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NEW SOUTH WALES STATE CORONER'S COURT

STATE CORONER: J ABERNETHY

MONDAY 27 MARCH 2000

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5/98 - EVENT OF THE 1998 SYDNEY TO HOBART YACHT RACE

INQUEST INTO THE DEATHS OF JAMES MICHAEL LAWLER

MICHAEL BANNISTER

BRUCE RAYMOND GUY

PHILLIP RAYMOND CHARLES SKEGGS

JOHN WILLIAM DEAN

GLYN RODERICK CHARLES

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Mr A Hill assisting the Coroner

Mr R Stanley QC for the Bureau of Meteorology

Mr R J Weber for the Cruising Yacht Club of Australia

Mr P Callaghan SC for Mr R Kothe

Mr A Shand QC Mr R Purcell

Mr A Colefax for Mr L Carter

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PART HEARD

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<STEPHEN GARY KULMAR(10.12AM)

SWORN AND EXAMINED

HILL: Q. Would you give the inquest your full name please.

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A. Stephen Gary Kulmar.

Q. Your address?

A. 4 Tutus Street, Balgowlah Heights, Sydney, New South Wales.

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Q. Your occupation?

A. My occupation I own and run my own business, an advertising agency.

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Q. You gave a statement in this matter, a 30 page statement on I think 12 April 1999, is that correct?

A. Correct.

Q. You have a copy of that with you?

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A. I do.

Q. If I could what is your experience on offshore yachting?

A. I have been sailing offshore boats since about 1979 and have contested a number of regattas representing Australia in other countries, in a lot of countries in the world over the last 10 or 12 years up to 1997.

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Q. And your expertise aboard these vessels is what?

A. Generally helmsman or tactician.

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Q. You were aboard the vessel Sword of Orion?

A. Yes, I had sailed on Sword of Orion doing the Hobart

race and previous that Telstra series and had spent about two months before that learning the crew and learning the boat.

Q. I think that in fact you invited Glyn Charles on board, is that correct? 5

A. Yes, I did.

Q. And his expertise was what?

A. Glyn's expertise was an additional helmsman, additional support tactically. 10

Q. And how many other helmsmen did you have?

A. Well, in a long race like that you need to know that you have got good support and we had - apart from myself and Glyn we had one other primary helmsman who was running as a helmsman shift and in addition to that about another two, two other guys who could steer the boat as well. 15

Q. Who were they?

A. The primary helmsmen were myself, Glyn and Adam. 20

Q. Adam?

A. Brown. And then in addition to that - in a long race like Hobart race you can call upon a number of other people, we had Carl also steering the boat. 25

Q. Carl Watson?

A. Watson, correct, and we had Andrew Parks also available to steer the boat as well. But generally we restricted ourselves to those three plus Carl. 30

Q. The first three plus Carl?

A. Yes, the first three plus Carl. 35

Q. Did you attend the briefing on the 24th at the CYC?

A. Yes, I did.

Q. You attended that?

A. Yes, I did. 40

Q. What was your expectation of the weather at that stage?

A. At the completion of the briefing my expectations were still somewhat confused. The information that had been given to us on that day - and mind you it was still a few days before the race so I guess you can't expect accurate information, but I left that briefing truly confused about what might happen in the race. 45

Q. Did you have any other weather briefings?

A. We had one other briefing on the start of the - the day of the race on board the boat, yes. 50

Q. Who was it that gave you that?

A. I am sorry, I can't remember the chap's name. 55

Q. But he was a meteorologist?

A. He had come through us through Rob Kothe, the owner of

the boat, and he offered us some extra input and some extra information to help us with making the decisions on the weather.

Q. And as a result of that further briefing, on the morning of 26th I take it, what was your expectation of the weather? 5

A. Our expectation I guess were ultimately that we would have a swift run down the coast in a freshening nor'easter going north to the north-west. We were anticipating, this is before the start of the race, the briefing before the start of the race, we were anticipating a change as we made our way into Bass Strait. That change would come out of the west, it could hold in the west at about 35-40 knots and see us across Bass Strait. 10 15

Q. When you say 35-40 knots, is that an average wind speed or what?

A. An average wind speed.

Q. Do you expect gusts greater on top of that? 20

A. No, I don't.

Q. You don't?

A. No. 25

Q. Have you heard of the rule applied by the weather bureau that you add 40 per cent for gusts on top of the--

A. No, I haven't.

Q. You have never heard of that? 30

A. No, I am sorry.

Q. What about wave heights that you add 80 per cent?

A. No. 35

Q. Or 86 per cent?

A. Never heard of it. I have sailed in a lot of countries in the world and I have never heard this before.

Q. The position of Mr Kothe on board the vessel, what was his position? 40

A. Rob's role is skipper, the skipper is responsible for the boat. I had skippered the boats in the shorter races primarily because you get caught in circumstances and situations starting a boat where you have to make decisions within seconds, but in a long race like that Rob's role was as skipper and also as navigator. 45

Q. Did he rely upon you for expertise in any particular areas? 50

A. Rob and myself talked a lot as we talked in the shorter races we had done previous to the Hobart race. Yes, I mean he relied upon me for input on a continual basis and judgment. 55

Q. The radio sked at 8pm on the 26th, do you recall anything about that, in particular the weather forecast?

A. Well, if we are talking specifically of the weather

forecasts I think it was earlier in the afternoon, I can't remember the exact time but we were running under spinnaker so we were probably into the race by about two or three hours, that we had received notification through on the radio and Rob notified us that there was a storm warning south of Merimbula.

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Q. What did the storm warning mean to you at that stage?

A. A storm warning means to me winds of somewhere between 40 to 50 knots.

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Q. Somewhere between 40 and 50 knots?

A. Correct.

Q. Is that an average or is that as high as they get?

A. High and low, 50 high, 40 low.

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Q. But not beyond 50?

