

DETECTIVE SENIOR CONSTABLE GRAY

Q1 This is an electronically recorded interview between et Senior Constable Stewart Gray and Mr Howard Elliott at the Sydney Police Centre on Wednesday, the 16th of February, 2000. Also present seated directly opposite me is Senior Constable David Upston from the New South Wales Water Police. The time on my watch is now 9.49am. For the purpose of the record, Mr Elliott, could you please state your full name.

A Howard Nixon John Elliott.

Q2 Your date of birth?

A 21st of October, 1957.

Q3 Your current address?

A 11 Hillside Crescent, Epping.

Q4 And your occupation?

A Consultant to the .... Industry.

Q5 O.K. As I've explained to you and you're aware that Senior Constable Upston and myself are making inquiries in relation to the 1998 Sydney to Hobart Yacht Race. Part of our inquiries have led us to interview all members of the 1998 Race Committee, hence that's why you're here today, for your particular turn so to speak. If I could just start with your sailing experience.

A I've been racing since I was about seven, so it's 30 odd years of racing. I've done five Hobart, sailed in five Hobarts, flown down in six of them. I've raced in just about every east coast race here in Australia, and

won most of them with the exception of Hobart. I've sailed in various events in the United States, various world championships, national championships and one Olympic trials even in Russia.

Q6 O.K. And how long have you been associated with the Cruising Yacht Club of Australia?

A I've been a member for about 4 years. I've been on the race committee for Hobart for the past 6 years including this year, sorry including the '99 race.

Q7 Yes.

A I've raced in their race the previous 5 years, oh, not the previous 5 years, the first C.Y.C. race, and it was in '76.

Q8 Right.

A Hobart in '76.

Q9 Have you ever held a position other than ordinary committee member, so to speak, on the race committee? Have you been race director?

A Never.

Q10 Have you been race chairman?

A Never.

Q11 O.K. Perhaps you might like to explain the responsibilities of the race committee to us, as a whole, so far as Sydney Hobart races are concerned.

A O.K. The race committee is, is a group which is formed under sailing instructions as part of the I.Y.R.U, sorry, I.S.A.F. sailing, racing rules. They report through to the organising authority. The role of the

race committee kicks off effectively once entries are open. The organising authority has a certain level of ownership of the event. It's, it's predominantly not what is occurring on the race track. The race committee generally has, has design over the race track and related things such as formation of handicaps, measuring of boats, lots of stuff. The race committee for Hobart is, is formed formally in about March, although it's formed informally in January. Following every Hobart we have a review, and usually the, the Sydney based members of the race management team sit down and work out what happened in the previous race and what we're going to do in the next race and set the planning in, in place. We start planning as, as a group in around about oh, late January, early February for the next race. We get stuck into it in vengeance around July. Leading up to that myself and the race director, Phil, Phil Thompson, and usually one or two others get involved in creation of the notice of race and sail instructions, which are the primary contract documents associated with the race. Leading up to the event most of the day to day management of the race is handled by the employees at the C.Y.C. sailing office, that's Phil, Mark Robertson and Andrew Holt. They're there to take entries, to receive all the measurement certificates, the documents associated with the race. They're all collated and we usually have a, an informal get together on a regular basis about, like, that's,

like, over the telephone just to see where things are up to. Leading up to the race part of my responsibility is to start ensuring that all our communications systems are in place. So I'm the one that looks after the, make sure the radio systems are in place, and the computer system's in place and all that sort of stuff. So that all, that all takes off. Day of the race, so we've now got past all the measurement problems that we normally would have, and, and there's usually a truck load of those. That's usually owners saying my boat's this big when in, sorry, when it's in fact - - -

Q12 Yeah.

A - - - 6 feet longer. The day of the race the, the race, sorry, let me take a step back. On Christmas Eve we have our briefing, and immediately prior the briefing the race committee just finalise any details in the sailing instructions which need to be finalised. Then we have the race briefing, which is on Christmas Even. On Christmas Day at, usually 2.00 or 3.00 in the afternoon we have a, a formal meeting where we look at the, the weather, the predicted weather for the race, and we look at that in the context of the I.M.S. course instruction which we're going to do. You've been through this a while, so you, do you understand - - -

Q13 Yeah.

A - - - what the I.M.S. course instructions - - -

Q14 Yes.

A

O.K. So we actually formulate that Christmas Day, late on Christmas Day. That usually takes us about 2 hours. We look at the historical weather patterns, we look at the predicted weather patterns and we try to come to some reasonable medium. Unless there's something, there is something at the time that is quite obviously different from what we've seen in a previous pattern. We also then produce the handicaps, the I.M.S. handicaps at that time and we publish those. We publish those both, both to the Internet and to the official race Motor Sport. Then you come to Boxing Day, the following day which is the day of the race. The course marks are laid and they're laid by the, by chartered staff under the direction of the, the race director, although note that they are in fixed G.P.S. positions, the same fixed G.P.S. positions from year to year, so it's just a matter of going out and dumping the marks where, where we've always dumped them. I then go out on the sailing boat. We have three, usually three vessels on the water. We have one at, say the pin end of the mark, one say at the head end of the mark and I'm on the head end of the mark and that's where we do all the flags and the timing and effectively start the race. We have a pin end boat, which is also running times for us as well, but his prime role is to look for early starters, and there are a bunch of other boats that are floating around, a bunch of little rubber duckies and stuff that, that do

all sorts of stuff. We then start the race. That evening at 8 o'clock is the first radio sked. I'm now, I've now gone into - - -

Q15 Mmm.

A - - - our, the management of the race. Do you want me to continue on with that?

Q16 Yeah. Yeah. A bit more, yeah.

A O.K. So at 8 o'clock is the first radio report. It's usually 8 o'clock or 9 o'clock. It varies, for no apparent reason. I think it's more to keep people on their toes that they're actually reading the sailing instructions and stuff. That's the first one. Then there's the safety sked at 10 o'clock, and then there's the first position reporting sked at 2.00am the next morning, 3.00am the next morning. And then we start going on to the rest of the - - -

Q17 Right.

A - - - position of morning skeds. Usually the day after Boxing Day I fly down to Hobart - - -

Q18 Mmm.

A - - - and we do a formal handover of the race management systems that we've been running the race in Sydney, and we've been collecting all the data using the radio systems based in Sydney, and either myself or Mark, and we alternate on an annual basis, either I go down first or Mark goes down first. We go down and we set up systems in Hobart, and we do a couple of things when we set the race management systems, and check all

the radios backwards and forwards, and then we also set up the dial-in, you know, the, the telephone answering people, the, you know, where's son Johnny, and that sort of stuff. So we set up all their systems as well, and link those into our race management system. The race then progresses, and it's, it's really, it focuses around the position reporting times and the safety sked times. And then it, it rolls on from that point.

Q19 O.K. Briefly, could you give me what the role of the chairman of the race committee is? Just briefly. I know it's not your position, but you might know - - -

A The chairman, the chairman of the race committee, with respect to Hobart or just - - -

Q20 Yes.

A - - - generally - - -

Q21 Respect to Hobart.

A - - - what, what a race committee? The race committee for Hobart is an interesting race committee in that how do I explain this, it's, let me just try and put this into context. In a normal yacht race there are effectively two primary groups of people that you have to deal with from a rules perspective. One is the race committee and one is the competitors. Both are bound by the rules and both do stuff. Officials, mark boats, lead boats, starters, judges are all covered by the term race committee unless otherwise specified in the sailing instructions. In the case of Hobart everybody's, every non-competitor that's involved in

the race is actually part of the race committee with the exception of the judges who are explicitly excluded as part of the international jury.

Q22 Right.

A Now the race committee technically covers everybody from Hans, who was the normal chair, or who is the chairman, all the way through to race directors to myself, to employees, to people running around in rubber duckies. We're all actually part of the race committee. What's actually listed in the notice of race is about half a dozen people including myself, who are on quote, the race committee, unquote. They're the people that are effectively at the top of the tree that have particular, or heavy involvement in the race in, in certain areas. The race committee in, in normal context what a race committee would do is set the course and run the race.

Q23 Yes.

A In this case we really can't set the course, other than, you know, it goes from Sydney Hobart to every year, and then the race committee runs the race.

Q24 O.K. So basically speaking, or what you're trying to say here is the seven, seven names which appear in the race review, which is Sommer, Elliott, Baddinak, Boyze, ..... Robinson and Thompson - - -

A Mmm.

Q24 - - - are at the head of the, the organisation, so far as the race is concerned?



A Correct.

Q25 And are ultimately responsible for the running of the race, or that particular race?

A They're responsible for the management of the race, yes.

Q26 Yes, right. O.K. Now so far as the race director is concerned, can you briefly give me some idea as to what his responsibilities are in the big picture so far as the Sydney Hobart is concerned?

A He's, in the context of the Hobart, he's the one that has the ultimate, I'll choose my words carefully here. On a day to day basis he's the one that's in control.

Q27 Right. O.K.

A He's the one that makes decisions if things need to be decided outside of our normal running - - -

Q28 Yes.

A - - - then we refer them to the race director.

Q29 O.K. Is it the case that the race director is required by rules or, or unofficial rules in, in making decisions that the whole committee is brought together to discuss a particular problem?

A No.

Q30 Or does he make them by himself?

A No, hang on. There's, there's two questions there.

Q31 O.K.

A Is, is it required by the rules? No.

Q32 Right.

A Unless it's stated so in the sailing instructions - -

-

Q33 Right.

A - - - it's not stated as such in the sailing instructions so it's not required. Does he make them by himself? Everything from, oh, gee, I need some more photocopy paper to

Q34 Yes.

A - - - oh, gee, we need to worry about changing handicaps and, and all things in between - - -

Q35 Yes.

A - - - generally speaking the answer is generally yes.

Q36 Right.

A It's only in the case, and, and a number of times we've, we've got the key members of the race committee or all the members of the race committee together in Hobart - - -

Q37 Right.

A - - - to discuss particular aspects of the race.

Q38 Right. But prior to the race indeed the race committee worked together?

A In '98?

Q39 Yes.

A No.

Q40 No?

A No.

Q41 So prior to - - -

A Excuse me. Other than on Christmas Day when we did the handicaps, yes.

Q42 Right. So what about at the start of the race, were the committee together?

A Meeting as a committee?

Q43 Yeah. I mean were, were those seven members within the vicinity of the Cruising Yacht Club prior to the race, race start? I mean Mr Thompson may have been on the boat, you may have - - -

A Um - - -

Q43 - - - been somewhere else and - - -

A Well, Hans, myself, Phil, Biddy, sorry Bob Baddinak, were all on the starting boat - - -

Q44 Yes.

A - - - if I remember correctly. Don't quote me on that.

Q45 Yeah. Yeah.

A But usually Biddy or Dave Boyze comes up from Hobart - - -

Q46 Yeah.

A - - - 'cause they, you know, David, I think at that time, Biddy was in Sydney and David was in Hobart, so David would be the only one that was not at the club at the time.

Q47 Right. O.K. Now so far as the checking of entrants. As you're aware there are certain requirements for the Hobart races, and in 1998 there were requirements for safety certificates - - -

A Yes.

Q47 - - - requirements for crew lists, requirements for next of kin - - -

A           Yeah.

Q47         - - - and there was also an I.M.S. certificate required  
            for boats which weren't in the I.M.S. divisions.

A           Yes.

