

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston and Mr Rob Kothe on the 24th of the 7th, '99, a Saturday, at the Sydney Water Police. The time by my watch is now 9.08am. And seated directly opposite me is Detective Senior Constable Stuart Gray from the Bega Detectives. Rob for the purpose of the interview could you please state your full name?

A Robert Maxwell Kothe.

Q2 And your address?

A 44 Sloane Street, Summer Hill.

Q3 And your date of birth?

A 16th of the 3rd 1946.

Q4 Rob, and also for the purposes of the statements being adopted for court purposes, would you please read this statement?

A O.K. This statement made by me accurately sets out the evidence which I would be prepared if necessary to give in court as a witness. The statement is true to the best of my knowledge and belief and I make it knowing that if it is tendered in evidence I should be liable to prosecution if I wilfully stated anything which I know to be false or do not believe to be true.

Q5 O.K. You agree with that statement?

A Yeah, that's, of course.

Q6 And Rob, I have here two other statements. One dated the 4th of June, 1999 and the other dated the, the 2nd

of January, 1999 and these statements you gave to us with Detective Senior Constable Gray and myself. Are they also your statements?

A Yes, these are also my statements and the same would apply that is that you know, I'd be prepared to say the same thing in court.

Q7 O.K. Thank you very much. Now Rob, as we spoke to you prior to conducting the interview, we've got you in again today to talk to you over a number of issues. Firstly, it's been brought to our attention that a collision occurred between your boat, the Sword of Orion, at the start of the, or just after the start of, the 1998 Sydney to Hobart Yacht Race. Is that correct?

A It happened virtually, you know, a few seconds before the start gun, between ourselves and the maxi yacht Barter Card which was being chartered and known at that time as Nokia.

Q8 O.K. Now could you tell me what happened as, as a result of that collision?

A O.K. That was a, there was, it was a pre start manoeuvre, the, the very large boat, Nokia, was sort of following us around, came up, very large boat, was next to us. When it came close to being head to wind, a big boat like that just tends to go sideways, loses, loses wind. I'm not going to go into the technicalities of the particular incident, there's except to say that there was a collision, there was, we were told when we got to Hobart that there would be a protest by them

against us. We had, we'd flown a red flag and then intended to protest them. And there was subsequently a protest committee meeting of the C.Y.C. Protests, yacht racing protests can be pretty robust affairs. People who win them best are people who go in, know the rules and say what's needed to be said to get the result that they need. There were no rules of evidence whatsoever and very often it's the people who are best primed. We went to that protest committee with two very clear pieces of evidence which were two photos which were uploaded from Nokia to the C.Y.C. and they were on the Internet, still remain on the Internet to this day. When we went to the, the, the, they'd been put up by Peter Campbell who was the public relations and media director of the C.Y.C. and we knew he hadn't taken the photos, because he wasn't on Nokia, but they were uploaded by Nokia and he posted them on the Internet. And so we took those two photos in as evidence. I didn't, I, I wasn't, I wasn't driving. The photos were taken in and they were presented as very clear evidence as to what happened because they showed very clearly what happened. Much to our surprise the guys on Nokia said that Peter Campbell, the media race director of the whole C.Y.C. wasn't on the boat and the boat, and they were possibly forgeries. We weren't prepared for that. We, of course he was not on the boat, we understood that, but we at that time couldn't, we didn't have, didn't take

in with us evidence that they had uploaded it just didn't occur to us. So that piece of evidence was wiped out. There was a, an adverse finding. We were penalised 10 minutes. Subsequent to that Nokia who alleged they'd suffered \$15,000.00 worth of damage, the representatives contacted me and said, We want you to pay \$15,000.00. I said, there were no rules of evidence. We've subsequently, by conversation with Peter Campbell have confirmed what we said, which was, that you guys uploaded those photos, they were really truly photos, and we're quite happy to go to a place where there are rules of evidence and let it be heard and we'll see you in the equity court if you want any money. Suffice to say that it all disappeared at that point in time. So once can draw one's own conclusion, but the conclusion we came was that they'd said what needed to be said rather than, rather than, you know, tell the truth. I mean, young Darren went into that, young Darren Senogles, my bowman, went in and on, asked one question, said he didn't know. You don't say things like that in protest committee meetings you, you state very clearly and very, you know, convincingly something, whether it's true or not, is, doesn't matter. But he said he didn't know something. We hadn't primed him in that regard because it tends not to be my way, but in, in those sorts of protest things, because ultimately I'm of this belief that you can't really hide the truth and that if you've got a crew

full of people ultimately it all comes out. And it's only yacht racing. But, you know, they said what needed to be said and they were a very slick outfit and they got a result. But it didn't affect anything as it turned out, but when they, what I didn't know was that they really were looking for money, but when I said, See you in a real court where there's real rules of evidence, it all faded away. So, but the most important thing about the, was that, yes there was a collision, we did suffer some damage and I subsequent to that gave, put an e-mail out during the Sydney/Hobart Yacht Race which was posted to the web, Sydney, to the web site. And the basic content was that we'd had a collision, we had a crease in the mast and we'd suffered structural damage. Now the structural damage that we've suffered particularly was that the aft starboard stanchion had, the support pad had been punched into the deck. Now one of the reasons for saying we'd suffered structural damage, 'cause that writes into the record for, at that stage we were anticipating getting to Hobart, it writes into the record for a protest that the, the incident was sufficiently severe that there was structural damage which is a, a, one of the, one of the pre-requisites for certain sorts of claims. Very often, if you just touch each other, and there's no major damage or, significant damage, I think is the words in the blue book, then people just do 360s or 720s and that's it.

And we were pretty pissed off. We think, we still do to this day, believe they did the wrong thing, and so we were writing into the record the structural damage. But, and we at that time had identified on the mast, 'cause the rigs did touch, we'd identified a, a little spot on the mast that we thought was a crease on the mast. It wasn't a fold type crease, it was in fact a shiny spot that we thought was stress on the, on, and this is an aluminium mast section. O.K. We went out the Heads and, and got going. Darren Senogles who, by trade was a builder, got busy with his, his cordless drill, took the stanchions off, re-drilled, moved them along, put a lexam pad underneath to, to, to make sure that the surface was strong, through bolted it and repaired the, the damage to the stanchion. I believe, and he certainly told me at the time, and the crew seemed to believe, that the stanchion and the base of the, the integrity of that was as good as new, as if it had been, you know, that we believed that. We were obviously very concerned about what we thought was a crease in the mast, gut knowing that the fact that the weather was expecting to strengthen. As we were going down the coast we were sort of watching it every 10 minutes. We figured that if it was a crease it was just gunna fold on us. The wind kept increasing, the mast was under load, as masts are supposed to be, the shape was bending. And what we finally realised was that there was a, a line rubbing against it and that it

was just a shiny spot that, from a line. Now I, you know, we watched it and probably somebody looked at it every, you know, half hour or so and we, we, you know, we finally realised that it was imaginitis, that the, the shiny spot had probably been there all the time and we just never noticed it. But when you're under stress and you look for things, where (DEMONSTRATES VERBALLY) this thing? Now when subsequent to that, you know, we had 40, 50, 60 knots, the masts, we're on both tacks and it gave no indication of any weak point failure, any change in any way shape, or form. After we rolled over the, when we rolled, the mast broke into six or seven pieces. It didn't appear, but from the best of my knowledge, and it's only hearsay, it didn't sort of break in one place and then, you know, something else happened. And my recollection is that, and I was below injured, my recollection is that I asked Dags did it, did it fail at the shiny spot, and he said, he had his ring hanging out, but it broken into either six or seven different bits and he was pretty sure that that had nothing to do with it. It was interesting, Steve I hadn't had an opportunity to talk to him about this, and this came out in the press, and he was in Western Australia and I had really to spoken to him about the thing for, oh, well since the Hobart, well I hadn't even spoken to him after the Hobart about it, 'cause it wasn't relevant. And he gave a radio interview with the A.B.C. and said, just the same

thing, you know, so we were all quite convinced while we were going out of the harbour, that we'd suffered, you know, (DEMONSTRATES AUDIBLY) it's got to be bad stuff. But by the time we got into serious breeze down around Eden we had totally relaxed and realised that it wasn't the crease that we thought it was. But certainly the structural damage that we'd suffered was, you know, it was, was aft stanchion etc. and that was repaired. But, yeah, one of the reasons for writing it into the record is for a, for a subsequent protest. You know, so that's, that's the story.