A. Well, that's my understanding of it, yes.

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Q. I am going to take you to the morning of the 27th, I think the seas picked up a little bit?

A. Yes, I was on deck. We were running watches where we rotate through shifts and as the conditions were getting extreme, extreme as in windy, we had gone from - we had reefed our way down through the mainsail to a storm gybe and then we had chosen to take the mainsail off deck. I was off deck from about 7 in the morning till about 10 but I was on deck from 10 through to when we retired, pretty much on deck, on deck/off deck, on deck/on deck. But the period that I took off, if you like, in the bunk having a rest was between 7 and 10 in the morning.

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Q. Who was on the helm at that stage?

A. Between 7 and 10?

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Q. Yes.

A. Primarily Adam Brown and I think Carl as well.

Q. I think that there was some statement about Adam Brown when he came off the wheel he had been on there for some hours.

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A. I don't know if he had been on there for some hours. In the morning - I had steered the boat earlier on and as I said I went off watch at 7 and when I came back up, and it wasn't probably three hours, maybe two and a half hours later, the conditions had increased quite considerably. It was then that we chose to pull the mainsail off and put a trysail on and then we pulled the trysail off. And the conditions had been extreme, building up, and I was on deck as I said from about 10 through - for a good part of the morning and what I was noticing, which was a little unusual certainly from my experience, was that the wind would freshen to 35 knots and then it would back down to 30, and then it would come back and it would come back fresher at 40 knots, and then it would back down again maybe this time to 35 and then it would come back harder at 45, back down and then it would come harder again to 50, back down. At no

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time when it came - you know, the lulls were not long and the wind continually increased over a period from about certainly around 10am in the morning through to midday and with the increasing wind we had a lot of rain and an increasing seaway to where I guess at around midday we had - in fact I remember quite distinctly the strongest gust of wind we had was at about 82 knots. 5

Q. Is that throughout the whole day?
A. No, no, no, that's what it peaked at, to my knowledge that's what it peaked at, and that was around midday, slightly after midday. 10

Q. I think that Mr Kothe makes reference in one of his statements about Adam Brown actually when he came off the wheel - first of all when he was on the wheel he had two harnesses on and people actually holding him on the wheel. 15

A. To steer the boat in those conditions isn't easy, not so much because of the heel of the boat, we only had on a storm gybe from around 10am through so the heel of the boat wasn't excessive, the heel of the boat might have been 20 degrees, but the sea conditions - the way in which you'd plan you'd come down the sea, plan how you'd helm your way up to the next sea and then find a way through the top of the next sea, whether it was slightly broken or unbroken seaway, to sort of land the boat so as it found its way down the next wave. And from a helming point of view it was hard work, you couldn't concentrate on holding yourself into the boat, you had to concentrate on steering the boat. So what we did was we were all wearing harnesses, I didn't know Adam had two harnesses on, we were all wearing harnesses-- 20 25 30

Q. Sorry, you didn't know?
A. I was unaware that he had two harnesses on. I only ever sail with one harness and the harness is connected to the stanchion that's nearest you and then generally we sail with a minimum - when it gets windy like that a minimum number of people on deck, we might only have three or four people in total on deck, generally someone behind the helmsman to keep an eye on him and generally somebody sitting just for'd of the helmsman so that when we do fall down a sea what happens is the boat stops but the helmsman doesn't, everybody else does because they have got something to grip a hold on but the helmsman doesn't so the guy sitting for'd of the helmsman has to lean over and grab him and pull him back down. 40 45

Q. What time did Adam come off the wheel?
A. I would be unsure but I would suggest that probably - I came up on deck - I actually relieved Glyn and Glyn went down at 10 in the morning and Adam was up, so I don't know whether Adam had been steering a lot of - for Glyn or what they had done there. He probably stayed on the helm for another hour when I came up. I sat behind him and - yes, I guess he probably helmed the boat for a while there, yes, hour/hour and a half. 50 55

Q. That's Adam?
A. Yes, correct.

Q. At one stage there I think in the morning you were of the opinion that you should turn around?

A. Yes, I was.

Q. What time of the day was that? 5

A. I would say that was probably around 11 to 12, somewhere in there, but I spoke to Rob about it and we agreed that we would wait for the weather forecast which was due at around that time, around 12 o'clock, around midday, the weather forecast. 10

Q. Was that the sked?

A. No, the sked wasn't until 1400 hours.

Q. Where was the weather forecast coming from at about midday? 15

A. The weather forecast - there is a number of forecasts that you pick up during the day but this one was actually via the CYC I guess, I can't tell you who it was via but I know it was the Sydney weather forecast that we were waiting for from the MET office for that vicinity, for the vicinity of the racecourse. 20

Q. What did you say to Mr Kothe between 11 and 12 about--

A. Well, as I have already expressed to you I mean the conditions had deteriorated and deteriorated in a way that I hadn't seen previously in that over that two hours or so it had got worse on a progressive basis and I had expressed to Rob at that time that I was concerned about the safety of the boat and the safety of the crew and I had suggested to him, or had basically suggested to him, that we should be thinking about retiring. 25 30

Q. What did he say?

A. We both agreed at that time that we would wait for the 12 o'clock forecast because we had had a forecast later the night before, I can't remember what time, late the night before, which had given us an indication of where the low pressure was and we had discussed the low pressure system that was building, which was sort of I think I recollected it being well south of us, something like about 41 degrees south and about 149 degrees east, which would be - I think it was from the forecast from the evening before, so we were anticipating that that low pressure system at that time, 149 degrees, would put it somewhere around Eddystone lighthouse and we were always anticipating that it would make its way out into the Tasman and as most of those low pressure systems do in a sort of south-easterly direction and move away from us. So that's what we were waiting to hear, we were waiting to hear what its position was. 35 40 45 50

Q. Did you get a weather forecast at 12 noon?

A. Yes, we did.

Q. Was that before or after this gust that you have told us about of 82 ..(not transcribable)..-- 55

A. Well no, it was around that time, it was slightly after that time.

CORONER: It's a bit hard to hear the end of the question and the answer if it come in too quickly.