Q48         And in case where they were in P, P.H.S. I believe and  
            C.H.S. divisions there were still requirements for them  
            to show a stability rating which was - - -

A           Yes.

Q48         - - - required for the race.

A           Yes.

Q49         And the minimum in fact was 110 degrees for boats which  
            are grandfathered. Do you understand that?

A           Yes, oh, yes.

Q50         And every other boat 115 degrees.

A           Yes.

Q51         Minimum requirements. Are you able to tell me who is  
            responsible for the, for the flow of information or, or  
            certificates and, and paperwork that comes in from  
            entrants?

A           Um - - -

Q52         Prior to the race?

A           They, all that documentation goes into the C.Y.C.  
            sailing office.

Q53         Right.

A           Who in particular is responsible, I don't know, you'd  
            have to ask Phil.

Q54         O.K. Did you at any stage have any input in relation  
            to the vetting of boats?

A No.

Q55 At any stage did you have - - -

A Sorry, sorry, just explain vetting.

Q56 O.K. The vetting of boats, to ensure that they comply with all their forms? And in particular their I.M.S. certificates.

A Not, not that I, certainly not formally.

Q57 Right.

A And not that I can recall.

Q58 Yes.

A There are often questions which, which are asked of me.

Q59 Yes.

A That are, like, what should we do about this?

Q60 Yeah.

A But they're usually relative minor such as in the last race - - -

Q61 Yes.

A - - - we had a bunch of people who wanted to comply with the waterproof handheld V.H.F. regulation by putting a non waterproof one in a plastic bag.

Q62 Right.

A You know - - -

Q63 O.K.

A - - - and they said, What do reckon?

Q64 Yeah.

A What should we do? I, I mean those sort of questions - - -

Q65 O.K.

A - - - come up like, daily - - -

Q66 Yes.

A - - - coming into the race, but formally, no.

Q67 Did you in 1998, have any questions put to you about the stability of any particular boats?

A No. Not that I can recall.

Q68 O.K. Not that you can recall. That's fine. Now as a race committee member do you make it your business or did you make it your business to inquire as to the stability of, of all boats?

A No.

Q69 Did you feel it was not your responsibility to do that?

A Responsibility is a harsh word.

Q70 O.K.

A Did it ever, ever enter in my mind to, to audit or check whatever - - -

Q71 Yeah.

A - - - the C.Y.C. was doing? No. But, but let me, let me take a step back. The, the requirements for stability in the notice of race and sailing instructions - - -

Q72 Yeah.

A - - - I was one of the co-authors on putting that together.

Q73 Right.

A So understanding what the stability requirements are and the safety requirements are - - -

Q74 Yes.

A - - - I do know a lot about that, what's actually in the sailing instructions.

Q75 Yes.

A No, I can't repeat them word for word but - - -

Q76 Yes.

A - - - damn close. So, so yes, I have a, an interest in what the stability requirements are. Do I actually get involved in any individual boat? No.

Q77 Right.

A That's all done inside the processes and procedures of the yachting, the sailing office.

Q78 O.K. So it would appear that the responsibility for ensuring paperwork is in place for each boat is up to either Mr Thompson, Miss Holt or Mr Robertson? They are working in the sailing office. As, as far as you're aware?

A As far as I'm aware, yeah.

Q79 O.K.

A That would be about right.

Q80 Right.

A I think that's what was written in the report as well.

Q81 Yeah. Now when was it that you became aware of the Business Post Naiad, Business Post Naiad's illegal certificate, I.M.S. certificate? Are you aware of that now?

A Oh, I'm aware of it now.

Q82 Right.

A Oh, gee. It was, like, well after the race.

Q83 Yes.

A Oh, I, I couldn't say exactly - - -

Q84 That's all right.

A - - - but it was, it, it was something that came up considerably after the race.

Q85 Right.

A And, and I'm talking days not months - - -

Q86 Yes, yes.

A - - - you know, like, a couple of days after the race, but that was, that was brought to my attention.

Q87 Right. What was your reaction to that?

A Well, the, the circumstances in which it was brought to my attention - - -

Q88 Yes.

A - - - were on, let's call it the grapevine.

Q89 Yes.

A The, the bar-roomers and all that sort of stuff. My, my initial reaction was it's crap, but then - - -

Q90 You mean it couldn't happen or, or it didn't happen?

A No, no, no, it was just bar talk.

Q91 Right. O.K.

A Yeah, quite, quite often in, in a situation similar to this where, where problems have occurred or where, you know, a boat's knocked over or something like that, you'll always get this.

Q92 Yes.



A He shouldn't have been going to Hobart because, you know, he has an oven and not a microwave, that sort of stuff, right?

Q93 Yes.

A So I dismissed it initially as bar talk, but then in subsequent conversations with sailing office, yes, it was identified. Also appreciate that by that time I'm now on the review committee, and it was discussed at the review committee in detail.

Q94 And what was the general view of the race, race review committee in so far as that particular problem?

A They've - - -

Q95 The fact that .....

A - - - used it in their report - - -

Q96 O.K.

A - - - and I'd refer to you that.

Q97 So what's in the report is in actual fact was what discussed in the main about - - -

A What, what's in the report - - -

Q97 - - - that specific problem?

A - - - was what was agreed by the committee - - -

Q98 O.K.

A - - - by, by the review committee's ..... our views on that ....

Q99 O.K. Now you agree that the Sydney to Hobart Yacht Race has been going for some 50 years, 50 years?

A 55 years.

Q100 55 years. And in fact you've been involved in the committee for the last four, was it, 6 years?

A Six.

Q101 6 years. And there has been administrative processes in place in relation to the vetting and scrutineering if you like of boats?

A Mmm.

Q102 Prior to racing?

A Mmm.

Q103 Your report indicates that, that it was a administrative failure, oversight in relation to the ineligibility of the, of the Business Post Naiad. Are you able to sort of expand on that? You say over, administrative oversight, yet systems are in place to avoid this particular problem.

A Oh, no. I didn't say the systems were in place to avoid it. I said the responsibility for doing the vetting or, or for, for receiving those documents - -  
-

Q104 Yeah.

A - - - and processing those documents rests with the sailing office.

Q105 Yeah.

A I have no knowledge of the processes which go on in there.

Q106 O.K. Well - - -

A Um - - -

Q106 - - - as a race, O.K.

A O.K.

Q107 O.K. Sorry, yeah. Yeah.

A So as what, part of what I have to do - - -

Q108 Yeah.

A - - - is actually get all those boats onto the computer and all that sort of stuff.

Q109 O.K.

A So I, I work on the assumption that, that, that the information which they're providing me and by the way stability is not information which I need to do my job - - -

Q110 Yes.

A - - - .... I don't even look at stability on a normal, you know - - -

Q111 Yes.

A - - - a, for doing the handicaps and the race results and stuff it's just - - -

Q112 Yeah.

A - - - not ..... The sailing office, yes, is responsible, yes, the report, sorry the review committee did find that the, there was an administrative failure. It's, yes, we found that. My thoughts on it? It should not have happened. It did happen.

Q113 O.K.

A It was a failure.

Q114 So far as, as summed up in the, the race review committee document as being an administrative

oversight, the race review committee was set up as a -  
- -

A Let me, let me, let me also say one thing before we  
leave - - -

Q115 Yeah.

A - - - that point.

Q116 Yeah.

A In the racing rules and in the notice of race there is  
an onus of responsibility on the owners.

Q117 Yes.

A And, and that onus of responsibility says, you know,  
and I can't remember the quote - - -

Q118 Yes.

A - - - exactly but it says something like, you know, I  
will keep my boat - - -

Q119 Mmm.

A - - - to a certain spec level, both safety, stability,  
meaning these things.

Q120 Certainly.

A Yachting generally, not just this race but yachting  
generally has been a, a, a self policing sport since  
it, since it started with the exception of match racing  
and team racing where you have people on the water.  
There is a, there is always the onus on the owners to,  
to make information available to us. Where parameters  
boats change and by the way we don't, we as a C.Y.C. I  
mean, we, we don't get in the changing of those  
parameters when, when the boat gets remeasured and

these sort of numbers change, that actually goes through the Australian Yachting Federation and we get fed electronically with what that information is. There is still an onus of responsibility on the owner to provide to us - - -

Q121 Yes.

A - - - a valid piece of paper - - -

Q122 Yes.

A - - - that says this is what it's all up to. It, it's unfortunate but what the '98 race highlighted was a need for the sailing office to be significantly more stringent in checking these pieces of paper - - -

Q123 Yes.

A - - - and making sure that people aren't putting stuff in which is not correct.

Q124 Yes.

A Or not compliant, I guess is the best way of saying it. So - - -

Q125 Yes.

A - - - the only defence I guess or, or one of the very few defences which the sailing office can do at this point is say, well, you know, it has been the onus of the owners to do this - - -

Q126 Yes.

A - - - up until now. There's usually been a reasonable amount of vetting, I don't know the level, you'd need to speak to the sailing office.

Q127 Yeah.

A What we did find in the race, in the review committee was that, yes, that got through, Naiad's got through.

Q128 O.K. So you agree then then as the race review committee was formed - - -

A Mmm.

Q128 - - - it consisted of approximately what, one, two, three, four - - -

A About six of us, seven of us.

Q128 - - - about six people?

A Mmm.

Q129 And in reality that was an investigative team, to a certain, to a certain extent? I mean you, your role was to investigate the problems associated to the 1998 Sydney to Hobart Yacht Race from the inside? Would that be correct?

A I, I think, I think the charter for the review committee's actually in there, and I don't think it uses the term investigative.

Q130 O.K. Well, is there - - -

A I think - - -

Q130 - - - another word - - -

A - - - ..... you ..... you know.

Q131 O.K. Well, well, do you agree sort of the .....

A What, what, what we were trying to do in concept here -  
- -

Q132 Yeah.

A - - - was not - - -

Q133 Yeah.

A - - - we, we, we were not trying to muscle in on quote,  
your territory.

Q134 No, no. That's fine, yeah. Yeah, no, that's fine.

A No, no offence intended. However it's very important,  
we felt that it was very important that, that the club  
conducted a review.

Q135 Yes.

A And we felt that it was important that, that conducted  
it in a very open fashion.

Q136 Yes.

A And that we publish the results very very quickly.

Q137 Yes.

A And, and we have, you know, made all those results open  
not only to the, not only to the coronial inquiry and  
yourselves but also the public. And we thought that  
the, that we actually did a reasonable job of it.

Q138 Yes.

A I can say that 'cause I was on the committee, you know.

Q139 Of course.

A But, but we thought that, that the level of detail we  
went into and yes, we looked at all the individual  
problems, the ones that we could see. We thought we  
did those in a reasonably objective manner.

Q140 O.K.

A Always open to criticism but - - -

Q141 Yeah, certainly.

A - - - you know, we thought we did it half reasonable  
.....

Q142           Yeah.

A               We didn't set out as an investigative - - -

Q143           Right.

A               - - - let's go find fault here.

Q144           Yes.

A               We set out as let's go find out what happened - - -

Q145           Right.

A               - - - and let's write it all down and let somebody else  
decide whether fault or, or blame or - - -

Q146           Yeah.

A               - - - or, you know, whatever needs to be applied.

Q147           O.K. Well, in relation to the situation, the sailing  
club and the vetting of vessels and the scrutineering  
if you like - - -

A               Mmm.