Q9 Did, did, at any time anybody shimmy the mast to have a, have a good look at it?

A Oh, yes, they did. Somebody, I can't remember who, got up on the boom, 'cause it was only about, I think it was probably about 3 metres up in the air. So someone got up on the boom and had a good look and rubbed it and, you know, there was no, there was no actual crease
- - -

Q10 Mmm.

A - - - as such.

Q11 Who was that? Do you recall?

A No, I don't. No, no. Darren would have a better idea than I would.

Q12 O.K. Now when you say that, that you suffered stanchion damage, the, the damage that, that occurred was actually a punching through the hull.

A What happened was that - - -

Q13 Or through the deck.

A I, I was on the aft quarter, but I was over it. I was actually tryin' to push the boats apart and, and there's some Channel 10 video of me taken from Nokia, 'cause they had a cameraman on it, of me tryin' to push the boats apart, 'cause this is all happening quite slowly. And the, the lifelines, you know, their stanchions and our stanchions locked and, you know, the, the stanchion head was bent forward. This is the second aft stanchion was bent forward and I remember Dags, you know, knocking it, knocking it up later. And the aft one, as is common with these things, was, you know, the, the pad of it was punched into the deck. But then what he did, and he can tell you in more detail, I think how moved it probably, you know, 50 millimetre forward and refixed it and we're all convinced, because you see what the, we then did is, we then put our lives on the line by all swinging out on it. You know, what you do by definition, is that when you're on the, when you're on the rail, you're hanging by those lifelines and stanchions. The second stanchion forward was inconvenient 'cause it was bent forward and it made it a bit hard to do. And that's why we have it weighted up. But it didn't stop any of the crew, you know, we had the entire crew weight on those, on those lifelines. And that's why Darren - -
-

Q14 Yeah.

A - - - you know, it's very important that you do it back up properly and everyone be comfortable with it, 'cause everyone's gonna put their life on it and, and hang out on those lines. Now as it happens there wasn't a real lot of that because we had following breeze, and then by the time we got headwind we were all so, we went into, you know, storm mode and you don't have people But I talked to Darren, I'm, I'm, you know, I'm sure he was, he was very happy at the time that everything was, had its structural integrity back.

Q15 So just, just, to get a clear in my mind, the aft, the aft stanchion, the very last stanchion - - -

A Yeah.

Q15 - - - on the - - -

A The stern.

Q16 - - - on the, on the stern - - -

A Yeah.

Q16 - - - was, was punched through the deck and the lines were obviously, that's the, that's the, the, the governing factor, that one, that particular stanchion holds all the lifelines basically - - -

A Well - - -

Q16 - - - in their integrity?

A It's the corner post, yeah.

Q17 Yeah.

A And it, the, the, they were, they tend to be slack - - -
-

Q18 Slack, O.K.

A So, so you'd be, if you tried to hike on them you'd be leaning out.

Q19 O.K.

A So, so he, he took that one completely off the deck while we were going downwind so no one has to, took 'em completely off the deck, drilled new holes with his trusty drill, put a piece of plexiglass there so that, you know, the pad wouldn't punch through the deck, and re, re-attached it.

Q20 Right.

A You know, and - - -

Q21 Is, is that area where that, that aft stanchion are placed, is that an area where it would normally be strengthened under the deck, with a, with a pad underneath, apart from a - - -

A Um - - -

Q21 - - - piece of plexiglass?

A I don't, I mean, it'd be solid.

Q22 Yeah.

A The, the punching through occurs on the surface of the, when the, but the large plate which is probably 50 millimetre long by about 25 millimetre wide, with two screws in it, that punches through the top surface of it. What you're actually concerned about was it going through and, and getting water and moisture in there. All your reasonably re-enforced and sometimes you could even have a plate underneath, but - - -

Q23 All right. Is there another rail that runs aft of that? Of, of these aft - - -

A Imagine - - -

Q23 - - - stanchion?

A No, imagine that's the, imagine that's the back corner of the boat - - -

Q24 Right.

A - - - then there's the ones that run across the stern. There's a centre post and there's one on the other side. And you've got lines running at the stern of the boat. I think there's, from memory there's four on like, there'd be three or four lines running there.

Q25 Were they still in place?

A Oh, they were still in place, oh yes, yes. After it was fixed - - -

Q26 Yeah.

A - - - it was all fine. He'd backed it, the second last one he, he'd straightened, I can't remember how he did it, he will tell you. He straightened it as such that, you know, it was pretty much unchanged. We previously had minor collisions like that, and by the time the boat got back to the dock you wouldn't have known that it had a, we'd actually had the collision - - -

Q27 Yeah.

A - - - so - - -

Q28 So you were quite content that the, the structural damage, or the integrity of the vessel wasn't compromised - - -

A Yeah.

Q28 - - - as a result of that?

A Yes, that's true.

Q29 Can you recall whether Darren indicated to you that there was any other structural damage inside the hull when he went down to repair it?

A No, I can't remember. No, no, no. Ask, ask him.

Q30 O.K.

A We're now talking, unfortunately, we're now talking 6 months ago.

Q31 Yes. Yeah, I, - - -

A

Q31 - - - appreciate that. And I, 'cause it is difficult relying on memory, for that - - -

A Yeah, I'd rather - - -

Q31 - - - for that particular - - -

A - - - not. I'd rather - - -

Q31 - - -

A I'd rather - - -

Q32 Yeah.

A As Darren, he'll know. He'll, he's good like that.

Q33 O.K.

A

Q34 Now I'd just like to refer back to a couple of other points.

A There probably would have been, and I can bet, there will have been some bits of, of some shattered

fibreglass down there, but you know, as, as far as I recall there was no, there was no concern - - -

Q35 Right.

A Yeah. O.K.

Q36 But I will ask - - -

A Yeah.

Q36 - - - Darren of course - - -

A Of course, yeah.

Q36 - - - about that and, and - - -

A Yeah.

Q36 - - - with the hull, its integrity of the hull.

A Yeah.

Q37 If it would have been the case that there was, was some sort of damage, what action would you have taken?

A What, damage to the - - -

Q38 Well damage to the hull, or the mast for that matter.

A If there'd been, if there'd been, and we'd been convinced there was damage to the mast, we would have gone in to the nearest port. There was no way we would have gone into Bass Strait - - -

Q39 Mmm.

A I mean, there's 80 years of, of Hobart experience on that, that boat. And it was run pretty democratically. I mean I made the final decision, but, I mean, there was people with a lot of experience on the boat. Had we been convinced there was a crease in the mast, there's no way we would have gone into Bass Strait, you know, it just wouldn't have happened.

Q40 O.K.

