system, you know, and to be judged by your peers. I mean there were all kinds of Indians that were with him that night. There were all kinds of Indians who were with him after that night. I was with him after it happened that night. We knew deep down _____ inside and, in fact, we didn't even have to question Junior, we didn't have to say 'hey, did you do it?' 'cause we knew that he wasn't capable of doing it. Even, if he wanted to he wasn't capable of doing it, and we knew that the City would somehow turn

TAPE: KEVIN CHRISTMAS: (cont'd) that damn situation around. We had the hope that he would get off but we all sort of looked at each other and knew that he was being set up, and we knew that he was going to be gone, you know, and whenever we sat down - when the trial was on, the original trial was on, I remember sitting down with Junior and saying boy, I said, you know, it doesn't look good. I said I think they're going to get us again, and he said, you know, Jesus I hope not, and it happened, and we just withdrew back into our Reserve again and said they did it, they did it again.

HEATHER MATHESON: The brutality of the murder of Sandy Seale came as a shock to the people of Sydney. Sydney is a quiet town, a mining center with DEVCO and Sydney Steel the main employers. Parker Barss Dunham remembers what it was like then.

PARKER BARSS DUNHAM: I think it's crucial to understanding this story is the fact that there's almost no crime in Sydney. It's a town where, at least until very recently, it's safe to send your child down to the corner store at 10 o'clock at night for a bottle of milk or something. When this murder arose it was a phenomenally traumatic event, more so than you would think in a city of 30,000 that is the center of an industrial area of 120,000 people. People were appalled that a 16 year old could be murdered in the downtown park and there was enormous pressure on the police to solve the case.

HEATHER MATHESON: Down the street from Wentworth Park, less than

TAPE: HEATHER MATHESON: (cont'd) a mile from the R.C.M.P. Headquarters in Sydney, is Membertou Reserve, 400 Micmac Indians live there. Until 1967 there was no running water, no electricity, only shacks. For the Indians it was a source of embarrassment and resentment. Kevin Christmas says there has always been an uneasy relationship between the races in Sydney.

KEVIN CHRISTMAS: We would come into town and we would be a disgrace to the town, for lack of a better term. You know, we would look poor, we would look dirty, we would, I guess perform within a certain stereotypical image that existed in that community.

HEATHER MATHESON: The man in charge of the City Police investigation back in 1971 was Detective Sergeant John MacIntyre. He was responsible for taking statements from the witnesses and today his detractors want him to account for his handling of the case. According to a memorandum from an R.C.M.P. investigating officer there was no complete record of the investigation, no autopsy, no photographs and no list of who was in the police line-up.

1291. Q. When you said that his detractors wanted to account for his handling of the case who did you have in mind?
- A. At the time there were newspaper accounts of people calling, among them Mr. Cacchione, and a public sort of concern, an interest in having a reinvestigation, from the newspaper accounts.

1292. Q. Anyone else apart from Mr. Cacchione?
- A. I can't tell you specifically but at time, reading the newspapers, the newspapers were saying that there was - and the newspapers, that there was a call for -
1293. Q. Were they requesting an investigation as distinct from calling for an Inquiry to require Chief MacIntyre to account for his handling of the case? Was it specific, in that sense, or was it just a general request for an investigation into the matter?
- A. As I understood it was an investigation into the original investigation which was handled by Chief MacIntyre.
1294. Q. Well let's make it a little bit more particular. Apart from an investigation into his handling of the matter these words give the impression that these people felt that there was an onus on Chief MacIntyre to explain and justify his handling of the case. Are you saying that there was that kind of an outcry from his detractors?
- A. I'm saying that in his position then, as head of the investigation, and at the time of this broadcast as Chief of the Police, that in his position of authority that there was a call for an investigation.
1295. Q. A call for an investigation as distinct from an obligation on him to account for his handling of the case? These words go farther than simply an investigation. They suggest that there is a burden on him to satisfy that he handled this thing properly.

1295. A. He and the police force?
1296. Q. He, John MacIntyre.
- A. That he and the police force handled it properly.
1297. Q. Well that's not what it says, it says his detractors want him to account for his handling of the case?
- A. And his as the Chief of Police and then Chief Investigating Officer.
1298. Q. But are you saying that at this time there was a demand by people for an accounting by him?
- A. That was my understanding.
1299. Q. And who gave you that understanding?
- A. Parker Barss Dunham, Michael Harris, Mr. Cacchione.

TAPE: HEATHER MATHESON: (cont'd) John MacIntyre today is the Chief of the Sydney Police. He refused to discuss the matter and has ordered his men not to comment, but Mayor Manning MacDonald stands behind him.