Q147           - - - so to speak, who was responsibility, or who was  
tasked to, not investigate, but to inquire as the the  
processes in pace at the time?

A               From the - - -

Q148           From your - - -

A               - - - committee?

Q148           - - - your committee, yeah.

A               Peter Bush.

Q149           Right. O.K.

A               Peter, Peter did the interviews of the - - -

Q150           Right.

A               - - - .....



Q151 So you'd be unaware of the exact intricacies of those interviews?

A Correct. Right.

Q152 O.K. That's what I wanted to find out, that's all from you in relation to that. Now I'll take you to page 57 of this document which I can show you. Just the bottom paragraph there.

A Yeah.

Q153 You will see the words, The chairman of the committee was unsure of the precise, precise responsibilities of the committee as a result.

A Yes.

Q154 I don't know whether Mr Bush was responsible for that part of the inquiry or whether you were part of that inquiry as well. Are you able to explain to me what the author means by the chairman not quite understanding his responsibilities?

A Yes. That's, that's a, a simple statement of fact.

Q155 Yes.

A When the, when Mr Sommer was interviewed - - -

Q156 Yes.

A - - - and, and I think it was by Bushie - - -

Q157 Yes.

A - - - but you'd have to check the appendices to find out - - -

Q158 Yeah.

A - - - who did the interview, he was asked what are the responsibilities of the chairman of the race committee

and, and Hans didn't know. So it's a statement of fact, no more, no less.

Q159 O.K. O.K. Now the, the members of the sailing club are in fact employees of the C.Y.C.A. paid employees as far as you're aware?

A Sorry, members of the sailing office?

Q160 Yeah, sailing office, Mr Thompson - - -

A Oh, yeah, yeah, yeah - - -

Q161 Mr Holt - - -

A - - - yeah, yeah, yeah. As far as I'm - - -

Q162 Mr Roberts?

A - - - aware, yeah.

Q163 Yes. O.K.

A I would certainly wouldn't work there for nothing.

Q164 Now prior to the race in 1998 we've been informed that around 2.15pm a fax with a storm warning was forward by fax to the communications centre, race communications centre in Sydney at the C.Y.C.A.

A What, when was this?

Q165 About 2.15pm on the 26th of December, 1998.

A Right.

Q166 O.K.

A Yeah.

Q167 Prior to the race commencing there was a gale force warning in place. Are you aware of that?

A (NO AUDIBLE REPLY)

Q168 For the south coast area?

A I, I can't recall, but - - -

Q169 O.K.

A - - - but, yeah.

Q170 If I was to tell you that that was the situation. At about 2.15pm a storm warning was issued by the Bureau of Meteorology, which was forwarded by fax to the media section of the Sydney to Hobart office.

A O.K.

Q171 O.K.

A Good spot for it.

Q172 And in fact shortly after that fax was forwarded to that section a member of the Bureau of Meteorology actually contacted that section and spoke to a female and informed her of the fax and the fact that a storm warning, the gale force warning had been upgraded to a storm warning. Are you aware of that?

A No. Sorry. Am, am I aware of exactly - - -

Q173 Are you - - -

A No.

Q174 O.K. Are you aware if a fax was forwarded to - - -

A No.

Q175 O.K. Were you given any information in relation to the gale force warning being elevated to a storm warning, as a member of the race committee?

A At 2.00, 2.15, no.

Q176 O.K.

A No.

Q177 O.K.

A Certainly not, not that I can recall. But 2.15 we're coming in from the start.

Q178 Right.

A So we're all out on the boat.

Q179 O.K. So as you were a group on that boat there was nothing provided to you as a group in relation to the storm warning?

A No, not - - -

Q180 That you're aware of?

A - - - that, that I can recall, no.

Q181 O.K.

A Not at all.

Q182 O.K. That's fine. And you travelled to Hobart the next day?

A Yes.

Q183 Th 27th?

A Yes.

Q184 O.K. Now were there any conversations between yourself and other members of the race committee in relation to the weather so far as what was happening in Bass Strait?

A When?

Q185 O.K. Well, the - - -

A There were lots of conversations - - -

Q186 O.K. There were - - -

A - - - about the weather .....

Q187 O.K. Well, from the time that the first May Day, I suppose was called, or when it was realised that there

were some problems being experienced by yachts on the race track, did the committee discuss these problems?

A Oh, absolutely.

Q188 And what was the basis of, of the discussion?

A Um - - -

Q189 Not verbatim but, but generally, what was discussed?

A O.K. The first, the first well, hint I guess of bad weather that was going to come up actually, actually arose well before the race. Now let me explain that. We, we've done this so many times.

Q190 Yeah.

A Sorry, C.Y.C's done this so many times and the weather patterns are so well known, that we can see when the boats are going to have a reasonably good race - - -

Q191 Yes.

A - - - or whether they're going to have an average race, or whether they, they're not.

Q192 Yes.

A In this particular instance we already knew that there was quite a strong or fast running southerly current. And when you get a strong southerly current then you get southerly winds and you always get southerly breezes in Hobart, or in a Hobart race, you get a very steep sea.

Q193 Yes.

A So we knew before they started that it would be an uncomfortable race, especially for the little boats. So we knew that and, and, but, but that is, that was

nothing out of what, what we would refer to as the, the normal zone. It was within our envelope of what we would expect to go for a Hobart, so it was going to be yes, it was going to be a wet and uncomfortable race. And most navigators knew that and that was discussed at the briefing, that there was a strong southerly current and Ken Batt pointed that out that yeah, we'd have quite steep seas. So moving forward then no, I wasn't aware of the, the fax and stuff on the day of the race. The following day was when the 70 knot report came from Doctel Rager.

Q194 Yes.

A And I was in the radio room at the time. And that was the, I guess for me that was the first instant, or first inclination that there was going to be quite an uncomfortable race for a lot of people. Again a report of 70 knots from a boat doesn't constitute major panic around the, the streams, because those sort of winds, while they're not normal, you know, they're not uncommon either in, in that space. So my reaction at the time was O.K. it, it's going to get wet and very messy and very uncomfortable for a lot of boats out there. Then at that point appreciate that, that I'd been down there since early in the morning setting everything up, dah, dah, so I then knocked off as Mark and Phil arrived in town, 'cause I'd already done the, the first set, and done all the handover. And I came back on in the middle of the night, when shit happened.

Q195        Yeah.

A            O.K. And it, so now we're in the middle of all this.

Q196        Yeah.

A            Yes, we discussed the weather. We discussed the, the question that, that is on everybody's lips, about abandonment. And, and that discussion continued for a long time, although not in one conversation.

Q197        Yes.

A            Because at various points in the race you have to revisit that question, because it's a natural thing to go, to do, you know.

Q198        Mmm.

A            Everybody's putting pressure on you. Yes, we discussed the weather. We discussed what, what effect the weather was having on the boats. We, we discussed a whole pile of problems. Once the man overboard on Sword of Orion was reported we went into a completely different mode of operation in the, in, in the centre, as you would appreciate.

Q199        Yeah.

A            You know, we're, we're now dealing with a problem, a quite serious problem. And as the situation worsened our, our thoughts were less of gee, how, how strong's the wind at the moment and more of how, how is the .... operation going here - - -

Q200        Mmm.

A            - - - and, and what do we need to do to support .... in and getting the stuff sorted so - - -

Q201 O.K.

A Does that answer the question?

Q202 Yeah, it does.

A Yeah.

Q203 Now as you've quite rightly said that it's the question on everybody's tongue, as to whether the race should've been abandoned, I suppose there's two ways of looking at that. Is it the case that a decision could be made to abandon the race or, or better to declare that the race is no longer in place but now go into survival mode, we're not racing. So all participants - - -

A Strictly speaking the, the race committee can abandon the race.

Q204 Yes.

A And, and that's all it can do. The, the, the fundamental problem you have here is it's not, it's not a matter of going, O.K. the race is abandoned and everybody drops their sails and opens beers. It just doesn't work that way.

Q205 Yeah.

A In, in, in quite extreme conditions like these boats were in it, it, it's very difficult from a race committee viewpoint, who are sitting very comfortably in Hobart, trying to give people advice who are in the middle of a washing machine. It is very, very difficult. All, all yachts people who go into this event are all aware of some of the fundamental rules,



which people have probably told you about, you know, they're responsible, and that sort of stuff.

Q206        Yeah.

A            The problem facing the race committee is O.K. if we abandon the race what, what impact is that going to have? Yes, we can abandon it but let's face the facts, these guys are out in the middle of Bass Strait anyway.

Q207        Yeah.

A            The conditions are quite extreme. Many of the boats by the time Sword of Orion occurred, some of the boats had already withdrawn, right, so some people had already made a decision not to proceed. If, if you, the danger for a race committee in a situation like that is if you say the race is abandoned, you may make them do something which they would not normally have done. For instance, turning around - - -

Q208        Yeah.

A            - - - and heading back in the other direction. Is that a good thing or a bad thing? I don't know.

Q209        Yeah. Certainly I'm not advocating that the race committee would say, O.K. the race is abandoned, turn around. I, I'm not saying that. What I'm saying is is there an option there for the race committee to say, O.K. officially the race is finished, due to the situation, please look after yourselves, we're not racing? That's what I'm saying to you. Is that an option?

A            There is certainly an option to do that - - -

Q210 Right.

A - - - and, and that's - - -

Q211 O.K.

A - - - called race abandonment, yes.

Q212 Yes.

A And, and yes, we would, we would track the boats back in as well.

Q213 Yes.

A At the time, at the time the, the Doctel Rager report came over the, the radio relay vessel if I remember correctly, reiterated what the responsibilities are and that - - -

Q214 Yeah.

A - - - you know, that, that people were responding, if they wanted to ..... - - -

Q215 Certainly.

A - - - then go for it.

Q216 I accept that.

A Yeah.

Q217 O.K. And you said before that you, as a committee, I don't, I can't recall whether it was, whether it was you as an individual or as, on behalf of the committee, did not consider the gale force warning outside the normal zone, and you said, Well, we're going to be expecting a rough race and a wet race and so on. Do you agree you said that a few minutes ago?

A No. What I said a few minutes ago was when the 70 knot wind report came in - - -

Q218        Yeah.  No, prior to that - - -

A            Oh, prior to that, O.K.

Q218        - - - when you were on race day.

A            Prior, prior to that, well prior to, to race day we  
             didn't, we didn't have a gale warning.

Q219        Yes.

A            Right.  That came in on - - -

Q220        Yeah, that was - - -

A            - - - race day.

Q220        - - - on the day, yeah.

A            According to you.  I wasn't aware of that but anyway -  
             - -

Q221        Yeah.

A            - - - prior to that we did know about the fast moving  
             southerly current.

Q222        Yes.

A            And we did know that we would get winds from the south  
             - - -

Q223        Yes.

A            - - - as a consequence.  You know, we get steep seas.  
             We did know that.

Q224        Yeah.

A            We did know it was going - - -

Q225        Yeah.

A            - - - to be uncomfortable.

Q226        Right.

A            So yeah.

Q227        O.K.

A But, but did we consider the storm warning? Not to my knowledge.

Q228 All right. O.K. Realising that there's a southerly buster coming up the seas are going to raise or stand up, is the correct terminology I suppose. What do you consider is out of the norm?

A Out of the norm?

Q229 Yes, well, this is, this is the words that you used, the normal zone.