A Would have been, you know, just not as it is we pulled out of the race when we had no, you know, we, we perceived we had no damage to us - - -

Q41 Mmm.

A - - - you know, because we, it's not all about racing, it's about, you know, getting home to your family.

Q42 Mmm.

A Yeah.

Q43 Now I'd, I'd just like to, to go back to a particular time where the boat rolled - - -

A Mmm.

Q43 - - - and Glyn Charles was washed over the side - - -

A Mmm.

Q44 For a number of reasons. There was a, from that particular time you were then in survival mode and, and you carried out certain actions as a result of repairing the boat and doing a number of things. Do you recall from that particular time that Charles was, was washed over the side, any search aircraft or any, any, did you have any communications with any search aircraft or, or any search vessel or vehicle between the time that you saw the Margaret Rintoul?

A Prior to seeing Margaret Rintoul?

Q45 Yes.

A O.K. We'd been in survival mode for probably some hours before the roll over and we had made the decision to turn back and stop the race before the roll over and

before we lost Glyn Charles. To my recollection there was, the first aircraft was a search and rescue aircraft, prop aircraft out of Eden. Now it's a, the, we could hear people on the radio, but we couldn't actually communicate with them, this is on V.H.F. As it was dying out, I think was one of the things that happened. As it dried out we could hear more. Our recollection is that, well my recollection is that the search and rescue aircraft we heard was probably an hour after we saw Margaret Rintoul. We did as a joint crew, sit down and try and recall the time lines - - -

Q46 Yeah.

A - - - and the time line that we all jointly recalled was that the, you know, and this was done by, well I was there and, you know - - -

Q47 Yes.

A - - - just tryin' to, by deduction, because nobody was writing the damn thing down.

Q48 Yes.

A The recollection was that it was about an hour or something. Now possibly the, the way to find out is that there, it was it think it was one of Laurie Gruzman's type aircraft out of - - -

Q49 Mmm.

A - - - out of Merimbula, because they asked me questions that made, that they sounded like that were using that method of, of dropping life raft called paps or, some, the, the one that Laurie Gruzman was - - -

Q50 Yes.

A - - - was very keen on. Because they came across and I said, when I heard they were out of Merimbula, and I said, They're going to try and put life rafts over us, put trailing lines over us. And that's exactly what they talked about. Now they, I'm sure, in Merimbula, would have a log of making a contact. But I, I, I can't know the exact time.

Q51 So after Glyn Charles was washed over the side, just to rehash so I get it - - -

A Yeah.

Q51 - - - clear in my mind, after Glyn Charles was washed over the side, an hour went by and you saw an aircraft?

A No, no, no, no, no. After, after Glyn Charles was rolled, was, was lost overboard, and about, we started cleaning up the boat - - -

Q52 Yes.

A - - - and there were guys on deck pumping the bilges -
- -

Q53 Yes.

A - - - and they saw, they saw, they saw a boat which subsequently turned out to be Margaret Rintoul.

Q54 So - - -

A Sometime after that we, we had our first radio contact.

Q55 O.K. So from the time you rolled over to the time you, you saw Margaret Rintoul, you didn't see that, and this is, I'll just rephrase that. From the time Glyn Charles was lost - - -

A Yeah.

Q55 - - - to the time you saw Margaret Rintoul, you didn't site any search aircraft or have any communication with any search aircraft?

A I don't believe so. No, but they're, you know, that was the, that's what I, I wrote down at the crew meeting that everyone sort of - - -

Q56 Right.

A - - - was, was reasonably sure about the time wise.

Q57 O.K.

A But the one way that that could be verified - - -

Q58 Yeah.

A - - - would be by speaking to Merimbula - - -

Q59 Yes.

A - - - and, whatever they say, I'll go along with, 'cause they'll be, they'll have logged it.

Q60 Yes.

A But we didn't log it.

Q61 Right.

A Yeah.

Q62 O.K. And then, then it was, the Margaret Rintoul, to the best of your recollection - - -

A Yeah.

Q62 - - - the Margaret Rintoul - - -

A Went on.

Q62 - - - went on?

A Yeah.

Q63 And then it was some time after - - -

A Yeah.

Q63 - - - that then you sighted a search aircraft?

A No, we didn't sight them. No, we didn't sight them - -
-

Q64 You had communication - - -

A - - - we heard - - -

Q64 - - - with them?

A Yeah, we could hear them.

Q65 All right.

A I, I wasn't on deck. I don't, and, and Carl Watson
will know whether we actually sighted it

Q66 Right.

A But I don't believe we actually saw them. We had a low
cloud base and it was raining. But we could certainly
hear them. They offered us life rafts. They offered
us, you know, two life rafts, and we said, No, we're
O.K. you know, and Carl was calling, 'cause I was on
the bunk at that stage, that's when we got, gave the
first news to the world that we had a man overboard.

Q67 Right. O.K.

A And he, he tried, and I think it was successful, in
telling them who was overboard. But again, they'll
have that logged - - -

Q68 Yeah.

A - - - somewhere.

Q69 So you, you actually, you spoke to them - - -

A Yeah.

Q69 - - - through V.H.F?

A Yes, V.H.F. radio.

Q70 O.K. And that was clear and concise, what you intended to do and that you had a man overboard?

A Oh, it wasn't the best advice - - -

Q71

A - - - it was - - -

Q72 To the best of your recollection they understood what you were portraying?

A Yeah. Oh, certainly, they, we could hear them and they asked us did we want life, did we want life rafts and we said, No. But we said we had a man overboard and it was, it was Glyn Charles, etc. etc.

Q73 O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q74 There was no lifting of the deck at all from the accident?

A No?

Q75 Lifting of the deck?

A No.

Q76

A No, no, no.

Q77 All right. The lashing down of the boom?

A (NO AUDIBLE REPLY)

SENIOR CONSTABLE UPSTON

Q78 Did you what, the boom that was, prior to the roll over
- - -

A Yeah.

Q78 - - - that was lashed down?

A Yes.

Q79 To what side was the boom lashed down?

A Initially it was lashed down to the port side, but that was before the roll over - - -

Q80 Yes.

A - - - when we were still going south.

Q81 Yes.

A The it was relashed after we jibed back around - - -

Q82 Mmm.

A - - - to the port side. But the people who did the actual lashing, 'cause I was on the sched, on the radio - - -

Q83 Mmm.

A - - - the people who did the lashing were Carl Watson and - - -

Q84 Mmm.

A - - - Darren Senogles.

Q85 O.K.

A And they'll have, you know, anything I say on that subject is hearsay.

Q86 Yes, O.K.

A But they, they will tell you exactly - - -

Q87 Right.

A - - - you know, which one of them lashed it and how they lashed it - - -

Q88 Right.

A - - - where they lashed it.

Q89 So it was, it was lashed to the port side, to the side which, where the damage had previously occurred at the start of the race?

A Correct, yes it, yes they did - - -

Q90 O.K.

A - - - yes. It, it was lashed on that side.

Q91 All right. That's O.K. And we'll, we'll, we'll ask Darren Senogles about that - - -

A Yeah.

Q91 - - - a little bit further on - - -

A Yeah.

Q91 - - - to how it was lashed down.

A Yes, yes, that's right.

Q92 O.K. That's

A I know it was lashed down with spectra, but - - -

Q93 Yeah.

A - - - 'cause that's the only thing you ever lash it with. But - - -

Q94

A But he can give - - -

Q95 Spectra is - - -

A Spectra is a, a synthetic robe with has got a kevlar core. It's, it is considered to be stronger than steel. It doesn't give way. I mean, you can, it's just very very strong stuff and it would have been at least, probably a, a 6 or 8 mm, no, probably 8 mm spectra and then so, you know, it's not gonna give. Other things'll give before that.