WITNESS: I am sorry.

HILL: I'll start again.

Q. The weather forecast, did it come before or after the gust of 82 knots that you have told us about about noon?

A. After.

Q. It came after that?

A. The weather forecast came after.

Q. So when you got that gust of 82 knots did that renew any conversation about the turning back--

A. Well, I mean it was from that - it was really because of that wind strength that I had been talking with Rob about considering our position and we agreed that we'd wait for the 12 o'clock forecast to get a fix on where the low pressure system may well be. When that forecast came through of course unlike the forecast from the evening before it went incredibly vague. It just referred to the low pressure system in eastern Bass Strait, it no longer gave us a position for the low pressure system.

Q. So what did you get out of that forecast?

A. Confirmation of the wind or wind strength, which was nothing like the wind strength we were getting.

Q. Why was it--

A. We had considerably more.

Q. So the actual wind strength you were getting were much more than what was being forecast?

A. Correct.

Q. Have you any idea how much more?

A. I can't give you the exact.

Q. So what was decided after that forecast?

A. Well, after we had the forecast the breeze did abate, it abated back to in the 60 knots and we thought - and we had a lot of conversation in this period because I was sort of on deck and I'd be on deck steering the boat for a while and be watching what's going on and watching the sea conditions and the weather conditions generally and it was at 1 o'clock I was actually due to come off. At that time I came down below deck again and had a chat with Rob about the conditions. The conditions had abated somewhat from 82 knots, we never saw 82 knots again, in fact we generally saw around 65, and we had a conversation. We both agreed that the conditions were extreme. We then both agreed that what we would do was wait for the sked at 1400 hours. Normally that sked begins with the weather forecast, we'd hope to get an update on the forecast. And it was sometime before the sked that we both agreed that what we would do is that we would give our position of the sked and then Rob would agree - or Rob would actually request to give a weather forecast

because what we were experiencing was unlike what we were being given as information from the MET office.

Q. I understand that there was a group of people that thought it preferable to turn back and another group who wanted to go on. Is that correct or not? 5

A. I wouldn't say that clear as saying there was a group who wanted to retire and a group who wanted to go on, I'd never say that to you. But it ultimately gets down to the crew's ability to sail the boat and as I say I had been talking to Rob on a progressive basis about retiring, retiring because, you know, the conditions I considered to be extreme, certainly in the morning when we were in that sort of 11 o'clock to midday period, and, you know, I was concerned because every time you would look the wind pressure was increasing and increasing up to midday. We got a forecast that didn't help us confirm exactly where the low pressure was. We had been sitting and discussing the low pressure. I think on one or two occasions we had been sort of holding pieces of paper and drawing it and trying to work out where it might be and where it might be going or in what direction, which was our rationale then for waiting on for the 2 o'clock sked and requesting to give a weather forecast. Our real intention of course was that maybe somebody in front of us, maybe 10 miles in front of us, might have come back on at the sked and given a weather position as well, or weather forecast as well, might have give us some indication of where that low pressure system lay or the intensity - the centre of the low pressure system lay, whether it was to the south of us still, as we believed it was, or whether it was to the north. 10 15 20 25 30

Q. If you believed it was to the south then you were still sailing towards it, is that basically--

A. Correct, and that ultimately was our decision to retire, it was due to that. 35

Q. It's just that Mr Senogles in his evidence seemed to think that there was an agreement that there were four people who wanted to turn back, being yourself, Mr Charles, I think the other helmsman Adam Brown and one other, and there was four who wanted to continue and then it was agreed that you would wait to see the weather forecast on the 2 o'clock sked. He seemed fairly certain that that was a defined area. 40 45

A. It is clear that, you know, Rob and myself had had a number of conversations about the wind and the strength of the wind in the seaway and Rob agreed that the decision to retire should be made by the helmsman. And I had spoken to Glyn - when Glyn and myself - when Glyn came on deck at 1300 hours Glyn expressed to me in no uncertain terms about his concern about the weather conditions and he did ask me to try - endeavour to convince Rob to retire. 50

CORONER: Q. Did Mr Charles indicate to you earlier his position relating to the weather? 55

A. No.

Q. So between 10 o'clock--

A. No, he hadn't.

Q. --when you were starting to think about it did you speak--

A. Glyn had been below deck, he had been pretty ill, he had been pretty sick. 5

Q. Did you speak to any other of the more senior and experienced members of the crew, apart from Mr Kothe, during that period between 10 o'clock and midday about your fears--

A. Probably talked to - a number of the crew members knew my feelings, you know, I considered the conditions to be extreme and that - because we were only I guess at that stage 50 to 60 miles into Bass Strait it was still our opinion that the low pressure system was well to the south of us because the position we had been given in the evening would suggest that it was well to the south of us and, you know, ultimately when we did retire it was because we considered it to be the prudent decision based on the fact that we understood the low pressure to be to the south of us. 10 15 20

HILL: Q. What I want to understand is this. It was your opinion, Mr Charles' opinion at about 1 o'clock that you should retire?

A. Correct. 25

Q. What about the other helmsman Mr Brown?

A. I went and spoke to Brownie, he was below deck in one of the bunks. Rob had agreed that the decision should be made by the helmsmen and I went and spoke to Adam at that time and Adam said that he didn't consider his experience or his level of experience to be such that he should be making the decision so he deferred to myself. 30 35

Q. He deferred to you?

A. Correct.

Q. So basically if your opinion was to retire he would go along with that?

A. Correct. 40

Q. What other helmsmen did you speak to?

A. There were only those three, only myself and those two. 45

Q. Did you take that message back to Mr Kothe that--

A. Oh yes, absolutely, and we discussed it and we had agreed that, you know, after we - we agreed then that we would sked at 1400 hours, or the time we got into the sked and our name came up, and that Rob would actually request to give a weather forecast, which he did. And, you know, it should be clear that in giving that forecast offered a tremendous amount of assistance to a lot of the boats behind us-- 50 55

Q. I understand that.

A. But, you know, to be perfectly honest the reason for it

was in hope that one of the yachts in front of us would give us a forecast because we were vague and we were unsure about whether the low pressure system and indeed the intensity of wind was more extreme to the south of us or to the north of us.