A I think - - -

Q230 I mean, what would be - - -

A Yeah, O.K.

Q230 - - - the abnormal zone?

A Out, out of our zone or out of our envelope - - -

Q231 Yeah.

A - - - the winds, the winds normally, sorry, the winds which are within what we would typically find in Hobart, tend to range from like zero to quite strong.

Q232 Yes.

A Currents tend to range from zero to quite strong. Generally heading to the south.

Q233 Yes.

A Going into the southern ocean we expect conditions to be typical for the southern ocean.

Q234 Yeah.

A So winds are strong, waves are usually quite high, certainly higher than you would get if you were headed

to Queensland in a race. And, and this is something which people expect in Hobart.

Q235 O.K.

A Generally speaking we always expect that there will be at least one, probably two southerly fronts coming through - - -

Q236 Yes.

A - - - and they normally come through from the south west.

Q237 Yes.

A And this is fairly typical and they usually bring winds that are, that are rated by the Bureau, of around 45 to 50 knots.

Q238 Yes.

A Which means you get peak crossed .... speeds of around 60's to 70's.

Q239 O.K.

A And so, so when I said in the envelope - - -

Q240 Yeah.

A - - - it, mate she's at the top end of the envelope, absolutely.

Q241 O.K. But when does it go beyond that? That's what I'm saying to you? When do you - - -

A It certainly went beyond that in '98.

Q242 O.K. Well, what I'm saying is gale force is obviously within the envelope, because you accepted - - -

A Yes.

Q242 - - - that the race would be rough, wet and a hard time?

A Yeah, but I'm, I'm concerned about the, you using gale forces within the envelope, O.K.

Q243 O.K.

A Because - - -

Q244 O.K.

A - - - I, I wasn't aware of a gale force warning prior to the race starting.

Q245 O.K.

A If, if there was one, you know, I, I wasn't told. I didn't know about it but - - -

Q246 O.K.

A - - - whatever. The, the report from 70 knots from Doctel Rager - - -

Q247 Yeah.

A - - - we're in the race now - - -

Q248 Yeah.

A - - - the race has started.

Q249 Was after the storm warning issued?

A Yes.

Q250 Right. Yeah. Right. What I'm, what I'm trying to say to you here is this. Is it, you as an individual and as a member of the race committee, have a set of parameters to, within your own mind to say yes, within the envelope of safety we're happy to allow steep seas, 40, 50 knots, that's fine. (Tape Beeping) But when do you as an individual or as a member of the race

committee decide that going is a bit too dangerous and we should look at it? When the winds reach 100 kilometres an hour, you know, what I'm saying to you?

A There is no - - -

Q251 When do you draw the difference?

A There are no set parameters to answer that - - -

Q252 Right.

A - - - question.

Q253 O.K.

A O.K. So there's nothing that says when it reaches 71.6 knots - - -

Q254 O.K.

A - - - we're all out of here, there isn't anything to do that, no.

Q255 What about as a situation as being on the race committee, what would you consider, this your own personal opinion, what would you consider before you would intervene as a race committee as to whether the race should start or be delayed, so far as weather's concerned? Or, or wouldn't it worry you?

A What, what do I think is a, is a reasonable parameter?

Q256 Yeah.

A It's, it's not, it's not a simple number you can put to this.

Q257 O.K.

A For instance a, an extremely strong southerly current with say 40 or 50 knots of breeze, could conceptually create quite dangerous sea conditions. If those sea

conditions were happening off Sydney heads at the time of the race - - -

Q258 Yeah.

A - - - we would, we would obviously consider a delay, a postponement - - -

Q259 Right.

A - - - an abandonment in, in those context, right.

Q260 O.K.

A However in, in themselves those individual parameters may not constitute grounds for delay or, or - - -

Q261 Right.

A - - - or the race to be abandoned. I would prefer to look at the, the thing holistically.

Q262 Yes.

A And, and try and determine when these events were going to occur. If we, if we knew when they were going to occur because the positioning of the fleet is also important.

Q263 Right.

A A, a strong southerly gale coming through Bass Strait is, is not as damaging to a fleet, if the fleet's only off Wollongong.

Q264 That's right.

A O.K. But if the fleet's predicted to be in the middle of Bass Strait and, and a big storm was going to happen and, and we know it and we're told about it, yes, the race committee would consider it.

Q265 Right.



A And they would consider turning the boats around.

Q266 O.K. We'll just - - -

A Mmm.

Q266 - - - the time on my watch is now 10.30am. We'll suspend this interview for a tape change.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

DETECTIVE SENIOR CONSTABLE GRAY

Q267 Interview between Detective Senior Constable Gray and Mr Howard Elliott is recommenced. The time on my watch is now 10.46am. Mr Elliott, we were just discussing the situation were a fax was forwarded from the Bureau of Meteorology to the media centre, which indicated the gale force had been elevated to a storm warning. At the same time a fax was forwarded to Telstra Control, by weather fax, a fax was forwarded to AusSAR and fax was forwarded to Eden Coastal Patrol. And in fact the Bureau of Meteorology contacted the media centre and informed them not only of the fax but what the contents of the fax were. They also contacted a representative of AusSAR and informed them about the fax, and in fact told a person in AusSAR due to the holiday period that they should consider recalling staff for the 27th, due to what may occur. That was also the case when they contacted Eden Coastal Patrol. So what I'm saying to you here is, if these warnings were given at 2.15pm on the 26th, 1998, you agree that the race commenced at 13.00?

A Yes.

Q268 O.K. Where would the lead boat be approximately at 2.15, 2.30?

A Approximately he's probably around Botany Bay area.

Q269 O.K.

A Perhaps a touch south.

Q270 Right.

A If I remember correctly the race started in a nor'-easter, spinnakers were set on sea mark, that's S.E.A. mark, so they would've been doing downhill around about 10 to 12 knots, probably higher than that, yeah, so they're south Botany Bay.

Q271 O.K. And would it be the case that in fact some boats may have still been within the harbour confines?

A Absolutely.

Q272 And there would be some obviously outside, but not as far as Wollongong, sorry - - -

A Yeah - - -

Q272 - - - not as far as Botany Bay?

A - - - the boats that were recalled, and I can't recall whether any of them were recalled would, would have been in there because the recall signal comes out 20 minutes after the start.

Q273 O.K.

A So yes, it's likely that an hour after the start there are boats still inside the harbour.

Q274 O.K. Is it the situation that had you personally as a member of the race committee been aware of the storm

warning, what action would you have taken under the circumstances?

A If I was made aware of it I would've approached the race director - - -

Q275 Yes.

A - - - Phil. And I would have said simply what are we going to do about this?

Q276 Right.

A And that's about all I can speculate on it. I mean this is a hypothetical question.

Q277 Yes, certainly.

A But again going hypothetically I would've imagined that what would then have occurred is that if, if we both thought that it was a reasonably serious problem that was going to occur we probably would have invited a few other people to join us - - -

Q278 Yes.

A - - - in that conversation, and we would have made a decision as to what to do from that point.

Q279 O.K. And in fact there was never any discussion around 2.15, 2.30 about the storm warning - - -

A Oh - - -

Q279 - - - that you're aware of?

A Not that I can recall and not that I was party to.

Q280 O.K.

A Yeah.

Q281           Would you agree that it would be far easier to stop the race, so to speak or abandon the race 1 and a half to 2 hours after it commenced?

A               Easier than what? Easier than to .....

Q282           As opposed to raising the question of abandonment late afternoon on the 27th of December, 1998?

A               It, it's, it's much easier to postpone the start if it hasn't started - - -

Q283           Yes.

A               - - - obviously. There are, for this particular even there are considerable difficulties in doing that, but because of, you know, this is an international event, but that is by far the easiest time to, to do something like that. With all the boats, if, if a storm is going to occur, which in the opinion of the race committee is going to be quite bad and all that sort of stuff, yes, the earlier the better, sort of .... that question, and, and more importantly the, the course that the boats sail, which is 180 degrees true off sea mark, sees them diverge from the coastline the further south they go. So yes, it, it would be prudent to, to do it as early as possible, because then the boats have got somewhere to run and hide.

Q284           All right.

A               The timing you're talking about with the lead boat being down around Botany Bay, Jervis Bay area means there's lots of places to go run and hide.

Q285 So it is the case that that option could have been utilised by the race committee had they been aware of the upgrade, gale force to storm warning after discussion?

A It, it, it is one of the options. One - - -

Q286 Right.

A - - - of the other options is that we could make it very clear to the boats that, that a storm was about to happen, and, and that, you know, we, we potentially could suggest that, that they go run and hide, yes.

Q287 Yes. O.K.

A Yeah. I think though that if it, and, and hindsight's a wonderful thing, O.K. but, but let's assume that this thing came in and we were all still on the starting boat when this occurred.

Q288 Yes.

A It, it, it would have been one of our considerations to stop the race - - -

Q289 Yeah.

A - - - and restart the race.

Q290 Yes.

A Yes.

Q291 Unfortunately it was the situation that the, the prognosis of the, of the storm was only sort of noted at about 1.58pm, around that area.

A It, it, it's interesting that, that, I mean the, the, the sequence that you've mentioned here is quite interesting because I would've thought that given that

we have quite good relationships with the Bureau, that, that they didn't ring Phil.

Q292 Well, there's nothing that we've, no one's indicated that they've contacted Mr Thompson.

A Yeah. I, I, if they felt that this was serious enough, I mean - - -

Q293 Yeah.

A - - - they knew, they have all the phone numbers of - - -

Q294 Yeah.

A - - - everybody in the world here.

Q295 But in the same token though - - -

A .....

Q296 But in the same token they have discharged their obligation by at least contacting someone on - - -

A Yeah, no, that's a bit weak.

Q297 Oh, well, this is, I mean, you know - - -

A O.K. Sorry, no, no offence intended here - - -

Q298 No.

A - - - but, but for me to ring into the media centre - - -

Q299 Yes.

A - - - and say something's about to happen - - -

Q300 O.K.

A - - - what's, if I knew it was the media centre my immediate reaction would be well, you know, why would I have sent it to the media centre and not to - - -

Q301 Yes.

A - - - race control.

Q302 O.K.

A Or not rung up Phil, whose number I already have. You, you put things into the media centre for the express purpose of getting them into the media, that's what the - - -

Q303 Yes.

A - - - media centre's there for. If, if the Met really wanted to, sorry if the Bureau of Met really wanted to get in touch with the, with the race director then they have a list of phone numbers as do everybody else, one of which is mine, that they can contact us. So I, I would've thought that, you know, they probably would've made attempt to contact us directly.

Q304 Yeah. O.K. Further to that there was a fax sent to the radio relay vessel.

A Yes.

Q305 O.K.

A Oh - - -

Q306 O.K.

A Sorry.

Q307 The same fax.

A O.K.

Q308 Are you aware if any information came from the radio relay vessel about the storm warning?

A I, I can't recall - - -

Q309 O.K.

A - - - but I, I'd be surprised if they didn't relay that message.

Q310 So it's possible then that the - - -

A See, the, the timing you're talking about is, I'm not transmitting between - - -

Q311 Yeah, certainly.

A - - - .....

Q312 But certainly that fax would've arrived at the radio relay vessel some time between 2.15 and 2.30pm, which is some 1 and a half hours after the start of the race.

A And that they confirmed that it, that it arrived?

Q313 According to the fax at the Bureau of Meteorology they have confirmation of transmission forms.