Q96 Well just on that, and to the best of your recollection, and maybe through conversation you've had with the others, what do you believe they secured the boom to?

A To the stanchion.

Q97 All right.

A Because that's where it ends. You know, I mean, you've, there's many boats don't, we had a vang, a vang is a spring device which, a strut which holds the, the boom up. You want it up so that if it's swinging across it's not hitting the wheel or hitting the driver's or anything like that.

Q98 So that comes from the base of the mast - - -

A Mast, back - - -

Q98 - - - at a 45 - - -

A - - - up to the mast.

Q98 - - - degrees or - - -

A Yes.

Q98 - - - an angle back up - - -

A The mast.

Q98 - - - to the - - -

A And it had - - -

Q98 - - - to the boom?

* - - - failed - - -

Q99 Bottom to the boom.

A It had failed when we were still running south. Now that's not a, many boats don't have them at all. It's convenience, I mean, it just, lots and lots of boats

just don't have them, don't need them, don't use them. You normally have an extra, an extra halyard to keep the mast up. So, keep the boom up. But, and had we not had that, had we not lost the vang, then we would have, at, the mast would have been up on the air. Had the mast been up in the air - - -

Q100 But, you correctioned on that - - -

A The boom.

Q101 The boom would be - - -

A Boom, sorry, my apologies. The boom would have been up in the air. Now with 20/20 hindsight, you know, we wish the boom had been up in the air.

Q102 Was that vang hydraulic?

A Um - - -

Q103 Was it a hydraulically operated vang? 'Cause some - - -

A Some are and some aren't,

Q104 Some I believe were, do have a hydraulic ram and some are manually fixed.

A Darren Senogles can give you the definitive answer on that.

Q105 O.K.

A I can't. It's, it's certainly got a rope element in it. I think it's, it's manual from the, with a spring, from recollection. But whatever Darren says is what, is the fact.

Q106 All right. O.K. Now Rob, I've just got some questions here that, that I'd like to, to ask you and just, I'll

go through them slowly and just bear with me as I, as I check them through.

A Go ahead.

Q107 And the first one is a pointed question to you. Do you own the Sword of Orion?

A Yes.

Q108 O.K. Right. And it's, it's personally owned by you and no other person?

A Yes, that's correct.

Q109 All right. Is it a company owned vessel?

A Yeah, the cheque was written by a company of mine, but it's a, it was a, no, that's not true. That's not true. It's, oh, gosh, Sword of Orion - - -

Q110 The question - - -

A The cheque, the, the cheque was a, a personal cheque. There's no taxation deduction. It's not, it's not run through a business or anything like that.

Q111 O.K.

A I can't

Q112 That's, that's probably more to the case is it?

A Yeah, yeah.

Q113 The - - -

A I mean the, I'm a, I own 100 per cent of my company - - -

Q114 Yeah.

A - - - so it's, you know, whether it's a personal cheque or a company cheque doesn't really matter, but I guess

the, is it owned by a business and is it claimed as a taxation deduction or any of those things - - -

Q115 Right.

A - - - no.

Q116 O.K. Well that - - -

A So what that'll mean is that when it gets to the point of doing the taxation return they'll reverse entries out that are written on a company cheque or a personal cheque, etc.

Q117 O.K. Well that's - - -

A There's no business involved.

Q118 That, that runs onto the next question and, was the Sword of Orion registered as a business enterprise?

A No.

Q119 Did the Sword of Orion generate any sponsorship moneys or any other benefits for the owners of the yacht?

A No. Not for lack of trying, but, no.

Q120 O.K. O.K. Did you have any employees maintaining or repairing the Sword of Orion prior to the Sydney to Hobart Yacht Race?

A Yes. Darren Senogles.

Q121 Did you have any employees on board the yacht during the race?

A Darren Senogles was on the boat. But he, he doesn't get paid to race, he was on holidays. So he doesn't time clock his time while he's racing. He ceased work on the, on the, the Friday, you know, or the, on the

last day before, before the yacht race. He's what's known as a yacht master.

Q122 So just to clarify that, Darren's paid up until the day of the race?

A Yeah.

Q123 And then it ceases - - -

A Yeah.

Q12 - - - payment - - -

A Like everybody else, yeah.

Q124 With Darren Senogles did you intend, or did you intend paying any accommodation for Darren whilst he was in Hobart, had you made it into Hobart?

A Had we made it to Hobart. I had booked crew accommodation for the, which is, you know, an apartment in Hobart now, it may, the, I think we were jamming about six or seven people into a room and so, you know, people would sleep on the floor etc. etc. as is the way. We did have two apartments. The previous year I'd slept, although I booked it, I'd slept on the floor in a sleeping bag. So it's a bit spartan, but yes, yeah, yeah, the, with all the crew would, you know, got some place to crash at the other end.

Q125 All right. Did you, did you offer or, or did you issue any of the crew members any form of group certificate?

A No.

Q126 No. And who paid for the expenses for the crew of the yacht prior to and during the race?

A They all had to pay, and there was quite, they all had to pay their own share and, not to me but to the guy, the kids who did the provisioning on the boat, you know, worked out in advance that it was gonna cost X dollars each, and everybody had to put their money in.

Q127 How was Darren Senogles paid?

A By cheque.

Q128 By cheque?

A Yeah.

Q129 Was he a, was Darren Senogles an employee of any of your companies?

A Yes, he was. He was an employee of Tetra Australia. He did other work for us. He's a builder by trade and we, you know, we're moving and so he did, he did quite a lot of other work for us.

Q130 All right. And what were his duties?

A He did things like building maintenance, you know, built a kitchen, did that sort of work. Also did some equipment field testing on some of our line throwers and equipment and that sort of thing. But probably about, I imagine a half of his time would have been spent, you know, repairing, maintaining, preparing, moving, doing whatever on the Sword of Orion.

Q131 O.K. And I think I did ask you before, was Senogles required to work on the yacht prior to the race in December, 1998?

A Yes. Yeah.

Q132 And again, his duties were to maintain the yacht?

A Yeah, yeah. I mean, among, among other duties.

Q133 All right. Did he have a supervisor at all?

A His supervisor would have been me.

Q134 O.K. What sort of hours did Darren work?

A Approximately 7 o'clock in the morning til, you know, 4.00 in the afternoon.

Q135 And do you recall how much he was paid?

A \$25.00 an hour. He was working as a subcontractor and had his own business. He worked for other people and did work for other people. You know, it depended. Some weeks he would work full time for us, other weeks he might do one day. He's, you know, rip, looks after other boats as well and does, you know, cabinet making and all sorts of things for other people, yeah.

Q136 And who issued the cheques to Darren?

A Um - - -

Q137 His pay cheques?

A Well as a, he, who paid his account?

Q138 Yes.

A Because he would present a monthly account.

Q139 Right.

A Or a, you know, it might be a fortnightly account at the end of a particular period.

Q140 Yeah.

A He would write a, he would present us with the invoice and my, you know, my accountant would, you know, my accountancy staff in the office would pay that invoice.

Q141 All right. But that would be authorised by you?

A Yeah, that's correct. So I guess you've asked the question there, was he an employee? And I've probably taken that question, you know, I, I've taken that incorrectly.

Q142 Right.

A He was a subcontractor, he didn't solely work for us. He presented with us, with invoices. In the period up to the race, yes, he worked very largely for us, but subsequently he was only doing 1 day a week and earlier than that he was doing, you know, 1 day a week and working on other, other boats and other people's things.