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Q. I am going to keep coming back to the point where you have the three helmsmen saying retire, Mr Kothe has sent you presumably to canvass the helmsmen and if they say retire he will agree with that.

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A. Yes.

Q. Did you then go back to Mr Kothe and say the helmsmen say we should retire?

A. Pretty much those words, yes.

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Q. And what did he say to that?

A. I can't remember exactly.

CORONER: Well, the gist of it.

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WITNESS: The gist of it was that we would - we agreed that we would wait for the 2 o'clock - the 1400 sked and at the 1400 sked we would give our position and the weather forecast and, you know, our hope was that we would hear from somebody--

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CORONER: Q. Yes, all right. So what you are saying is he overruled you, are you not?

A. Yes.

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HILL: Q. There would have been nothing preventing you from turning the boat then?

A. The difficulty of the turn at that stage. It certainly was easier when we actually did gybe out.

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CORONER: Q. What did Mr Charles say after this meeting between you and Mr Kothe, what did he say to you?

A. I went back on deck and I told him that we were waiting for the 2 o'clock sked and we'd give our weather position, he agreed that that was right.

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Q. He agreed it was right. What did he say?

A. It was very windy on deck at the time, I basically informed him of what we were doing.

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Q. He made no comment?

A. I can't remember an exact comment. He had made a comment to me earlier of his concern for the wind, the strength of the wind and the sea conditions, and, you know, that he thought we should have retired. But that was, you know, earlier to that.

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HILL: Q. When he made a comment to you when you informed him about waiting for the 2 o'clock sked was that a comment of agreement or was an expletive or what was it?

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A. The comment earlier when Glyn came on deck at 1300 hours to relieve me, his comment was that he was concerned about

the conditions, he considered them as being extreme and that he wanted me to go and talk with Rob about retiring. And then when I went and spoke to Rob I spoke with Adam and we agreed that we'd wait on for the 2 o'clock sked, I went back on deck and I told Glyn that we were waiting on for the 2 o'clock sked. To be honest the conditions had subsided a little bit too, not a lot but they had subsided a little bit.

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CORONER: Q. And you can't remember what he said to you?
A. No, I can't.

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HILL: Q. Was it something that was angry or was it--
A. No, it wasn't angry.

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Q. --agreement or--
A. No, it wasn't angry.

Q. Was it an agreement?
A. It was an agreement to keep sailing, yes. It certainly wasn't anger.

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Q. The 2 o'clock sked, what happened from that?
A. We waited through for our turn, we gave our position. At the end of that we requested to do a weather forecast. Lew Carter agreed that we should do that. Rob gave the forecast. You know, as I say it was an extreme forecast, I can't remember exactly what he said but he gave an indication of the wind strength and the sea conditions at that time and, you know, our intention was hopefully that either a yacht somewhere around us or in front of us might have also given an indication of the weather forecast.

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Q. That didn't happen?
A. No, it didn't.

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Q. Did anyone have any thought of asking Telstra control of contacting the yachts ahead and finding out what was happening in the weather down there? Did anyone ask them that or think of asking?
A. No.

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Q. Why not?
A. Well, it's sort of outside assistance. It's classified as outside assistance, it's outside of the racing rules.

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Q. What would that do?
A. If we were to ask someone, ask Telstra to ask someone, basically I should assume that from that we could be disqualified from the race because it's classified as outside assistance.

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Q. But you were in extremely severe conditions.
A. We were still racing.

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Q. You were still racing?
A. We were still in the race.

Q. I think there is something called the Everest syndrome, what is it?

A. I think I actually gave you those words.

Q. Yes.

A. Having read a number of books on people climbing Mount Everest I think lack of oxygen or lack of something people manage to climb over dead bodies and keep climbing towards the summit. That's what I call the Everest syndrome.

Q. And does that pertain throughout this race?

A. Hard to comment. You know, our decision to retire was the right decision when we made it.

Q. Though you would have made some hours previously?

A. Yes, probably three hours earlier.

CORONER: Q. Aren't you arguing against yourself when you say that?

A. I am not sure.

HILL: Q. Nothing comes back over the radio from yachts ahead, so what's the decision then?

A. The decision was to retire.

Q. But that didn't occur for some hours after the sked?

A. It occurred about an hour after it.

Q. What happened in between that hour?

A. The conditions abated quite considerably for a brief period and we thought oh right, fine, we are sailing away from the low pressure, we'll continue on. It's always a difficult decision because you are left wondering is the low pressure abating, is it moving, is it where we think it is. So you are left sort of, you know, with a judgment about what you are doing. You know, clearly when the wind started to abate we thought that maybe it had moved further and quicker to the east given its previous position and therefore, you know - and what can quite often happen I mean although you can sail in extreme conditions the weather can abate amazingly quickly, amazingly quickly. It doesn't happen over three or four hours, it can happen over half an hour/40 minutes, it can abate quite rapidly. And that's what we thought was happening after the sked. And then it came back and when it came back we retired.

Q. What did it abate to, have you any idea?

A. I couldn't tell you. We were considering changing sail or adding extra sail to the boat, so it had abated a bit.

Q. So it had abated enough for that?

A. Yes.

Q. Then it came back?

A. Yes, it did.

Q. To what degree?

A. Back up to sort of 55/60 knots.

Q. And what happened then?

A. We retired.

Q. The vessel was turned around?

A. Yes, it was.

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Q. Was there any difficulty with turning it around?

A. No, there wasn't.

Q. Was the motor used?

A. The motor was started, it wasn't put in gear.

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Q. So you turned on the sails?