A Oh. O.K. So, so did you check with the L.E.S. in Perth that the mobile received it?

Q314 We would have to check that.

A O.K. That's probably a good thing to do because - - -

Q315 What I'm doing now is I've got the documents of, we had all the tapes transcribed from the radio relay ship - - -  
-

A O.K.

Q315 - - - and that will indicate whether it was actually broadcast.

A And my next question was go, go check their log, yeah.

Q316 O.K.

A 'Cause Lou does keep a fairly detailed log.

Q317 Yes. Without the documents in front of me if they did receive that document and issued that warning, would



anybody in the race committee have been aware of that, or should they have become aware of the storm warning if it was broadcast by the race relay control, radio relay ship ordinarily? Would it be the business of the committee to listen to what's happening?

A The, the committee, O.K. The way the communications worked in '98 is that the primary communication facilities via the, via Lou - - -

Q318 Yes.

A So he has a responsibility for continuous of the race - - -

Q319 Yes.

A - - - frequency. The, the land based crew, which starts in Sydney and end up in Hobart, we, we generally came on at around about the asked time.

Q320 Right.

A O.K. Sked, by that I mean the position reporting sked and the safety sked and those sorts of things. If it was, if Lou made the, the call in that time that we were listening then yes, we probably would've heard it, but at 2.15 we're not, O.K. 2.15 in the afternoon is not close to our, our reporting, so at that point we're getting off boats and coming back and we're not actually due to come up on the radio - - -

Q321 Mmm.

A - - - until, I think 8.00pm that night.

Q322 O.K. I'll just pass you on to Senior Constable Upston, who may have some questions for you.

SENIOR CONSTABLE UPSTON

Q323       Where would, you may not know, but where would Phil have been around that, you know, at the time between perhaps 2.15, 2.30 or 3 o'clock, where he may have - -  
-

A           O.K. Phil - - -

Q323       - - - have access to that storm warning?

A           O.K. At, at, the race starts at 1 o'clock. We're on the official start boat. We follow the fleet up. Now if I remember correctly in that race we actually had a problem with the anchor on the starting boat, so we were actually late leaving the starting line. So we then followed the fleet up, so about an hour after the start we were either at Sydney heads or, or coming back from Sydney heads. We then come back into the club and offload all the people. So my guess, and I can't remember exactly the timing, but my guess is around about then we were either still on the starting boat or offloading the starting boat. What Phil does then, I, I, I don't know exact detail but I suspect that, that his main duties at the time are then cleaning up the harbour, because there's a lot of marks and stuff, and boats that we need to pull out and, and just tidying up that end of it. So would, would he be, would he have been in a position to receive the fax? If he was on Olympic Spirit, sorry, the starting boat at the time the fax was received, no, unless the fax was sent to there. Would he have gone immediately into the race

office, don't know. You'd need to speak to Phil. I suspect, I suspect the answer's probably no, because there's a lot of stuff that has to happen, you know, just, just general organising rubber duckies to go pick up marks and getting boats in place so it wouldn't surprise me if it took Phil a little while to get into the sailing office. Was the fax sent to the sailing office?

DETECTIVE SENIOR CONSTABLE GRAY

Q324 No, it was sent to, only the media.

A O.K. I would, I would be, I, I, I don't know whether Phil would have had a reason to go into the media office.

Q325 Right.

A You'd need to ask Phil. I, I just don't know.

Q326 If I could just intervene for a second. In the documents which I discussed with you prior to Senior Constable Upston taking possession of them, is the transcript of 10 cassettes off the radio relay vessel. And I'll take you to page 24 which is tape one.

A I'm not familiar with those documents.

Q327 That's all right. I'll read this to you. Here is the weather issued, first of all I'll just give you the key. V.1 is weather forecaster on radio. Here is the weather issued by the issued by the Sydney Met Bureau at 14.50 hours, Saturday, the 26th of December. It is for the area Sydney to Jervis Bay. The synoptic situation a near high - - -

A Hang on, 14.50 - - -  
Q328 Yeah.  
A - - - is well after your 2.15.  
Q329 It is well after 2.15.  
A O.K.  
Q330 But that's - - -  
A O.K.  
Q330 - - - when the fax was sent to one centre. We don't  
know what the time delay is to the next - - -  
A Yeah, but what he - - -  
Q330 - - - centre.  
A - - - but what he said there is, Here is the weather  
issued at 14.50. What time was the call made?  
Q331 Well, the, the fax was originally sent at 2.15.  
A Yeah, sorry, but what he said there - - -  
Q332 What, yeah, what he says - - -  
A - - - what, what you're - - -  
Q332 - - - there - - -  
A But, but, but here, here is the weather issued by the  
Bureau at 14.50.  
Q333 That's right.  
A Which is about the time that they would issue weather.  
So, so he's not talking about the 2.15 fax, he's  
talking about - - -  
Q334 He's talking about - - -  
A - - - .....

Q334 - - - something else.  
A O.K. Sorry.

Q335 But, but, O.K. Well, even in view of that at 14.50 is  
1 hour 50 minutes after the commencement of the race.  
Do you agree with that?

A That's correct.

Q336 O.K. Where would the lead boat be at 1 hour and 50  
minutes after, or say 2 hours after the beginning of  
the race? Wollongong?

A Jervis. No - - -

Q337 Right. Jervis?

A No, Wollongong's 60 miles, 50 miles.

Q338 O.K. So Jervis Bay?

A Yeah.

Q339 Some distance before Bass Strait?

A Just a bit.

Q340 Right. And some vessels would still possibly be in the  
harbour confines, 2 hours after - - -

A Oh, no.

Q340 - - - the beginning of the race?

A No. The ones that are racing, no.

Q341 Right. O.K.

A No, see your distance from the starting line to the sea  
mark is about 3 miles - - -

Q342 Right.

A - - - total. And so you go up a mile and a half.

Q343 Yeah.

A - - - to a mark just of North Head and then you head  
out.

Q344 Yeah.

A So it's only, you know, 2 miles to get out of the harbour.

Q345 Yes.

A It, it's unlikely that, that a boat still in the race is there 2 hours later.

Q346 Right.

A The only, the only potential way that could occur is if the wind is quite light and you got recalled, and I don't think that was the situation.

Q347 Right. Right.

A The year before was.

Q348 Yeah.

A I don't know whether you recall the Exile incident, but, but at that time, and the only other way is if damage had occurred, you'd gone back into repair it - -  
-

Q349 Right.

A - - - which he's entitled to do.

Q350 But in any event it is still sufficient time to abandon, stop without any great danger? There are still areas for shelter for - - -

A Oh, sure.

Q350 - - - boats?

A Sure.

Q351 And a decision - - -

A Yeah, yeah, yeah, yeah, yeah.

Q352 And a common sense decision could still be made or discussed by a committee?

A Yeah. O.K.

Q353 Right.

A Yeah.

Q354 The synoptic situation, a high near New Zealand is ridging into the central New South Wales coast. A low of 995 hectare .... near Lord Howe Island is slowly moving. A cold front is over central Victoria. Warnings - - -

A Did, did it say which direction it's moving in.

Q355 Look, I, I'm reading it to you.

A O.K.

Q356 Warnings, repeat warnings. There is a storm warning current south from Merimbula and there are gale warnings, repeat, gale warnings current south from Broken Bay.

A Right. O.K.

Q357 Winds north to north-east 20 to 25 knots, ahead of a west, south-west change 25 to 30 knots with stronger gusts expected near Jervis Bay around midnight. Wind my tend briefly north-west 15 to 20 knots prior to the change, waves 1 to 2 metres rising to 3 to 4 metres offshore with the west south-west change. Swell 1 to 2 metres. Weather scattered showers and thunderstorms developing tonight ahead of the change. Then clearing tomorrow. The outlook for the next 48 hours, gale to storm force west winds south of Jervis Bay, expected to moderate Monday evening. And here is a further update of the storm warning for the south-east area, New South

Wales coastal waters south of Merimbula. The expected south to south-west change of 30 to 40 knots late tonight, changing to west-north-west 40 to 55 knots late Sunday and expected to last until Monday night. And that ends the weather.

A O.K.

Q358 So at 14.50 hours, 14.50 hours you agree that the weather was read to the fleet indicating a storm warning?

A If that's what - - -

Q359 That's the transcript.

A - - - .... says then yeah, that's cool.

Q360 O.K.

A Now what that weather says though - - -

Q361 Yeah.

A - - - is that your storm warning is south of Merimbula.

Q362 Yes.

A So the boats do have a fair way to go.

Q363 Yes.

A They've got a, a, a 25 knot sou' westerly change due at midnight.

Q364 Yeah.

A And so we've got a fair time window now where these guys are sailing into it. O.K.

Q365 O.K.

A Right. So, but that didn't indicate a storm warning at Jervis for that time.

Q366 Not at that time.



A It's south of Merimbula so that's - - -

Q367 Yeah.

A - - - quite south.

Q368 South of Merimbula.

A Yeah.

Q369 O.K.

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Q370 But it still indicates that the fleet is sailing into a, quite a significant - - -

A Yes - - -

Q370 - - - storm.

A - - - absolutely. Yeah, I'd agree with that.

Q371 So - - -

A It's, it's only into a storm. They didn't put parameter that it's a storm warning so the storm warning is - - -

Q372 But the indicated - - -

A - - - ..... yeah.

Q373 They did indicate 55, the parameters of the storm, 55 knots.

A Yeah. Yeah, that's O.K.

Q374 Mmm.

A Yeah. Sorry, yeah, I understand what was said there, yes.

Q375 Yeah. Now going back to a number of things that you also mentioned. Were you privy to, or were you present at meetings where boats were rejected as a result of

their, the problems associated with entering the race regulations, such as stability ratings and, and - - -

A No.

Q375 - - - the like?

A No.

Q376 You were never at - - -

A Oh, no, my apologies. We were, I've got to get my years right. There were considerable discussions, I think leading up to '98 about the eligibility of Nicorette, but those meetings were, like, in September October time frame if I remember correctly. I'd have to go back and check my notes, but I think it was about then. But that was the only one I can recall, I was, I was involved with.

Q377 So it is - - -

A That, that was an I.M.S. it was, was not stability, it was an I.M.S. rating.

Q378 O.K.

A .... yeah.

Q379 So it is the case that the race committee is involved in, in conversations regarding I.M.S. ratings?

A Yes.

Q380 And other documentations?

A Yes.

Q381 But it's not the case where you were involved in a discussion with the Business Post Naiad and it's stability rating under the I.M.S. rules and regulations?

A That's correct.

Q382 O.K. You mentioned earlier that you had a situation where you were transferring data of race goers, of race participants into the computer. Is that correct?

A Correct.

Q383 Can you expand on that and, and, and give me details information on what that information pertained?