Q143 O.K. And another question, did Darren Senogles do any other work for any of your other businesses?

A (NO AUDIBLE REPLY)

Q144 And I think you may have answered that - - -

A Yeah, I've answered that - - -

Q144 - - - - - -

A Yeah.

Q144 - - - on that.

A That he would do line throw testing and, yeah, whatever.

Q145 How long has he been working for you in any other, in any of your businesses?

A Well he initially, I think, about, he probably started working in, mid September of last year. That's mid September of '98.

Q146 Right. And do you consider Darren Senogles to be an employee?

A No. Not a, not a, no I've used that word badly. He would be an employee as far as I'm concerned if he worked, you know, 40 hours a week. I, particularly the last, the last, you know, well if you averaged it over the whole period, he's probably worked an average of 2 days a week for me and worked for other people maintaining other boats. He recently, he's been, you know, with Sledgehammer 4 days a week, you know, for a lot of that period, more recent period, yeah.

Q147 O.K.

A So he's, he's a subcontractor and he would, he's, the majority of his income for short periods would have come from us, but other long periods he, the majority of his income came from other things.

Q148 All right. Did you hold any worker's compensation policies in December of 1998 for any of the crew members taking part in the race?

A No.

Q149 Was Darren Senogles covered by any worker's compensation policy - - -

A Um - - -

Q149 - - - taken by, by yourself in any of, in any of your own businesses?

A No. Because just like any other subcontractor, if somebody does welding services for us, we assume they've got their own worker's compensation cover. He

had his own business and in the normal course of events, all the subcontractors, you know, who do maintenance work or welding work or any other sort of work, we assume that they've got their own policies.

Q150 O.K. Now I know we did cover this before, but we'd like to just cover it again. Was Glyn Charles an employee of yours or any of your own businesses?

A No.

Q151 Was any contract or agreement made between you and Glyn Charles?

A Certainly nothing written down. What we had loosely agreed to do was that post the race he was gunna, we were gunna sit down and he was going to be a consultant. You know, be a consultant, that's probably formalising it a bit, but he was gunna sit down and I was gunna pay him to sit there and tell me a whole lot about the racing scene in England as it applies to Admiral's Cup. And that way he would have been a consultant.

Q152 And within that consultancy and, and also whilst, whilst he was on the boat, did that, did that come into any contractual agreement?

A No.

Q153 Did you offer to supply any accommodation or any travel arrangements - - -

A Yes, yes I did. He had originally been going to fly back to England before Christmas and I said if he stayed and raced with us, that was obviously gunna

wreck his, his travel plans, and I'd be prepared to pay the difference in changing his ticket so he could, so he could stay and do the race and, you know, and then we planned to sit down, and the long term plan was that he would act for us in England. (Tape Beeping) 'Cause at that stage I was - (Tape Beeping) - hoping to do the Admiral's Cup - (Tape Beeping) - then he would have, would have acted - (Tape Beeping) - in England as a, a contact point. He would have arranged the accommodation for the crew, organised the, you know, the gear, you know, probably worked at unloading the boat, you know, had we taken the boat to England, etc. etc.

Q154 O.K.

A But that didn't happen.

Q155 All right. Was Glyn Charles covered by any worker's compensation policy taken out by you or any of your own businesses?

A No.

Q156 O.K. And how much money was paid to Glyn Charles' family for any of the services that he provided to you?

A Well I think I, I told you in a previous statement, the, the, Glyn Charles had originally asked for money to do the yacht race, and I'd told him that that didn't happen in Australia. Now it happens obviously in England, and I've just had confirmation of it. But I told him it didn't, it wasn't, it didn't happen and wasn't gunna to happen, but what I was prepared to do

was, I needed some help, I needed some consultancy and I was prepared to pay for that in the proper and normal way. And, excuse me I'll turn my phone off, my apologies. And I agreed to do that. Now when we got to Hobart and, and his sister was flown out from England, she was very upset, etc, etc. poor kid was a mess which you came,..... arrived by, she started to calm down and by the evening that they were about to leave, you know, she said, Now Glyn had told us that he was gunna get some money for doing this thing. And I started to explain the whole thing, but she was on tranquillisers, we were in a, a big auditorium, we were sitting at a table of about 15 people, there's a band going, she's on tranquillisers, she'd had too much to drink, I'd spoken to her sister about the fact that she shouldn't take, 'cause I'm an old pharmacist, she shouldn't be drinking while she was taking the tranquillisers, 'cause when she'd arrived initially she hadn't been taking any, and she was, you know, really strung out and the, her cousin had, you know, given her the tranquillisers and that had calmed her down. But that evening she'd been taking tranquillisers and she'd been taking alcohol. So I started to explain the whole thing to her, but I gave up. It, I wasn't getting through and so, look I, what I said, Look, I was gunna pay for the, the, you know, the difference in the air fares and I was gunna pay him for this. And it all sounded a bit tacky, and I said, Look I'll, you know,

just give us the, the, and she explained how there were going to be expenses and, you know, there was the inquest and dah dah, dah dah. And I said, Look, you know, it was gunna cost me all up about 3 grand. To give me the, the, well 2600 I, I've forgotten. I, I told you the exact number before, and tell me the account details and I'll send that money. 'Cause I didn't feel like, I felt a bit tacky about the idea of, it was, I was saving money 'cause Glyn Charles had died, and so I, you know, so I, but I covered that in detail in my, in my previous statement. But, no, I'm very clear that he wasn't an employee.

Q157 O.K.

A He was going to be a, down the track, a consultant, but you've got to remember that this guy, what he did for a business was, and it's highly developed in England, I mean he, he gave his, I think, I think Carl Watson very early on in one of his statement, was asked what Glyn Charles was and Glyn Charles had told Carl that he was a professional, a, a yachting professional. And got his income from, from doing that. And so had he down the track subsequently in England, done some work for me, he wouldn't have been an employee, he would have been a consultant. You know, he got all his income from all around the world from these sorts of things.

Q158 O.K. Rob, the time on my watch is now 9.52. This interview is suspended temporarily for a tape change.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE UPSTON

Q159 The interview between Senior Constable Upston and Mr Kothe has resumed. And the time on my watch is now 10.56am. Rob, we were discussing Glyn Charles.

A Yeah. Glyn, as I say, went around the world sailing, he was obviously an experienced young sailor. And, you know, doing advisory work and consultancy work. And he certainly held out to me that this is how he made his income. He, I'd never heard that he had any other, I don't know, I didn't know him that well. But my certain expectation was that he was available and would be available in England to act as a, an adviser/consultant/contact person. But only a very small percentage of his, of his annual income was plainly going to come from this. I mean he worked for umpteen different people and, and provided consultancy services, and as such, there's no way that he would have been, as far as I'm concerned, an employee of mine as a very small part of his income, his annual income, would have come from me, even had he done all the work that, that, you know, we were talking about him doing. And so I don't, I don't, would never have contemplated that making him an employee. What would have happened is we would have got a, an invoice from him which we would have paid. I mean, quite a substantial of the amount of money that we put, you know, he was going to

get, was for, to cover his air fare because he, we were asking him to stay and do a yacht race where he had tickets already out and it was going to cost X dollars more to, for him to stay, and we said, Look, we'd love you to do the race and I'm prepared to pay the, the difference. That doesn't represent a taxation deduction for me. That's a private expense and, and that was paid out of my private account. That's post tax - - -

Q160 Mmm.

A - - - money. I'm, and so as such - - -

Q161 Mmm.