A. Sorry?

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Q. You turned on the sail part--

A. Yes, we gybed, we gybed. We basically - Glyn was steering the boat, he picked a seaway, we bore away in the seaway and gybed the boat. It was a very easy satisfactory gybe.

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Q. No problems with it?

A. No problems with it. We then lifted the boom, because the boom had been on the leeward side of the boat so when we gybed it was on the weather side of the boat, lifted it across to leeward and strapped it on to the leeward stanchions.

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Q. And that was the starboard side at that stage?

A. Correct.

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Q. Then I think Mr Charles was at the helm?

A. Yes, he was.

Q. And Mr Senogles was his ..(not transcribable)..--

A. Support on deck, yes.

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Q. Support?

A. Yes, support on deck. And we agreed that we would sail with only two crew on deck and that we would make our way slowly and cautiously back towards the coastline. We had notified I think the CYC what we were doing and our plan was to get back in and around sort of the Eden sort of Gabo area, back towards land and make an estimation then of whether we would continue or whether we would retire completely from the race.

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Q. I think it was sometime after that that the vessel was actually struck by a rather large wave?

A. Yes.

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Q. Where were you at that time?

A. I was below deck. I was in one of the bunks, one of the upper bunk on what was then the weather side of the boat.

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Q. About how long was it after the vessel had turned that this wave struck?

A. After we had gybed out to sail back?

Q. Yes.

A. It would be hard for me to comment. I guess it could have been anywhere between 20 minutes and 45 minutes.

Q. The vessel was struck and turned through 360 degrees, is that right? 5

A. Correct.

Q. What happened then?

A. What happened then. The actual capsize or 360 appeared to happen very quickly and, you know, it's a little difficult when you are sort of sitting in a bunk not quite awake and not quite asleep, in a sort of semi state, you know, being tired and exhausted from being on deck, and it was an odd experience to roll all the way through the side of the boat, the top of the boat and then bounce back down onto the bunk. I remember being somewhat shaken, dropping the bunk, they sort of lift up and down, dropping the bunk, jumping out of the bunk and landing into the bottom of the boat in water, in water up to sort of my knees. At that time I could see the boat was in a hell of a mess. The actual capsize probably only took four or five seconds, couldn't have been much longer than that. The hatchway stairs, the stairs that come down the hatch, had been completely broken away from it so it made it quite difficult to get up out of the hatch. I could hear at that time Darren on deck calling 'man overboard'. I was about the fourth man to make it on deck, had to sort of climb over the top of the debris inside the boat and the motor housing had sort of collapsed and as I say the water was quite deep inside the boat. There were sails floating everywhere, I mean the boat was a complete disaster below deck. I managed to make it up onto deck. At that time the first thing I noticed was Glyn, he was at that stage, I don't know, somewhere between 25 and 30 metres behind the boat. We had already endeavoured to throw a heaving line to him, the heaving line was not far enough. Darren wanted to go after him. We found a rope. At that stage Glyn was about 45 to 50 metres behind the boat. We were drifting at probably 4 or 5 knots and being in the water he wasn't drifting at all towards us. Darren wanted to dive over with this rope and swim after him. I wouldn't let him go, it was agreement both by myself and some other crew members. If he had he would have drowned as well. 10
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Q. That was your opinion at that stage? 45

A. Correct.

Q. What happened then, when did you--

A. We couldn't start the motor, the motor had sort of moved out of its housing completely. The rig was out the side of the boat. The boat was lying side to the sea as it was being held side to the sea because of the way in which the rig had folded around the boat on this side and the sea was coming in this side, so it was being held side-on to the sea. What we then did was Simon stayed aft and kept an eye on Glyn and we desperately got everything out and started cutting the rig away from the boat. 50
55

Q. What was the position with regards Glyn, what was to be done?

A. We could do very little, we had no motor. Glyn had drifted very - we had drifted very quickly away from Glyn. The high sides of the boat and the sea conditions were such that we drifted very quickly away from Glyn and we had no means to sort of get to him or help him.

5

Q. Was the man overboard button pressed, do you know?

A. Yes, it was. Actually I pressed it on my way up there on deck. I jumped out of the bunk and I leant over, Rob was lying in the bottom of the boat and there was crew already climbing out of the hatch, and I leant over onto the nav area and pressed the MOB button.

10

Q. When did you last see Mr Charles?

A. About 20 minutes after the capsise.

15

Q. How far away was he at that stage?

A. He was probably 200 metres.

20

Q. Was any life ring or anything like this thrown to him?

A. Yes, there was. Nothing we could get far enough towards him. He was basically - we were drifting down and away from him so the further we drifted away from him he was to weather of us.

25

Q. Was he wearing a life jacket at all?

A. I don't believe he was wearing a life jacket, no.

30

Q. At one stage the EIPRB was put over?

A. I actually got the EIPRB out and put the EIPRB out on the weather side of the boat about 5 minutes after the capsise.

35

Q. When you say put it out on the weather side of the boat you mean in the water?

A. Into the water, let it out into the water and tied it up onto the stanchion.

40

Q. And that was about 5 minutes after the capsise?

A. Yes.

Q. And you've told us about cutting away the rigging et cetera. Now were you on deck some time later when another vessel was seen?

A. Yes I was.

Q. Now first of all, how long after the capsize was that?

A. I would say - when I first sighted Margaret Rintoul, and I didn't know it was Margaret Rintoul at that stage, it would've been about an hour and a half later, hour, hour and a half. Somewhere between an hour, an hour and a half after the capsize.