MAYOR MacDONALD: Well there's no question about it that the reputations of some fine police officers in the City of Sydney have been somewhat tarnished over the past few years. Back in 1971, the original investigation, our police officers acted at that time on the information that was presented to them. It's extremely unfortunate that this situation ended up the way it did, but this is not going to be the last one. If you're a police officer you're going to run into those altercations with the public from time to time and we see it almost on a daily

TAPE: MAYOR MacDONALD: (cont'd) basis now where police officers are being challenged and many many more inquiries are coming forth all the time, and I think that the Police Commission and the, especially the Nova Scotia Police Commission, are going to have to take a hard look at that.

HEATHER MATHESON: Supporters of Donald Marshall are calling for a public inquiry into the case, from the police investigation up to the way the case was handled at trial. Journalist Parker Dunham says the Supreme Court decision freeing Marshall must not be the final word on the matter.

PARKER DUNHAM: The Supreme Court Justices who handled that case in Nova Scotia maybe have more to answer for than anyone. Their decision was an entirely political decision. They went out of their way to give Nova Scotia an out, to make it possible for Nova Scotia to abdicate its responsibility. They took a kid who had been sent to the slammer for 11 years for something he didn't do and basically they said 'it's really not the system's fault, it was that kid's fault because on that particular day he didn't confess to a crime that the judges have apparently concluded that he committed'. They say that he was trying to rob Roy Newman Ebsary. The judges have the, you know, the incredible heartlessness to say the system, of which we are pillars, should not be called to count for this. It's really this young punk that caused it all. It wasn't the police who bullied three witnesses into lying on the stand, it wasn't the police and the

TAPE: PARKER DUNHAM: (cont'd) Attorney General, and the R.C.M.P., and the Town Prosecutor who covered up contrary evidence of eye witness evidence that someone else had committed the murder. 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, we can't be sure he was guilty of murder but any injustice is more apparent than 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's the whole judicial system that needs now to be called to account.

HEATHER MATHESON: Since Donald Marshall was set free his case has become a political hot potato. The Federal and Provincial Governments have refused to pay legal expenses or to compensate him for the time spent behind bars. Parker Barss Dunham says the judicial system is abdicating its responsibility to Marshall and points the finger at Ottawa.

PARKER DUNHAM: Mark MacGuigan was discusting, I mean he stood up in the Commons and in this very clever, smart-alecky way said that, 'oh well you wouldn't want me to interfere with a matter of provincial jurisdiction'. I mean is there nothing that

TAPE: PARKER DUNHAM: (cont'd) politicians won't try to make political points out of? I mean doesn't it ever come a point where you say my God something wrong has happened here, let's set it right. At the same time you had John Munroe standing up giving this fervent heartfelt description of how much he felt for Donald Marshall, he felt almost enough to lift a finger for him but not quite, you know, and that's what we're getting all down the line. It's somebody else's problem. It's somebody else has to do something about it, or oh gee it would be a little too upsetting to take a look at that. Well, you know, it's just not good enough.

HEATHER MATHESON: Donald Marshall says he isn't bitter. He says he's a survivor. As a Micmac in Sydney he has had to be.

DONALD MARSHALL: I think that people that were involved in it, they, you know, I think to them I was a nobody to them, you know, the type of race that would just shut up, right. You know, people like that, the big people, you know, they got priorities, you know, they're on top and it got to a point where it was too late to let me go. In their minds, in their law, one side is right or wrong, you know, whether you're right or wrong, you know, the power got the right. This time I'm right and they're wrong.

HEATHER MATHESON: Today Donald Marshall is working in Halifax, he rarely goes back to Sydney. Roy Newman Ebsary was sentenced Thursday to 5 years in prison, his lawyer is appealing the

TAPE: HEATHER MATHESON: (cont'd) conviction. Chief John MacIntyre is due to retire soon. Now it's up to the Nova Scotia Attorney General to decide whether to hold a public Inquiry. So far he has remained silent. For Sunday Morning this is Heather Matheson in Sydney, Nova Scotia.

1300. Q. I guess Heather Matheson in Toronto, Ontario, right?

A. Well.

1301. Q. Miss Matheson last night I asked you if you would take a look at the Affidavits that were filed before the Appeal Division to see whether or not any of those were included in the documents that Mr. Cacchione gave you on the Friday afternoon. Have you had a chance to do that?

A. There were no -

MR. MURRANT: There were none.

MR. PUGSLEY: There were none. I see, so the -

MR. MURRANT: The group was the same as the group in the Exhibit.

1302. Q. So it's pages 1 to 39 of Exhibit 3 that were the only documents that were given to you by Mr. Cacchione.

A. That's true.

1303. Q. And indeed the only documents that you've ever seen?

A. That's right.

MR. PUGSLEY: Thank you very much Miss Matheson.

REPORTER'S CERTIFICATE

1984 S.SN. No. 03224

I, P. Eileen Morres, certify that the foregoing is a true and accurate transcript of all the evidence taken by way of recording and reduced to typewritten copy.



P. Eileen Morres,
Court Reporter

DATED this 2nd day of July, 1984 at Dartmouth in the County of
Halifax, Province of Nova Scotia.