

CANADA  
PROVINCE OF NOVA SCOTIA  
COUNTY OF HALIFAX

1984 S.S.N. No. 03224

IN THE SUPREME COURT OF NOVA SCOTIA  
TRIAL DIVISION

BETWEEN:

JOHN F. MACINTYRE

PLAINTIFF

- and -

CANADIAN BROADCASTING CORPORATION,  
a body corporate

DEFENDANT

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

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

R. Murrant Esq., Solicitor for the Defendant

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MEDIA POOL COPY

JUNE 25th, 1984

10:00 a.m.

2.

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

and

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

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

EXAMINATION BY MR. PUGSLEY:

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

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

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

A. Not that I recall, nothing specifically.

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

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

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

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

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

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

18. Q. And how long was that course?

A. That was a full year.

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

A. Yes.

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

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

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

A. Do papers, write exams.

22. Q. What courses did you take?

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

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

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

31. Q. What does a copy writer do?

A. A copy writer writes commercial copy.

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

A. About 3 or 4 months.

33. Q. And then?

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

34. Q. How long were you with CFTO?

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

35. Q. And what is Canada AM?

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

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

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

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

A. Until 1977, October of 1977.

38. Q. What did you do there?

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

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

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

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

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

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

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

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

A. It's regional, m-hm.

43. Q. In the Province of Ontario.

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

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

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

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

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

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

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

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

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

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

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

A. I find that a difficult question to answer.

160. Q. Why?

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

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

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

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

A. That's right.

162. Q. Under the leadership of John MacIntyre.

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

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

182. Q. Coming down on the Tuesday?

A. Tuesday evening.

183. Q. And you remained in Halifax until?

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

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

A. If I can refer to my notes -

185. Q. Of course.

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

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

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

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

MR. PUGSLEY: Yes, all right.

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

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

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

186. A. Yes.

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

A. Yes, it is.

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

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

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

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

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

A. It does.

191. Q. President Kennedy.

A. Late '60s.

192. Q. And the word "railroaded" -

A. Another quote from someone who I spoke with.

193. Q. Who was that person?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

274. Q. And what did you do there?

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

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

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

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

A. Page 12.

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

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

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

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

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

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

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

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

317. Q. And what does it say?

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

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

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

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

A. Yes.

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

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

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

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

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

A. Yes, it is.

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

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

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

A. Yes, it is.

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

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

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

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

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

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

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

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

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

486. A. M-hm.

487. Q. Who was that?

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

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

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

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

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

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

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

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

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

492. Q. Had you been in Sydney before?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A. Yes.

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

A. M-hm.

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

A. No.

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

A. No.

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

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

583. Q. What did you say?

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

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

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

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

592. A. No.

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

A. No, I didn't.

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

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

595. Q. Did you ever ask those questions?

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

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

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

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

A. Yes.

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

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

~~598~~. Q. Did you do anything else in Sydney?

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

600. Q. Who was that?

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

601. Q. What did he say?

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

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

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

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

A. Very brief, 15 minutes.

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

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

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

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

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

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

607. Q. And you taped that did you?

A. Yes, I did.

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

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

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

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

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

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

611. Q. What did he say?

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

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

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

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

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

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

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

A. I do not know.

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

A. I don't know.

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

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

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

A. I got to Halifax on Friday morning.

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

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

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

A. That's correct.

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

640. A. No, I didn't.

641. Q. Why was that?

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

642. Q. What did he clarify?

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

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

A. Yes, he did.

644. Q. What did he say?

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

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

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

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

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

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

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

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

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

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

756. A. No, they were not -

757. Q. Of any relevance.

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

758. Q. Why concerned?

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

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

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

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

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

761. Q. Now you said that there was -

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

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

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

A. That's right.

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

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

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

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

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

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

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

A. Yes.

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

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

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

MR. MURRANT: In the journalistic sense.

MR. PUGSLEY: Yes, precisely.

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

A. I read it as a statement of comment.

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

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

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

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

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

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

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

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

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 Patricia 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.



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P. Eileen Morres,  
Court Reporter

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