Q. Now what was the state of your vessel at that stage?

A. We were still bailing. In fact part of the reason why - there was two of us on deck, myself and Nigel, I can't remember Nigel's surname, were on deck at that time and I can't remember whether it was he or I who first sighted the yacht but at that stage they were almost due north of us so they were actually pointing at us and they were - at that stage it was raining slight drizzle, the sea conditions and the weather conditions had abated considerably, we probably had around 40 maybe 45 knots maximum and three to four metre seas. It was quite easy for the two of us to remain on deck. We first sighted them and I guess at that stage they were a kilometre away from us, 1000 metres, maybe a bit more, maybe 1300 metres away from us and as they sailed - and they didn't alter course at all as they sailed this way we drifted away from them to when they were dead to weather of us they were probably 250 metres dead to weather of us.

Q. Alright now just stop there, I want to take you back, you said you were still bailing at that stage and then--

A. We had to sort of continually bail the boat.

Q. There were two people and what were they doing on deck?

A. What were we doing on deck?

Q. Yep?

A. Well we had been on deck bailing. Basically if water comes up out of the hatch you get given it and you lean over leeward and you actually, you know - because we had discovered earlier we'd been just throwing water up out of the hatchway and it had been running along the cockpit floor but in the capsize the wheel of the boat had been forced down into the wheel well and had broken the wheel well open so every time we bailed and just dropped the water into the cockpit floor it went along the cockpit floor and straight back down the wheel well and back into the boat.

Q. But you were still bailing at that stage?

A. Yes we were.

Q. What was the state of your vessel generally?

A. We had actually thrown a lot of sails overboard, we'd cut the rig away, we'd got the anchors out and we'd actually put the anchors out and that helped pull the boat around somewhat into the wind.

Q. Which anchors are you talking about?

A. The main anchors in the boat and we let them out with all of their chain and that had helped pull the boat around so as we were at least close to being head to wind, it wasn't perfectly head to wind but closer towards being head to wind and we'd disposed of a number of sails, we had Rob below deck who was injured and yeah we still had water coming in the boat so we sort of had to bail the boat pretty will continually from there to when we were taken off it.

5

Q. I think you said that, and can I take you back to Margaret Rintoul about 250 metres--

A. Metres to weather.

10

Q. What was the weather like at that stage?

A. Weather conditions were, as I said, from earlier in the day had abated considerably. It was probably 40 to 50 knots and the sea conditions three to four metres.

15

Q. What sails did the Margaret Rintoul have out?

A. She had a storm jib up.

20

Q. What was done to attract the attention of the Margaret Rintoul?

A. We agreed that we'd wait until she got as close as what we thought was the minimum distance from her - us, which was when she was to weather of us and at that stage we let off a number of flares.

25

Q. What sort of flares were they?

A. We let off pretty well every flare we could find. When we identified that she either hadn't seen us we agreed to hang onto one of two of the flares so there was 12 of the flares in the container, one of them failed so that's 12 less two, less three, about nine of them. We would have let off somewhere between eight or nine flares.

30

35

Q. And what colour flares were they?

A. We actually started with our red flares and then worked our way through them.

40

Q. Now, as far as the weather is concerned the vessel that you saw, can you describe it?

A. I could describe her quite easily from where I stood, yeah.

45

Q. What--

A. She had a varnished stern, she had an off-white slight beige colour hull, the crew members, there were either two or three on deck, in yellow wet weather gear, she had a - I pretty well identified the boat.

50

Q. As?

A. It wasn't difficult to identify at all.

55

Q. So you knew it to be the Margaret Rintoul?

A. Yeah I had a feeling it was the Margaret Rintoul, yeah. You could see it from the varnished stern and the slightly

off-coloured hull, the sort of slightly more beigey-white coloured hull.

Q. What sort of vessel is it, do you know?

A. What sort of a vessel is it? I'm not sure. I can't tell you exactly what sort of vessel it is. It's a vessel that we have raced against on the harbour and then again on the ocean a number of times, generally she's well, well behind us whenever we - Sword of Orion but know, she's been a yacht that's been out sailing for a number of years so it wasn't that difficult to identify it as that yacht. 5 10

Q. Now in your opinion could the Margaret Rintoul have come towards you?

A. Yes. 15

Q. Why do you say that?

A. Conditions had abated considerably.

Q. And could it have remained on station near you? 20

A. Yes.

Q. What could it have done for you had it done those things?

A. What could it have done for us if it had done those things? We actually - I believe we tried to communicate with her on our VHF but had no luck in getting through to her and when she sailed off into the distance I assumed that she hadn't seen us. 25

SHAND: Well that's not an answer, I submit, to the question, your Worship. 30

CORONER: You're quite right. 35

Q. The question was pretty specific Mr Kulmar. What could that boat have done for you, for the Sword of Orion and its crew, had she come towards you?

A. Okay, sorry. 40

Q. Had she turned and come to your assistance in other words, in answer to your flair?

A. What would she have done if she had come towards us?

Q. What could she have done? 45

A. She could have radioed our position. She could have stood by us. We were unsure at the time--

OBJECTION (SHAND). 50

WITNESS: --whether the yacht would remain afloat.

DEPARTING FROM THE QUESTION.

CORONER: Well radioed our position and stood by us, they're both responsive. 55

HILL: Q. What else could it have done?

A. I'm not sure she'd need to do much more than that, radio a position and stand by us, as we would have done for her.

OBJECTION (SHAND).

CORONER: It's a matter of weight Mr Shand.

HILL: Q. And as far as your vessels ability to remain afloat, what was your opinion at that stage?

A. The vessel would sink. The boat will sink was my opinion.

Q. That was your opinion at that stage?

A. Yep.

Q. Now, you've also heard put to I think Mr Watson that the Margaret Rintoul did not have use of its motor at the time that it was near you, you have heard that?

A. I heard that, yes.

Q. Now, would that change your opinion about the manoeuvrability of that vessel?

A. Restricts manoeuvrability but she could manoeuvre.

Q. And could she have come near you without the motor?

A. Within a reasonable distance, yes.

STANLEY: Q. Mr Kulmar I want to ask you some questions about the weather generally and your understanding of it, your experience with it and firstly have you ever, in your racing experience, pulled out of a race on the basis of a forecast?