A - - - there's no, as far as I'm concerned, no employee/employer relationship there.

Q162 Mmm.

A But I'm not an expert in these things - - -

Q163 Mmm.

A - - - now. But that's, that's pretty much it, you know.

Q164 Right.

A I wish we'd been able to go on and do that.

Q165 Mmm. Did, did you supply Glyn with any sailing equipment? Did you sort of offer to fit him out in any equipment that, that then would be his - - -

A No, no, no, no.

Q165 - - - on a permanent basis?

A No, I think Darren, and I certainly read it in the book, he had wet weather gear, and I don't know where

it came from, that he was, it was his wet weather gear, and he was complaining about the fact that it wasn't waterproof and he didn't like in the middle of the southern ocean. I think you probably read that as well as I did. He did actually, he was looking for a pair of sea boots, and he was trying to borrow a pair of sea boots, 'cause he hadn't brought out heavy wet weather gear, and I certainly looked and couldn't find any. I didn't have any, but I don't know where he borrowed them, but there was certainly no gear.

Q166 Mmm.

A There was no, he wasn't being paid in kind or anything like that - - -

Q167 Right.

A - - - though. There was no, nothing like that. He did manage to borrow all that stuff up, I don't know whether he did or he didn't, I don't know - - -

Q168 Mmm.

A - - - where he got the sea boots from. He was staying with some, with some, some English people here. But, no I don't, I don't know what happened. But it is common and normal practice, and it happens right across the sailing sport where you can't expect people to, to be able to take all their annual holidays and go to outlandish places and pay all their air fares etc. etc. because they're taking their annual holidays and it's not money they've got, and so that's quite normal across the sport that you reimburse people for their

expenses. What you normally do is, you get bulk rates for air fares, that you get, you know, you can get from Ansett etc. a team rate and the classic case is to get to Southport, I think it's \$167.00, versus, you know, something like, 330 if you, if they rock up and buy. So you buy, you buy those and you, you know, have share accommodation. Everybody bunks in. They're all passed out for, 'cause they've been drinking anyway, they're all passed out on the floor, as you do, and so that's the normal sort of thing. And, you know, this was the, the big lump of it was, it was going to be, was the cost of him, you know, that, the air ticket back to England. And my travel agent, I think I might have previously told you, my travel agent actually hearing, having booked it, cancelled it, because he'd been following the race. And so I, I didn't make that out that expense, and so that's when I, feeling guilty, you can call it whatever you like, feeling guilty, not, having tried to explain it to the, to the sister who, you know, and it looked like I was, you know, sort of tryin' to chisel, and so I gave up tryin' to explain it to her, and said, Look, you know, tell me the account and I'll, you know, I'll, I'll put the money in the account. But, but, you know, it was clearly a, a, what the intention was that we had agreed, is that in the 2 days, 'cause he wasn't goin' back to Sydney for 2 days, and you certainly don't sit down and talk before a, a yacht race about those sorts of future things, you've

got too much to do about getting all the race done. But the plan was we would sit down in Hobart and we'd go through in detail what work he could do for us in England, and he'd give me a debriefing etc. etc. And that's what, that, and we had, I had agreed that we would do that. So his position, you know, he was saying, Oh, I've got to earn money and I was saying, Well O.K. let's do this race and then, then, yes I am gunna need somebody who can, do this now, I'll pay you for this, and what I'll need for you in England, 'cause you need to scout, you've got to find the, the tacticians who understand the, the water, you know, off Cowes, 'cause it's very shallow, dah dah, dah dah, dah dah, and so you need help with these campaigns. So that was the idea.

Q169 Did you offer the air fare to anybody else on board your vessel, to fly back to Sydney, as part of going down there?

A Oh, yes, all, all the crew. All the crew. Sorry, no, is that true? No, no, it's not true when I say that. I, I'm wrong. It's not true on that particular one, but it is, it, it does, it has happened in other races. There were two or three other people on that crew. I'll say that, I'll say it more exactly, I didn't offer it to all the crew, I offered it to the sail maker.

Q170 Who was that?

A Andrew Parkes, who doesn't earn a lot of money, and I was, you know, getting him to do the yacht race. And so I paid his air fare back to, back to Sydney.

Q171 Does that, just on that, and we'll go through the others.

A Yeah.

Q172 Is that all you paid him - - -

A Yes.

Q172 - - - just his air fare?

A Yes, yes, yes, yes, yes.

Q173 O.K.

X A And Steve ^KCulmar.

Q174 Right.

A The, the, one of the other steerers who was a friend of, of Glyn's. I also paid his air fare back to Sydney.

Q175 Darren Senogles?

A I don't remember. Let me think about it? I mean it didn't actually happen and I hadn't - - -

Q176 No - - -

A - - - booked it - - -

Q176 - - - but - - -

A I hadn't booked it or anything like that.

Q177 All right.

A No, no that's right he wasn't, he wasn't going, that's, I know why. He was goin' to sail the boat back.

Q178 Right.

A So that's right, that - - -

A Andrew Parkes, who doesn't earn a lot of money, and I was, you know, getting him to do the yacht race. And so I paid his air fare back to, back to Sydney.

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A Yeah.

Q172 Is that all you paid him - - -

A Yes.

Q172 - - - just his air fare?

A Yes, yes, yes, yes, yes.

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A And Steve Kulmar.

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A I hadn't booked it or anything like that.

Q177 All right.

A No, no that's right he wasn't, he wasn't going, that's, I know why. He was goin' to sail the boat back.

Q178 Right.

A So that's right, that - - -

Q179 Yeah.

A - - - that was fine, you know, 'cause he, yeah, he was goin' to sail the boat back.

Q180 O.K.

A Yeah, so, as it happened, what actually happened was that I paid for the crew to fly down for the memorial service.

Q181 Right.

A You know, so I paid for that.

Q182 Mmm.

A You know,

Q183 Would, would you have paid Darren to work, to, to, to sail the boat back?

A Yes.

Q184 Would he have been - - -

A Yes.

Q184 - - - paid to sail the boat back?

A What, what, the standard rate which works out from memory \$1.00 a, \$1.00 a nautical mile.

Q185 All right.

A But, you know, they get paid a contract rate if they get the boat back quickly in one piece then they obviously have worked, they've actually got more money

Q186 Mmm.

A But yeah, the deal was gunna be, and he was gunna provide the crew and, you know, he was gunna provide the crew and he would get paid, you know, you know, so much a, a nautical mile. From recollection it was

gunna cost me about \$2,000.00, and if they had eight people or three people it was their business. It was just a - - -

Q187 Yeah.

A - - - that was just a, a contract. And that's a common thing - - -

Q188 Mmm.

A - - - that, that, you know, that's the way yachts are delivered. We'll bring the boat back from, it'll come back from, from Hamilton and they might have three on it, they might have six people and God knows how they -
- -

Q189 Work out - - -

A - - - they will work out who gets what there.

Q190 Mmm.

A But it's a fixed rate contract, and he wasn't gunna be a paid employee at that time - - -

Q191 Mmm.

A - - - and if wanted to take five girls, you know, and, and he did have expectations of taking, you know, some girls with him, you know, if he wanted to take five or three, as long as it was done in a seaman like manner and there was enough experience on the boat, that was entirely his business and he wouldn't have been an employee at, you know, he would have done that as a, you know, just a, a contract.

Q192 O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q193 Is it, is it common practice for, for owners of yachts to pay people, whether it be for their clothing or their, for their time, whilst conducting races?