A O.K. Just trying to come up with a simple picture for all of this. We take information primarily from three sources in, in building up the information base prior to the race. And the three sources are, we get delivered electronically a file from the Australian Yachting Federation, which is the I.M.S, what's known as the I.M.S. database. The contains the latest I.M.S. information on each entry in, in our race. And, sorry. What, what gets delivered to the Yacht Club is the I.M.S. database. We then use another program which is also supplied by the A.Y.F. to select the boats in our race. We take that, that database, and that contains all the information about the, the boat which is accurate as to its last official measurement or last gazetted, whatever the term is, however, however it's logged in the A.Y.F. We take that from the A.Y.F. I think on Christmas Eve so we, we actually, we don't officially, but we sort of give the boats a little bit of latitude in, in getting some of these things into the A.Y.F. That's, that's one source of information. Another source of information is we, all the entry

forms which are processed throughout the year or the 6 months prior to the race are, are then keyed in or scanned in, and they're added to a different ..... and that, that includes next of kin information and owner information and basic information about the boat, you know, beam, length, displacement, radio capability, safety category, dah, dah, just some basic information which we use for information on the web, that we publish. And then the third source of information is our, our ongoing database on the courses that we have used in previous Hobarts. So we have a model that says wind direction, wind speed, and this is for the I.M.S. part on, on how all that works together. So the three sources of information, one is I.M.S. basic, one is general entry information and then the other one is information about previous courses and the weather that we, that we'd collect on the way through. We also put in the P.H.S. handicaps, which we get from the Royal Sydney Yacht Squadron, basically.

Q384 O.K.

A That's, they're all the sources of information.

Q385 In any of those three sections of information - - -

A Yeah.

Q385 - - - is the I.M.S. stability rating logged into the computer?

A It, it comes as part of the I.M.S. database, yes. Yeah. We get both the L.P.S. and the, that's the

limited positive stability, and the index value as well.

Q386 So you, you put that in on the 24th of December? You log that yourself under the 24th of December.

A That, that comes as part of the database that we receive from the - - -

Q387 Yeah.

A - - - A.Y.F. yes. And we extract all of that information, yes.

Q388 Yeah. Would it then not be the case that you, you program the ELPOS which is the limit of positive stability, or the - - -

A L.P.S.

Q388 - - - or the, yeah, L.P.S.

A Yes.

Q388 - - - or the stability rating of the Business Post Naiad into the computer?

A No. Sorry, did we manually do that, no. We, that information is contained in the database, which is sent to us from A.Y.F. and then we just extract it. We, we have computer programs that suck that information out.

Q389 Right.

A Yeah.

Q390 Can you interpolate that information into real figures? What I'm saying is basically do you, if you get that raw data - - -

A Yeah.

Q390 - - - can you personally interpolate the facts and figures from that raw data into a, an L.P, a limited positive stability rating or an I.M.S. stability rating?

A Absolutely, absolutely. Do we, do we have the technical capability to do it? Absolutely. The, the L.P.S. is a number which is a calculated number, which is already on the, on the A.Y.F. database, so once you get that if, if what you're asking is do we have the capability to do something like, do a quick scan on the database to see who meets it and who doesn't, yes, we have the technical capability to do that. Did we do that in '98? No.

Q391 Mmm.

A Have, have we ever done it? Sorry, have we done it prior to '98? No. Did we do it in '99? Yes. For the, for the reasons I mentioned earlier that, you know - - -

Q392 Yeah.

A - - - we've now started to check what, whether or not people are telling us the, the correct thing.

Q393 So there were a number of situations where you could have checked prior to the commencement, commencement of the race, the exact eligibility of each yacht, of each vessel?

A Yes.

Q394 In - - -

A And we had - - -

Q394 - - - regards to its stability rating?

A We, we had the technical capability to do exactly that, yes.

Q395 O.K. Were you in attendance at any meeting prior to the race where, and in particular a, a meeting with all skippers and maybe a number of entrants, where people were denied access into the race until such time as they built up the, the correct procedures and the correct formalities into entering the race? In other words was there any yachts denied racing right up to the flag?

A I, I can't recall exactly. The, the notice of race and the sailing instructions specify entry requirements in terms of lodging of documents and that sort of stuff. There are cut off dates for those. And, and usually the final cut off date is briefing or like an hour after briefing, which is on the 24th of December, and usually at briefing, and I can't recall exactly what went on in, in that one, the people that have got outstanding documents are, are named at briefing and, and they, they've usually sorted it out pretty quickly. I can't recall whether anybody was denied entry - - -

Q396 Right.

A - - - in the '98 race.

Q397 Was the Business - - -

A I, I think the answer's no.

Q398 Right. Was the Business Post Naiad ever named at that briefing?

A I can't recall.

Q399 O.K.

A I can't recall. But you could go to Channel Ten and get a copy of the tape, 'cause that was all video taped.

Q400 O.K. In regards to the Sword of Orion and the Margaret Rintoul incident - - -

A Yeah.

Q400 - - - are you privy to that - - -

A Yes.

Q400 - - - incident?

A Yes.

Q401 And have you discussed that in detail with anybody?

A Yes.

Q402 Was there a, a committee called to discuss that, that issue? Was the race committee in fact called by the race chairman or any, or the race director to discuss that issue on the Sword of Orion and Margaret Rintoul?

A There were, there were a number of, now, I, I assume you're talking about the, the alleged Margaret Rintoul not stopping and helping that, that incident?

Q403 That's correct.

A O.K. The flare and that sort of stuff. O.K. After the race and, and I'm, and I'm thinking somewhere between days and weeks here, many, many, many conversations took place about what, what the club potentially could do, if anything about that. At the end of the day the, the chairman of the jury was



notified, the chairman of the jury's Mark Pride, he was notified and, because what, what you're talking about here is a rule infringement. When, when you, when you come down to the very base level in, in yacht racing that's what this is, this is an infringement. Yes, it had other implications about safety and stuff but, but at the end of the day what the club can and cannot do without infringing what you and the Coroner are trying to do is at a rule infringement level. The conversations took place about whether or not a rule 69 hearing should be opened. Rule 69 is bad sportsmanship .... infringement rules, O.K. It's a rule which is used as a catch-all for, catch-all's the wrong word, but it's a rule which is used when no other rule applies and it states so in that rule. It's usually targeted at bad sportsmanship and, you know, brawls and fights and just stuff, right, cheating. Now it was discussed whether or not that rule should be applied, or should be used. It is the, it is then at the discretion of the race committee or the jury to request a hearing under those circumstances. The, there were conversations that took place between oh, the members of the race committee, myself, Phil, Hans, about this. There were, there were letters that were sent between the chairman of the race committee and the chairman of the jury. I'm not privy to those. A considerable time later and I'm now talking in the zone, in the time frame of the review committee, so we're now 6 weeks

after the event, or 4 to 6 weeks after the event, a jury was formed and chaired by John ..... who opened a hearing against MR II, about, you know, allegation had been made, blah, blah, blah, blah, what do you want to do about this? And that hearing was adjourned to be reopened after the coronial inquiry. Then, and I'm a bit hazy on some of the times and dates here, but at some later point in time, far far, too, too far down the track for my liking, it was pointed out that the radio relay vessel was in contact with Margaret Rintoul at the time and was aware of Margaret Rintoul was doing and dah, dah, dah, and why it couldn't alter course to go do whatever it had to do, that the flare was in fact sighted and, I believe it's in your radio logs, and so that then went away, in that the jury was reconvened and the allegation was withdrawn.

Q404 O.K.

A So I actually did the interview with Margaret Rintoul II as part of the review committee after the race.

Q405 O.K. Are you not in fact, were you in fact a member of the, of the jury?

A No.

Q406 Are you a member of a racing jury now?

A Um - - -

Q407 For, for any particular - - -

A No, not this week.

Q408 Not this, but you are called to be a member of a jury  
- -

A Absolutely - - -

Q408 - - - on, on - - -

A - - - oh, yes, on numerous occasions.

Q409 As a result of your experiences - - -

A Yes.

Q409 - - - and all of that?

A As a result of my exceedingly good looks.

Q410 We won't comment on that. So in fact when the, when the initial inquiry started and the, the incident inquiry I'm talking about now as - - -

A The Rule, the Rule 69 - - -

Q410 - - - as far as the Race 69 hearing.

A - - - hearing, yes.

Q411 Yes, yeah. Who in fact convened that, that meeting?

A The, the chairman of the appointed jury convenes the meeting and that was John .....

Q412 Right. Who in, can you tell me who informed the, the chairman of the incident? Was it Hans Sommer or was it somebody else?

A I, I don't know. You'd have to speak to, to John .... about the but I, I think what occurred was that the sailing committee, which is chaired by Hans, requested a jury to be formed and they can do that, as, as organising authority they can do this, O.K. under the rules, that, they requested a jury be formed and that the allegation be dealt with. I, I wasn't party to the letter but I - - -

Q413 Mmm.

A - - - I could just about guess what would be in it.  
Q414 It may be difficult for you to say not sitting on the jury or the committee, but obviously you, you had dealings with the skipper of the Margaret Rintoul II, as a result of - - -

A Richard Purcell.

Q414 - - - of the, Richard Purcell, as a result of the race review's committee into that incident.

A That's correct.

Q415 Right. What are your thoughts as a result of those meetings, in, in regard to Rule 69?

A You're right. I wasn't party to the jury. I, I did have numerous conversations with, with Richard, or sorry, I had the one formal conversation with Richard following the race, as part of my, being on the review committee. I also had a number of conversations after that with him. Based on my knowledge of what occurred on the radio relay vessel the allegation would not have been proven, you know, I suspect it would not have been proven in a Rule 69 hearing. What a Rule 69 hearing is about is a gross infringement of the rules or bad sportsmanship. What, what they dealt with her is, from a technical level, it's actually an infringement of one of the fundamental rules of, you know, thou shall help people in distress. And, and this is where we start to get a problem, because you can't use Rule, I mean technically you can't use Rule 69 if another rule applies. So if the allegation was that they saw a

flare and did nothing about it then that's in fact an infringement of fundamental Rule 1, because it's a boat in distress. So you can't really use Rule 69. So there's fine technicalities about this. At the end of the day what appeared to occur is that they were out there in the middle of a washing machine and, and it was quite severe weather. Apparently they saw the flare, apparently they radio'd the relay vessel and spoke to Telstra control and informed them and gave them G.P.S. positions dah, dah, dah and all that sort of stuff and also informed them, I'm led to believe that they were not in a position to alter course. Now appreciate the sort of boat the Margaret Rintoul is, appreciate the conditions that they were in, and, and I could be, I, I could appreciate the position they were in and why they couldn't alter course. I mean the, the review committee in talking to a bunch of boats, what we found was a general theme that said once a boat found a good point of sail to survive in those conditions then their, 100 per cent of their effort was targeted at keeping that point of sail. And if you compare Margaret Rintoul's point of sail with say, Midnight Rambler, the boat that won the race and a few others you find they're all fairly similar in their angle onto the wind and stuff. So from a, from a helming viewpoint Richard, I guess, would have, would have looked at this and said, you know, and I'm speculating here, right. You'd need to ..... but, but

I, I could just sort of picture how this would go, have gone through their mind. They've found a nice point of sail where the boat is comfortable, they're surviving the conditions, they're all bunked down, they're all roped on, and suddenly they see something in effectively the opposite direction and the process that goes through their mind is, you know, I've got seven or eight blokes on here, do I, do I risk these seven or eight blokes to go off and see what's happening over here, and, and I think they did the right thing again by radioing the, the relay vessel and going here's the situation, you know, we would find it really difficult to get over there, what do you want us to do? And, and I believe what the radio relay vessel said to them was to continue sailing. I, I, that's what I believe but I, I don't know.

Q416 When talking to Richard, did he inform, tell you, and this is Richard Purcell, did he inform you in fact of his, one of the problems that are associated with his, this particular incident is that his engine had come adrift from its mountings? Were you aware of that?