A. No.

Q. Have you ever pulled out of a race before this one on account of weather conditions?

A. No.

Q. So is it fair to say that from your own point of view the only basis upon which you would pull out of a race in practical terms is when you experience or observe conditions that are so severe you regard it as unsafe to continue?

A. Correct.

Q. Have you ever raced in conditions in Australian waters of this latitude where a storm warning had been issued before this race?

A. No.

Q. So this was the first time you'd ever raced when a storm warning had been put out in Australian waters?

A. To my knowledge, yes.

Q. And you mentioned earlier in answer to a question that Mr Hill put to you that your understanding of a storm warning is winds of 40 to 50 knots?

A. Correct.

Q. And you emphasised that by saying high and low, the 40 would be the low, the 50 would be the high is that so?

A. Correct.

Q. And you then made it clear that that did not - those figures were to include any allowance for gusts?

A. Correct.

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Q. You didn't, as it were, go beyond 50 to incorporate gusts?

A. Correct.

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Q. What do you understand to be the appropriate description for waters in this latitude if the winds are in fact to be forecast at more than 50 knots?

A. Don't know.

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Q. I find that a little surprising that you don't know, I mean, you're a very experienced sailor are you not?

A. I've not sailed in those conditions previously.

20

Q. But irrespective of that you've been sailing for a long time and done a lot of sailing very successfully, correct.

A. Correct.

25

Q. And I take it sailing is very much part of your life?

A. Correct.

Q. And has been for a number of years. I mean we had, for example, Mr Senogles was asked about whether he was involved in it or what he thought of it and with some force indicated to him it was a passion. Do you share that passion?

A. No.

30

Q. But you are never the less a very interested and involved sailor?

A. Have been, yes.

35

Q. And do you read sailing books?

A. Have done, yes.

40

Q. Books in relation to or that might relate also to the weather conditions with sailing?

A. No not really.

45

Q. I wonder if I could just give you - ask you to look at this list rather than me reading them out. These are books that were produced by Ken Batt from the weather bureau--

A. No I've never read anything Ken's written.

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Q. No, no, these aren't ones that he's written, with one exception, but they're books that he referred to. I just wonder whether you've read any of them. Just take your time and have a look.

A. Two of them.

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Q. Which are the two that you've read?

A. High Performance Sailing by Frank Bethwaite, and ORRC

Manual of Weather at Sea.

Q. Sorry the second one is?

A. Second last one, ORRC Manual of Weather at Sea.

Q. Weather at Sea, yes, so you--

SHAND: I didn't understand that unfortunately--

CORONER: The court officer will show you the paper and you can make a note of it.

SHAND: Could I have which items they were again then? High Performance Sailing, Bethwaite, and--

CORONER: Weather at Sea.

SHAND: Thank you.

STANLEY: Your Worship, if it's an assistance we can have a copy of that list photocopied.

CORONER: Thanks Mr Stanley.

STANLEY: Q. Mr Kulmar, Mr Batt produced those books because in his evidence he stated that they all referred to in general terms if not specific terms to the fact that when weather forecasts or weather predictions are given in terms of wind speeds that there will be invariably a considerable range of gusts over and above what has been forecast. Are you unaware of that?

A. Pretty much.

Q. Well for example on this morning, the morning of the 27th, if we look at your statement, you refer to the winds how they tended to abate and then they'd come stronger then abate again and so on and indeed they started off at roundabout 25 knots didn't they?

A. Somewhere round there, yes.

Q. And yet you say they extended up to 82 knots?

A. Correct.

Q. Do you seriously then say that if a weather forecast was to be spot on accurate of those conditions what it would be saying is forecast winds of 25 to 82 knots? Is that your understanding of how the weather forecast operates?

A. No.

Q. Well what do you understand the weather forecast to mean when it gives wind speeds?

A. Well I'd say no but I guess that's because of the question, 25 to 82 knots is incredibly - incredible wide range of wind strength.

Q. But that's what the wind strengths were in your estimation--

A. Yes it started off early in the morning.

Q. I'm sorry, that's what the wind speeds were in your estimation between about 10 o'clock and--

A. Did I say 25 knots at 10 o'clock? I don't think that's true.

CORONER: Q. Well we won't argue about it, say it was 35 knots.

A. Okay.

Q. It's still an incredible range but the question's the same.

STANLEY: Yes it is.

WITNESS: Yes it is an incredible range.

STANLEY: Q. What would a forecast like that mean to you? If you got a forecast of let's say 35 to 85 knots, what would that be telling you?

A. Well basically at 85 knots it would be telling me it's going to be very windy.

Q. But you understand weather forecasts are given for a period of time aren't they?

A. Correct.

Q. It's not an instantaneous indication of one second or one minute in time?

A. Correct.

Q. It's over a period and that period is in general terms over a number of hours?

A. Correct.

Q. And the weather forecasts cover considerable area, do they not? It's not just for one particular point on the sea?

A. Yeah I think the area was Bass Strait wasn't it?

Q. Well Bass Strait's a fairly large area isn't it?

A. Yes it is.

Q. So were you aware that the winds forecast the day before your boat went down were for winds of 40 to 55 knots?

A. Yes.

Q. You knew that did you?

A. A storm warning, yes.

Q. Well you indicated before you believed storm warning was 40 to 50?

A. Sorry, 40 to 50 is what I thought, yes.

Q. Did you know that a storm warning had in fact been issued?

A. Yes I did.

Q. When did you first find out?

A. In the afternoon of the 26th. Late in the afternoon of the 26th.

Q. How did you find out?

A. Rob Kothe told me. 5

Q. That was before the sked, he'd found out on the radio?

A. That's correct.

Q. And when you were told that a storm warning had been issued for seas that you were going to meet the next day what was your feeling? I appreciate it's a hard question for you to answer now but are you able to tell us when that was put to you? Here you are, you're going into-- 10