A No, no. No, it's, it's against the, against the I.M.S. regulations. And you just don't do it. You typically, you may or may not pay for crew uniforms, or parts of crew uniforms if it suits you. If you've got sponsorship, the typical thing is that the sponsors would, you know, for example, if, if we're going for at the moment, for a, a Jaguar sponsorship, now if we, which is currently with Team Jaguar and is hopefully going to move. Now in that Jaguar will provide all the crew uniforms and they won't be normal ones now, they'll have Jaguar etc. So that would happen. At the moment with my crew, they'll all buying their own shirts, yeah, yeah, some will have, their buying their own shirts and I'm getting, they're all buying them individually, they'll all buying the same ones and I'm getting them embroidered, you know, because you can be, do it as a bulk, bulk lot, but - - -

Q194 All right.

A - - - no, they don't get paid in kind.

Q195 Mmm.

A What, what they get is, they get their, you know, joint accommodation is, is paid for, and that's normal - - -

Q196 And their air fares?

A And their air fares, for certain things. Now that's, that applies to I.M.S. racing which is what I race on. In America's Cup where there's no rules like that and they have professionals, people are paid to sail on the boats and they are employees of, you know, the corporation, which is usually set up for those things. And that's a, that's a totally different thing. But, but you know, it's illegal to do that under I.M.S. and I'd hate to be pinged, and one of the things we talked about earlier was the fact that people would know, you know, would talk about it in the pub and you really can't, it's a bit like starting a motor in a yacht race, you'd get - - -

Q197 Mmm.

A - - - you'd get, you'd get sprung.

Q198 Mmm.

A And then you'd be rubbed out because your competitors would all say, It's not me, mate, it's not me, it's just the other guys, as they do.

Q199 Mmm.

A You know, so, no is the answer.

SENIOR CONSTABLE UPSTON

Q200 Can you recall where in the I.M.S. rule it says that it's illegal to pay people to race?

A No, but - - -

Q201 All right.

A - - - I'm sure I could find it for you.

Q202 O.K. No worries.

A I, I think I've undertaken to, to do it before, but I will - - -

Q203 Yeah.

A You know, I'll, I'll find it for you.

Q204 Yes O.K.

DETECTIVE SENIOR CONSTABLE GRAY

Q205 I've got just one - - -

A a fax number.

Q206 Just one question, Rob, who was in charge of your boat during the race?

A I was in charge of the boat - - -

Q207 Right.

A O.K. I'm the skipper and owner and - - -

Q208 Right.

A - - - have the legal responsibility.

Q209 Right.

A Now some of the press reports, particularly coming out from Rod Mundle, list Steve Kulmar as the - - -

Q210 Yeah.

A - - - skipper. Now what he was is principal driver.

Q211 Right.

A O.K. Vastly experienced and a good mate of, of Rob Mundle's. And so you know, it's a, he would sort of, purport to be the skipper a such. And if you read the book, you know, and that was, I just didn't bother changing but I mean some of it, some of it's a bit self serving, I mean, you know, I mean, but the original version that came out, Steve Kulmar had told

Rob Mundle that he'd been driving for the previous 5 hours. Now there's a young guy called Adam Brown who'd been driving for the previous 5 hours. And so people get a bit self serving in some of the stuff, you know?

Q212 So that was totally incorrect?

A Oh, yeah, he'd, he'd, he had, the first draft of the article that, of, of the book that came out said that Steve Kulmar had been on the wheel for 5 hours and came down below and talked to me and said, We've got to go back. And what you read in the most recent, in the version that was corrected, is I, I, you know, Rob Mundle gave me a, a draft to correct, and I said, I'm sorry, you know, there'll, there'll be a riot among the crew because the fact is he'd been on the wheel for half an hour. There must have been a misunderstanding 'cause you can't let people lose face, that, that this young fellow, Adam Brown, who weighs at, at the time he weighed 118 kilos, and he'd been on the wheel and came down, you know, this big guy, came down, absolutely trembling with exhaustion, I mean his - - -

Q213 Yeah.

A - - - muscles had just gone on him, and he was sitting like jelly in the bottom of the stairwell, and we put him, you know, I made him, the guys, and I said, He's going into shock, for Christ sake give him something to drink.

Q214 Mmm.

A And, anyway, and we put him in the bunk and he was in the bunk when we rolled over. You know, absolutely exhausted and out to it.

Q215 Mmm.

A But the first draft that came out said that Steve Kulmar had been at the wheel for 5 hours, but when you, you know, it's just not, not true - - -

Q216 Mmm.

A - - - you know, so - - -

Q217 Mmm. That's fine.

A Yeah, yeah, so that's - - -

SENIOR CONSTABLE UPSTON

Q218 Can you recall any other anomalies that might have been in the book that you can bring - - -

A No, no, well, no that was in the, the book it had been corrected.

Q219 Right.

A But the story of, the story of, of Steve Kulmar coming down below and saying, We've got to go back and I, therefore agreed that we had to go back, is not factual. What happened was, what happened was that there was, you know, a whole lot of people involved in those discussions. The, Darren didn't want to go back and, other ones, Steve Kulmar has a history of wanting to go back, actually. And the, I would have had discussions with five or six people on the boat about that and, you know. Oh, the reason why we did go back, and I did say and what was true, was that ultimately I

had to leave it to the drivers, 'cause I wasn't driving. I was navigating and doing that sort of stuff, and if, if I didn't have enough drivers, if all my drivers wanted to go back, we were going back and the, the, the reality is that the majority of my drivers wanted to go back, and so I made the decision but, you know, it was my responsibility, but, but, yes you, you see that. There's a, there's a distinction between, you know, typically people on the helm are seen to be the - - -

DETECTIVE SENIOR CONSTABLE GRAY

Q220 Mmm.

A - - - the skipper, whereas, and in early days they used to be. They would commonly be the, you know, the whole shebang. Nowadays you have specialists and my driver, the driver doesn't make the, the decisions. In short races you have a tactician, in long races you have your, you have a tactician and you have a navigator. But it's, you know, I mean we were about to go out the Heads and Steve Kulmar was, he's the most experienced person on the boat, was saying, Now, now we want to do this and we want to do that. And I said, Now, just stop the road show here. This is very clear, this is what we're going to do, this is the watch system, that's the way we run it, and, you know, the guy had 17, he has 17 Hobarts, but just before the, oh, he actually did it during the, when we went through the eye of the storm, he wanted to put more sail up and, you

know, bloody idiot, and I said, you know, wait. You know, just wait, and what happened is the wind comes back in, you know, and Carl I think, it might have, I think that was somewhere in Carl's stuff, and you get these, you know, you get these guys that are heroes. At one stage he said, I said, I want two reefs and a main, you know, reducing the sail. He said, You only need one. And I stamped on the deck really hard, and said, I want two reefs now up, two fuckin' reefs and I want 'em fuckin' now. He turned around and said, Two reefs. 5 minutes later we had 50 knots. So you - - -

Q221 Mmm.

A - - - you get personalities - - -

Q222 Yeah.

A - - - in these sorts of things. But very clearly, my responsibility, you know, and, and I can't walk away from that. And I'm not gunna walk away from that.

Q223 Mmm.

A You know, I actually pointed out to him, if he wanted to be the skipper did he realise that he had the responsibility. Oh, oh, I was only just the driver. You know, so, so that's fine. So he was principal driver.

SENIOR CONSTABLE UPSTON

Q224 With Mr Kulmar and I, how were the arrangements for him to come on the boat?

A He'd come on back in, oh, oh, August, September or something like that. Pretty much as it is in the book.

Q225 Mmm.