A I, I, I recall, yes, I, I seem to recall that he mentioned he had radio, engine problems.

Q417 O.K.

A Not radio, engine problems.

Q418 What were your recommendations then as, as a result of that to the race review committee?

A The race review committee specifically did not look into that incident. Because it, because it was an incident concerning the death of a person, part A, and part B, because there was a potential Rule 69 involved, the review committee didn't have the charter to look into that. What the review committee could do in that case or in that situation and what it did do was, was say back to the club, you know, here are your options. We, we can't really look at this because we would be pre-empting anything which, which you guys did or which a jury did and we can't do that. That, that, that sort of incident's best handled inside a jury or best handled by a coronial inquiry.

Q419 Well, from your personal experience where do you feel then the difference between this incident occurred and the incident with Sienna and Stand Aside, where this -  
- -

A .....

Q419 - - - .....

A Just, just remind me of Sienna and Stand Aside.

Q420 Where, where in fact Sienna went to the, to the aid of the vessel Stand Aside.

A I have no comment. I, I don't know the circumstance, sorry. I, I know broadly speaking Offshore, Stand Aside and Sienna and what happened, I know broadly speaking MR II and Sword of Orion. I wasn't there.

Q421 O.K.

A I don't know.

Q422 Just - - -

A I, I seem to recall though the video of Stand Aside. Sienna didn't alter course. She .... her, her angle of sail was, she was trucking along, so they were, they were on convergent course anyway, and also in that video and the soundtrack that came back, that Sienna actually went past and radio'd that I can't turn around and come back. I seem to recall that so, just, you know - - -

Q423 Mmm.

A - - - I seem to recall - - -

Q424 Yeah.

A - - - I could be wrong on that one but - - -

Q425 Mmm.

A - - - yeah, I wasn't there so - - -

Q426 O.K. The briefing you mentioned where they raised issues with boats that don't comply for certain reasons, whether that be - - -

A The - - -

Q426 - - - ....

A Yeah. Yeah. Yeah, normal race briefing, yes.

Q427 That is held on the 24th? Is that correct?

A Correct.

Q428 O.K. Now in relation to the raw data that was sent, that David mentioned before, that is sent to the sailing office some days prior to the race?

A Sent to or picked up from the A.Y.F. - - -

Q429 Right.



A - - - one, one way or the other it gets to the sailing office, yes.

Q430 O.K. Now I just need to clarify, does that, does that data in raw figure form indicate an E.L.P.O.S. or a stability index?

A Yes.

Q431 It does?

A It has the number, so the, the number you're looking for is 110, 115.

Q432 Yeah.

A That number 110, 115 is, or 114 and a half or - - -

Q433 O.K.

A - - - whatever the number is, yes.

Q434 I also inform you that we have a copy of some of the documentation which was sent from the A.Y.F. and does not in fact include the E.L.P.O.S. or the stability index. What would you say about that?

A You have a copy of the documentation? Do, do you have a file?

Q435 We, we have one document. We have a, one document in relation to a number of boats, sorry, a couple of documents in relation to, to boats and the E.L.P.O.S. and the stability index does not appear on that raw data. What would you say about that?

A Are, are these, are these paper documents?

Q436 Paper documents.

A I don't know what paper documents you've got. I couldn't make a comment unless I saw the documents.

Q437 O.K. Well, the form in which these documents arrive, or are picked up from the A.Y.F. are there a number of, well, are there numbers on these documents?

A No, no, no, no. Sorry, what I was referring to is, is a database file, it's a disk, it's a diskette.

Q438 Yes.

A O.K. The, the information is in a, is in a disk, and it's a, it's a standard - (Tape Beeping) - Microsoft access database, and that information is in there.

Q439 All right.

A It's not paper.

Q440 Right. O.K.

A So, so you need .....

Q441 But you can print from that? What I'm saying is you -  
- -

A Sure, sure, sure, yeah, you can .....

Q442 O.K. We are in possession, I just want to make sure we're not getting our, our wires crossed here. There is certificates, I.M.S. certificates?

A Yes, pieces of paper.

Q443 Yes. These are different to what you're talking about?

A Yes. Yeah. Physically, yes.

Q444 Physically yes?

A Yes.

Q445 O.K.

A All, all the information which is on the piece of paper  
- - -

Q446 Yeah.

A - - - with the exception of the signature of the owner  
- - -

Q447 Yes.

A - - - I think.

Q448 Yeah.

A Don't quote me on this but I think - - -

Q449 Yeah.

A - - - the guts of the information is actually in the  
database.

Q450 Right. O.K.

A And those bits of paper are printed from the database.

Q451 O.K. What I'll do is during the break, we're just  
going to change tapes, I'll get a, the piece of paper  
we have and I'll show you.

A O.K.

Q452 O.K. So you said that in '98 obviously those documents  
weren't looked at closely by anybody?

A Which documents? The ones received from the A.Y.F. - -  
-

Q453 Yeah.

A - - - or the database?

Q454 The database?

A Correct.

Q455 O.K. And - - -

A I, I don't know what, what paper you got from the  
A.Y.F. - - -

Q456 Yeah, I'll show - - -

A - - - all right?

Q456 - - - you in a sec. What I'm saying is, would it be the responsibility of the organising body to ensure that all boats comply so far as stability index or E.L.P.O.S. is concerned?

A No.

Q457 Whose responsibility is that?

A It's in fact, it's the owner's responsibility.

Q458 O.K.

A And that's clearly stated in the notice of race, and the racing rules.

Q459 So why is it the C.Y.C.A. require stability indexes and documentation to prove that the stability index or E.L.P.O.S. is greater than the minimum requirements as an organisation? Why do they require that?

A Oh, gee. There's a good question. I, it, it's traditional in lodging an entry - - -

Q460 Yes.

A - - - that all that information is, is kept or, or, or supplied with the entry.

Q461 Yes.

A It's the owner's, I, I guess I should be a bit clear here. It is the owner's responsibility to ensure that his boat meets whatever's on the, the piece of paper or the database, O.K.

Q462 O.K.

A That he maintains his boat in that order. In, in the notice of race the, the entries are only open to boats which meet certain criteria, and one of the ways that

is demonstrated I guess is that the owners have to lodge the documents.

Q463 O.K.

A Did that answer the question? I'm not quite sure.

Q464 In some way. Well, I put it to you this way. Are you aware on previous occasions and previous years of Sydney to Hobart yacht races where owners have submitted I.M.S. certificates and E.L.P.O.S. which are below the minimum standards, have been in fact told by former race committees that they're not entering the race until such time as their boats comply with E.L.P.O.S. and stability index? Are you aware of that previously happening?

A I, I can't recall any particular incidents, but it certainly wouldn't surprise me.

Q465 So that indicates that the organisation is certainly interested in ensuring that boats comply - - -

A Yes.

Q465 - - - not only, not only for their peace of mind, but ensuring that there's no - - -

A Yeah.

Q465 - - - cheating? Do you agree with that?

A Cheat, cheating's a rough word but yeah, O.K.

Q466 Yes.

A Yeah. Yeah.

Q467 The time on my watch is now 11.29. This interview is suspended for a tape change.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE UPSTON

Q468 The time on my watch is 11.41am. This interview between Gray and Mr Howard Elliott is recommenced. Prior to the tape change, Mr Elliott, we were discussing the documentation which is received at the C.Y.C.A. - - -

A Yeah.

Q468 - - - sailing officer, either received or they pick it up from the Australian Yachting Federation.

A Mmm.

Q469 Do you have copies of that database for 1998?

A I do.

Q470 And from your best recollection does that data indicate to you a stability index or E.L.P.O.S. off every boat that entered that race?

A I believe it does.

Q471 O.K. And is it the case that this information is provided to the C.Y.C.A. for a, for the purpose of checking that boats comply with the necessary stability requirements?

A No.

Q472 What's its reason?

A Its reason is as input to a program called R.M.S. 97, which is a handicapping, a handicapping or race results program.

Q473 Right.

A That's the purpose for which it's supplied.

Q474 Is it the case that you discussed prior to the tape change that there was a great amount of responsibility placed on the owner to ensure that his boat complied, or his or her boat complied with the minimum stability index?

A The, the, the rules place an onus on the, on the owner to comply with his measurement certificate, yes, and all parts of it, not just the, that particular part.

Q475 So is it the case that the Cruising Yacht Club have a responsibility to ensure that that person or that male or female or owner of the boat has, has in fact complied?

A Not, not really. Technically, according to the rules the, the onus is on the owner to do that, and, and technically the only other way that a, that a boat can be found in infringing one of those rules is either on the report of another boat in case, in that case it comes under normal protest, or by measurer, reporting same. So the race committee itself can't go out and go your boat doesn't comply. It needs to have advice from a measurer, or it needs to be protested by another boat. So in, like last year the Nokia incident with the number of crew and that sort of stuff, that came up as a result of a protest from another boat. Quite often in, in other championships you'll have the official measurer, who has a, a charter to wander around and look at boats, will go, that's not the right sort of rudder or that's not - - -

Q476           Yeah.

A               - - - the right sort of sail, pack it in guys, or we'll go to the protest room about it. So the race committee itself technically doesn't have a responsibility to check from a measurement rule perspective whether a boat complies. Whether its got a, a responsibility to check whether they comply to the conditions of entry and there are minimum conditions of entry, my, my guess is that it seems logical that, that conclusion would follow, and that you'll need to palm onto Phil and Mark - - -

Q477           Yeah.

A               - - - to answer that question.

Q478           So it is the case that, from your understanding, that it is important that, I, I'll put it this way. These forms are checked by someone or some body or some persons prior to the race?

A               Yes.

Q479           Or should be checked.

A               Should be, yes.

Q480           If a I.M.S. certificate comes into the sailing office and it is clearly indicated that, that that I.M.S. certificate had a rating of 104.7 and it is viewed by someone, what would be the, the responsibility of the person viewing that document in relation to that boat?

A               O.K. Now, now you've gone into a different zone now.

Q481           Yeah.



A Now, it's, now has been brought to the attention of the race committee.

Q482 Yes.

A Or race officer that the boat doesn't comply.

Q483 Yes.

A Generally what happens at that point is the owner is contacted and, and, you know, ... George, you don't comply.

Q484 Yeah.

A What are you doing to do about this?

Q485 Yeah.

A If, if that continues the, the notice of race is quite clear in that the entry can be refused.

Q486 Yes.

A And, and generally to the best of my knowledge the entries usually are refused if the, if it doesn't comply. I can't think of an occasion when it hasn't been refused.

Q487 Right.

A But, but you, you're right. If it comes in and it's identified it's, yeah.

Q488 .....

A Absolutely.

Q489 So obviously the scenario could be that the owner may say, well, this one's expired, I'm about to get the boat remeasured, I will send the new one to you?

A Can't do.

Q490 Sorry?

A Can't do. The, the, the, the, the terms of entry are very clear, that it has to be current and valid certificate - - -

Q491 Yes.

A - - - so it cannot be an expired certificate.

Q492 O.K.

A Now the only exception to that - - -

Q493 Yeah.

A - - - is in the case of a P.H.S. boat - - -

Q494 Yes.

A - - - wishing to demonstrate its stability, in which case he doesn't have to have a current certificate but it has to have a balance certificate.

Q495 Yes.

A So the currency is renewed every year, O.K.

Q496 Yeah.

A And, and quite often it's just paying money, but a valid certificate implies that all the measurement information is correct.