A That he'd been out of yacht racing, you know, he's, he's, runs a advertising agency, you know, talk it up, but he runs an advertising agency at North Sydney and I'd been looking for an experienced driver for Telstra Cup and, you know, so we sat down in the pub and, and, you know, we worked out that, yes, he'd, he'd be on the boat and he'd be on the boat til then, etc. on til Hobart So, no that was all - - -

Q226 Mmm.

A - - - pretty much - - -

Q227 Was it - - -

A - - - as it happened.

Q228 I don't want to keep going back, was there any contract or agreement between Mr Kulmar - - -

A No.

Q228 - - - did you offer to pay his air fare back?

A No. Oh, to, from Hobart?

Q229 Yeah.

A Yes, I paid his air, yeah, I said, yeah, I'd pay his air fare back from Hobart.

Q230 O.K.

A Yeah. But, but, you know, he was on the boat from about, well from September, October.

Q231 Mmm.

A You know, but we're about to do Hamilton.

Q232 Mmm.

A And, you know, the guys are paying part of it. They're
..... but I'm, I'm subsidizing the balance of it - - -

Q233 Yeah.

A - - - you know, 'cause it's just - - -

Q234 Mmm.

A - - - I mean you get kids of 18, you, well you get, I
got one guy who, who drives a, you know, a ferry. Now
he probably gets \$300.00 a week. But the accommodation
in Hamilton, in Hayman is probably \$500.00 a night.

Q235 Mmm. And the he can't afford that?

A Yeah. No, he's - - -

Q236 Yeah.

A - - - he's paying about the, he's paying a grand.

Q237 Mmm.

A You know, he's, he's paying a lump of it. And that's
a big lump of his annual income anyway.

Q238 Yeah.

A And I think he's probably gonna pay me off, you know,
but, but no, no, so that's the normal thing, but yeah,
O.K. So the things I have to get you is the, I'll get
you the I.M.S. thing and I, I promised you that I'd
find previously the, the bit about the definition of
professionals etc. etc.

Q239 And also you'll send us a copy of the e-mail?

A Yes, I'll send you a copy of the e-mail. I've just got
to find it.

Q240

A But not a problem.

Q241 All right. Rob, is there anything that you'd like to add now, that you feel that you could - - -

A No, no. I think that's, I think we've, we've pretty much covered it.

Q242 O.K. Stuart, you got anything to say?

DETECTIVE SENIOR CONSTABLE GRAY

Q243 So far as the Rintoul business, Rob - - -

A Yeah.

Q243 - - - was there ever were you ever approached to settle this with Mr Purcell by any members of the club?

A The club was in a real quandary - - -

Q244

A - - - and are still, I think that we've been unfairly treated. They, they had a real quandary, they didn't know what to do.

Q245 Yeah.

A And what I think they've done, which is, they said, It should go to a, you know, a, it's got to go to an outside body. But yeah, they approached me and said, Is there any way you could reach a rapprochement? And I said, I will try. He gave me his phone number and I, I rang him. And he basically, he's told me about four different stories.

Q246 Mmm.

A You know, his brother originally, in the pub, where it all started, where the first altercation started, you know, his brother, you know, told that they hadn't seen

us, what it turned out ultimately what they meant was that they were below and they didn't see us.

Q247 Mmm.

A You know, and they, all these sorts of different stories were coming out. And I talked to my lawyers about it and I said, I said, What'll we do? And the problem is that the insurance companies are involved and we didn't know where it was going to lead or what was going to happen, or what was, you know, and, and the advice was, You can only tell the truth.

Q248 Mmm.

A And if you say that, that they did all the right thing, and it, and it later turns out that, you know, in the court, that, you know, you say, Well no, they could have done this, they could have done that - - -

Q249 Mmm.

A - - - then you are in some way going to be, you know, possibly liable and they said that there's all, my guy has just said, Just tell, tell the truth. And I issued a press statement which I don't know whether you've seen a copy of. Would you like a copy of my press statement which I did put out on that just, just a few weeks ago which said, basically that I had been advised that they, they were instrumental in getting search and rescue aircraft to us. Now they advised me, I don't know whether it's true or not. And I haven't said that it was true. I've said, I've been advised that.

Q250 Mmm.

A You know, and I'm prepared to get up and say, Yes, Richard Purcell advised me, oh, this is tacky. But Richard Purcell did advise me that they called, you know, they got the signal through and search and rescue aircraft. That's what I was advised. Don't know whether it's true or not, and the words were very carefully chosen, because I'm not saying, I don't know what happened on their boat.

Q251 Right.

A And I'm not goin' to say that, what happened on their boat, 'cause I don't know. And it's all I can, and so my lawyers just said, You can't go issuing things that say that's all kosher, and that's what I finally, you know, I came out with this thing after talking to the insurance companies, and you know, the, you can only say things that are absolutely true and what you find in this statement that I've said was, I was advised things. And I was advised of that. And I was.

Q252 Mmm.

A But I don't know what's true and what's untrue. Not that I personally care, you know, in so far as it's, it didn't change anything actually. It could have changed things, but it didn't actually change anything, and I've, what I have said to the club and to Richard Purcell, that I would never allow, and young Darren said the same thing, would never allow any, in any sort of court proceedings, the suggestion to be mounted that what they did affected the outcome - - -

Q253 Mmm.

A It could have affected the outcome if, if Glyn Charles hadn't gone off the boat, or if there'd been another six people in the water - - -

Q254 Mmm.

A - - - it could have affected the outcome, but it didn't. And we have said that. But the club, 'cause all the club actually did was to refer it to a, a committee. And I don't think the club's done the wrong thing. They were in between a rock and a hard place. But they, they asked me could I reach a, reach an accommodation and when I explained that my lawyers said I couldn't, they wouldn't allow me to say anything or do anything which was not truthful or honest, they said, Well we're not asking you to do anything like that. You know, and, and - - -

Q255 Mmm.

A - - - they certainly weren't. You know, they weren't asking the, they weren't asking for me to sweep it under the carpet or anything. And I was, but I didn't even know, and God I was quite shocked, I didn't know it was going to be in, in the, the public document.

Q256 The review?

A No, I discovered that about 4 days before and apparently they'd been asking their lawyers about it. Because there is a lot of people in the club, among the directors particularly, who feel that the wrong thing was done.

Q257 Mmm.

A And so they were driving it, and I didn't know about any of these internal machinations, but they were driving it, and I, that, I heard about the, about the thing was obviously a printed document before I heard about it.

Q258 Yeah.

A And they, you know, but they had the draft and they had it at the lawyers, and they had it at, I don't know whether he'd given it to the Coroner at that stage or not, but it was just a, virtually at that stage, and they were saying, you know, is there any way you can reach any sort of accommodation? And I just said, I've tried. I'd love to, but, and I issued this statement which was obviously enough for Mr Purcell, 'cause he's not suing me, which says, I've been advised of certain things, in the sort of term, words that you guys probably are used to seeing - - -

Q259 Mmm.

A - - - come out of people from lawyers, etc. And I've been advised of certain things, and I've been advised of certain something else. I haven't said it was a fact because I don't know what the facts were.

Q260 O.K.

SENIOR CONSTABLE UPSTON

Q261 No?

DETECTIVE SENIOR CONSTABLE GRAY

(NO AUDIBLE REPLY)

SENIOR CONSTABLE UPSTON

Q262 O.K. then, Rob. Thanks very much for your time.

A I appreciate it.

Q263 The, the time on my watch is now 10.21am. This
interview is now concluded.

INTERVIEW CONCLUDED