Q497 Right. O.K. So if the owner said, well, this is my previous certificate, which, which has expired but, but is within the minimum limits - - -

A Yes.

Q497 - - - O.K. we will get a, we have a new one coming on the way.

A Yes.

Q498 Is that reasonable for someone to say yes, look, send the new one through before the race entries close?

A It's common, yes.

Q499 Right. Would it then be, would the person or persons be encumbered to check to ensure that in fact the owner did have the boat remeasured, and the new certificate was forthcoming, or in fact did arrive?

A Well, generally speaking no. What, now let me rephrase that. What, what occurs is there is a, a list maintained of, of all the entries into the Hobart race and - - -

Q500 Yes.

A - - - what documentation is outstanding from each boat. If, if an owner comes along and says, I don't have a, I don't have a valid current I.M.S. cert now, but I'm going to have it at some later point - - -

Q501 Yeah.

A - - - then that's in the list as saying, you know - - -

Q502 Yes.

A - - - here, here's a document that's owed to us.

Q503 Yes.

A And then we get to the briefing - - -

Q504 Yes.

A - - - usually.

Q505 ....

A You know, list of people don't have, you know, you've got to give it to me.

Q506 O.K.

A So - - -

Q507 In relation to that list - - -

A Mmm.

Q507 - - - are you aware if prior to the 1998 Sydney to Hobart Yacht Race if there existed on a board in the sailing office two pieces of A3 paper stuck together which had a number of, which had all the entries, and which had a number of columns indicating the requirements of each boat, ie Next of Kin, safety certificates, I.M.S. certificates, are you aware of those documents?

A I, I, I seem, I seem to recall them. It changed for the '99 race to a bigger - - -

Q508 Right.

A - - - white board thing but, but yes, that's normally what occurs.

Q509 O.K.

A Yes.

Q510 So is there a separate list kept to that?

A Don't know, you'd have to ask Phil.

Q511 O.K. On the briefing day are you, does, well, on the briefing day is everything transferred on that, those two bits of A3 paper, transferred to a document to take to the briefing, or is the A3 bits of paper taken down and taken to the briefing?

A Don't know, you'd have to ask Phil.

Q512 Do you recall - - -

A I, I don't know - - -

Q512 - - - such - - -

A - - - I don't know - - -

Q513 O.K. That's fine.

A - - - I, my, my part in the briefing is to sit up the back and be quiet.

Q514 That's fine. And would it be the case that those documents would ordinarily be archived with other race documents?

A I don't - - -

Q515 Ordinarily?

A I don't know, you'd need to ask Phil.

Q516 O.K. That's fine.

A I, I would suspect they would, but, you know - - -

DETECTIVE SENIOR CONSTABLE GRAY

Q517 Just on one thing, and to conclude. Why do you suspect they have a stability rating at all for any yacht race? With your experience, what do you think the importance is of a stability rating, being and having the understanding of that is 115 degrees or 110 degrees, or 120 degrees for various category, what's your understanding of why that's necessary to have that stability index?

A It relates to the safety category of the event more than anything else. Well, I, I guess there, there are two reasons that you need to know that number or that people use that number. From a race management perspective the number, that number plus some of the equipment which they carry categorises the boat into a different safety category. And then we, we categorise

races according to safety category. Hobart's a category 1 race, the Whitbread's is a category zero race. Port Stephens is a category 3 race, I think, so, Inside the Harbour it's category 7 races, so depending on, on, on that number plus a whole bunch of other factors the boat meets certain criteria, and certain races, like, a race on Lake Illawarra has a significantly lower safety requirement than the Hobart race.

Q518 Yes.

A For obvious reasons.

Q519 Yes.

A Then down the other stream the limit of positive stability and those numbers relate to how far you can tip the boat over and, and when it will recover under its own steam. That stability also affects the rocking moment and the, the, sorry, the pitching and gyrating moment of the boat, so it's often used by designers and other people to help tune the boat.

Q520 Yes.

A So we need to know, you know, the physics of the boat and, so it's used for two, two different things. But from a race management viewpoint it, I can't remember the numbers but, you know, it's a L.P.S. 115 are graded I think as category 1, then less than that's category 2, Mooloolaba's category 2, Wollongong's category 2, so most of the ocean races of any length are category 2 or

category 1, and there is a write up in the back of the rule book as to what those categories mean - - -

Q521 Yeah.

A - - - and why, you know, enclosed waters, sheltered waters, bays, rivers and, and how they all fit together. And those categories are determined by the International Sailing Federation, I.S.F.

Q522 But in, in the back of it all it's really a safety factor, isn't it? Is is, it's a safety margin for the area of operation of the race?

A Yes.

Q523 Is that what you're saying?

A Yes, yes.

Q524 Well, what are your thoughts on crossing one of the most, and this is a general consensus - - -

A Mmm.

Q524 - - - of one of the most treacherous areas in, in Australian waters - - -

A Mmm.

Q524 - - - and possibly in other ocean races around the world?

A Yeah.

Q525 Would you agree with that?

A That it, that it's a tough race?

Q526 Yes.

A Oh, absolutely.

Q527 And, and crosses one of the most dangerous parts of, of sailing?

A It's, it's without question recognised internationally as being a race that, that goes into some of the most difficult conditions encountered for a blue water race of that length, and, and let's be realistic, it's a medium length ocean race by world standards. It's long by Australian standards, but that's only because we have it, the Lord Howe and Mooloolaba as the next length races. But, but by world standards it's a medium length ocean race. It doesn't compare for instance with the Capetown to Rio race, which is across an ocean, or the trans Atlantics or Trans ..... in terms of length.

Q528 Mmm.

A But it heads straight down into the southern ocean, which is a very, very ugly place to sail. Tony Bullimore can probably give you more information on that.

Q529 I'm sure he could. But what I'm saying it's a safety net, it's a safety factor basically, and if they travel into, into these waters that you're explaining in your own words as, as extremely treacherous wouldn't you think that they would widen the safety margin, wouldn't you think that the, that the, the race committees would extend that safety margin and perhaps, and perhaps make the, the Sydney to Hobart Yacht Race a category zero race?

A Um - - -

Q530 For that safety factor only and, and none other?



A To go to category zero I probably would agree, because category zero is really designed for cross ocean passage racing and, and this is not one of those. Category zero is, it's, it's a Whitbread and Round the World, I mean it's, it's a fairly serious sort of, sorry, an extremely far more, what's the word, stringent set of conditions than, that category 1. Category 1 is pretty tough. I think though you've got to be careful about using L.P.S. and S.I. as the panacea for safety 'cause it's not. All, all it does is it says in calm conditions if I incline the boat to 115 degrees it will come back up of its own speed, or it, it's own efforts. Now that, that in itself is one of many measures of safety that we have. I mean you could, you could go down the track here and say, O.K. well, in category zero they actually require sealed bulkheads all through the place. Are we going to put sealed bulkheads in these? They require different types of liferafts, are we going to put different types of liferafts? My vote on that question? Absolutely. Liferafts we have I don't think are very good. The, there are a bunch of different things that we can put in. Now for a ..... such as Naiad, that, the, the way the L.P.S. is calculated is all, it was all O.K. and you, you invert the boat and, and it bounces back no problem. And you do that in, you know, the, the back of Sydney harbour somewhere where it's nice and calm and it works perfectly every time. You put it into 11

metres seas where the boat's falling down waves sideways, and you have a completely different set of conditions. You also put it in seas where instead of going beamside, rolling beamwise, it rolls nose first, and so L.P.S. doesn't cover a nose first dive. It only covers the, the rolling moment. So it's not a panacea for everything, it's, it's one of many indications and, and it's, it's probably, at, at, at the end of the day if you go back through not just I.M.S. but I.O.R. and J.O.G. and all the other measurement rules stability has always been one of the key ones to identify whether the boat, you know, fundamentally basically is, is remotely capable of handling the conditions that it's going to go in, and by having a, an L.P.S. greater than 90 degrees you're, you're suggesting that the boat can actually recover from a, from a knock down comfortably. Most boats these days will, will, will come back from a knock down, even, even the littler trailer sails and stuff. But I'm not altogether sure I'd hang my hat on L.P.S. as being the panacea for all our rules here.

Q531 O.K. Let's take it one step further. The Sydney to Hobart Yacht Race, in accordance with the International Offshore Racing Council Rules, and the stability ratings really, if we look at it further, is only a category 2 race.

A Yes.

Q532 Yet they - - -

A Strictly, strictly speaking - - -

Q533 Strictly speaking - - -  
A - - - it's - - -  
Q533 - - - it's a category 2 - - -  
A - - - a category 2 race.  
Q533 - - - race?  
A Yes.  
Q534 Yet they elect to make it a category 1 race.  
A I, I think - - -  
Q535 And - - -  
A - - - I think you'll find the difference - - -  
Q536 So if, what I'm saying is that if these are, if these are the most treacherous waters, can be the most treacherous waters in the world, is it not insurmountable to make it a cat zero race on stability only, and to further eliminate the chance - - -  
A ....  
Q536 - - - of knock down and if not that, a quick recovery, a quicker recovery?  
A It's, it's, it's a, it's a very good debate, and a debate which rages every year. Perhaps not do we make it a cat zero, but, but do we add in to the safety features or, or, or the, the, the basic safety requirements? It, yes, strictly speaking it, it is really a category 2 race if you carefully read the definition. But also strictly speaking it can be a category 1 race if you read the definition of category 1. So it's a, it's one that fits on that cusp. It's very similar to Wollongong in that respect, in that

Wollongong is not really, and Port Stephens, is not really a category 3 race, sorry, could be interpreted as a category 2 race and, when in fact it's interpreted as category 3 in the case of Port Stephens, and Wollongong is the reverse, right. They're both similar distances, you know. Now what you, what you can do though is while you can't reduce the safety requirements for any particular category you can always increase them, and, and we've done that in '99 and we've, we've actually done that in prior races as well. We've, we've actually put other stuff on there, that you've got to have, like, we mandate H.F. radios, and H.F. radios is not mandated under that safety category. But the fact that radios need to be there is one thing, but we actually mandate the H.F.'s, right. Yeah, I think if you make it category zero and, and, and to, how do I put this? This is, this is, this is a question that, that has so many facets to it. If you were only concerned about safety you wouldn't run, run the race. If that's the only thing you were concerned about you wouldn't run the race for the simple reason that it's been proven not just in '98, but prior to that that this is a potential life threatening, you know, so you wouldn't run it, if that was your only concern. That's not the only concern. It's one of the major concerns but it's not the only concern. I mean you wouldn't walk across the street for the same reason, right. But, so adding all these things

together category 1, I think is, is O.K. for, for that race. I wouldn't make it category zero 'cause that, that's going over the top, but I would, based on hindsight, based on '98 definitely increase or supplement the category 1 safety requirements. Whether I'd increase L.P.S. I don't know and I'd need to take advice from a designer as to what that would give me and, and I don't know. But I think what '98 did show was that the numbers of knock downs and recoveries, and the speed at which they recovered wasn't necessarily related to L.P.S. and that's what the review says as well. So I, I'm, I'm, I'm careful about saying, you know, L.P.S. is the answer and let's just increase it to 125.

Q537 O.K. You've nothing further to say?

A Beauty.

Q538 The time on my watch is now 12.00 midday. This interview is concluded.

INTERVIEW CONCLUDED