A. Concerned. 15

Q. What was your concern?

A. Concern for the safety of the boat and the crew.

Q. Because you were going into an area affected by a storm warning? 20

A. Correct.

Q. You'd sailed in both the '84 and the '93 Hobarts hadn't you? 25

A. Yes I had.

Q. You described the '93 as a killer race?

A. It was a tough race, yes. 30

Q. Well the report from the cruising yacht club following this race as involving or including an early south-east change hitting the fleet on the first afternoon building to 50 knots and gusts in the mid 70 knot range with 10 metre seas. Is that, in general, your recollection of-- 35

A. It hit 70 knots but I mean to be perfectly honest the '93 Hobart was a different type of race to this race. We ran into the southerly change at around Wollongong and we spent the entire race from Wollongong to Tasman Light on a breeze. So we were on a breeze sailing into winds between sort of 25 up to 70 knots over a four day period. Generally that race was sailed in about 40 knots and it was the persistence of the wind for day after day after day that I think made that race a really tiring and strenuous event. 40

Q. Right, but despite that the fact is no storm warning was issued for that race-- 45

A. Right.

Q. --and here you had a storm warning being issued. Did that make you think the conditions could be worse than they were in '93? 50

A. No.

Q. Well look at 1984. The description of the wind there was a strong southerly change that built to a solid 40 to 45 knots. Now again, no storm warning was-- 55

A. Yeah, just to be fair on 1984, it went way over that

where we were on a course.

Q. But as you've already indicated no storm warning was issued on that occasion?

A. Correct.

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Q. But you knew on that occasion the conditions were very severe and indeed in that race just under 70 percent of the whole fleet had to retire? You're aware of that?

A. In '84, yeah, and the primary reason for that was not just the wind conditions but it had to do with the current - strong - because we ran into the southerly on the first half of the course and we actually sailed down the coast in a seaway that was also - or a current that was also going south and the wind was coming north so it left the seaway a very difficult, nasty sea that, you know, a lot of boats retired because of that.

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Q. Well nevertheless despite the fact that you'd sailed in those two races and they're as you've described you were prepared, notwithstanding the storm warning, to continue in this race?

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A. Correct.

Q. Now you mentioned before that you'd never read anything of Ken Batt's, anything that he'd written. Are you a member of the Cruising Yacht Club of Australia?

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A. I am - I was.

Q. Were you in 1998?

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A. Yes, yes.

Q. And did you sail in the 1997 race?

A. Yes I guess I would have, yes.

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Q. I wonder if you'd look--

A. No I didn't, I beg your pardon, no I didn't. No I didn't sail the '97 Hobart race.

Q. My instructions are that this magazine was in fact issued to the competitors in the 1997 race but I presume you get that journal do you?

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A. Amongst many, yes.

Q. And when you get it do you read it?

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A. Not regularly.

Q. Do you ever look at it?

A. Occasionally.

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Q. If there was an article written in that dealing specifically with Hobart race would it be of interest to you?

A. Yes it would.

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Q. Would you turn please to page 39. See the title of the article?

A. To Be Or Not To Be?

Q. Yes. A guide to weather prediction at sea with a Hobart race bias?

A. Mm hmm.

Q. Now, just have a look at it, I don't mean read it all, but just have a look at it and see if you can - if it jogs your memory as to whether you've read it before?

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A. No I didn't read the article.

Q. Is there any particular reason why you wouldn't read it?

10

A. I didn't do the race in '97 and I wouldn't have taken much interest in it.

Q. But if you'd sailed before '97 I assume at that stage you thought you were going to sail again later?

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A. Not necessarily, no. No, I didn't - I honestly say I haven't read the article.

Q. Well would you mind turning then to page 40. The last two paragraphs on the page, I think there may be some highlighting of them, do you see that?

20

A. Yep.

STANLEY: I've had some photocopies made, could I hand up a copy to your Worship?

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CORONER: Yes thanks.

STANLEY: Q. To take you to the last two paragraphs on that page, page 40, it talks about the - and looking at the second sentence in that bigger paragraph, "gusting winds will occur in the area around a cold front but some evidence suggests that when we have a tight pressure gradient with isobars close together on a weather chart the wind arranges itself in corridors of stronger winds interspersed with areas of lighter winds and these stronger winds can be 20 knots or more higher in speed than the average wind speed." Now firstly you've said you've not read that?

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A. No.

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Q. But from your experience of the waters there described do you agree with it?

A. Yes.

Q. So in your experience there can be these corridors of stronger winds and that these stronger winds can be 20 knots or more higher than the average wind speed?

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A. Yep.

Q. Then if we just go on to the next paragraph, "this situation is similar to waves at sea where we talk about average wave heights but none the less there can be some waves at lease twice that height". Now, you haven't read it but do you agree with that?

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A. Yes.

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STANLEY: Your Worship, I'm not sure if this has been tendered or not. There has been reference made.

CORONER: No I don't think it has.

EXHIBIT #25 ARTICLE BY KEN BATT MAGAZINE TENDERED, ADMITTED WITHOUT OBJECTION

STANLEY: Q. Could you look please also at page 42. You see--

A. Weather words of wisdom?

Q. Yes, there's an insert, weather words of wisdom. The first sentence there is, "you homework begins beside any reading and/or off course work at least three weeks before the race commences with the religious collection of daily weather maps from say the Bureau of Meteorology's weather by fax service". Do you agree with that?

A. For the navigator, yes.

Q. I see, that you would see as the task of the navigator?

A. Correct.

Q. Now, Mr Kulmar, on 24 December you've told us you went to the pre-race briefing and you left rather confused--

A. Yes.

Q. --as to what the weather was going to be?

A. Correct.

Q. For the race that was to commence two days later?

A. Yes.

Q. And was it clear to you from what Mr Batt said that he was uncertain also?

A. Correct.

Q. And that the one thing he emphasised was that there be some fine tuning each boat or each navigator or those responsible fine tune as far as they could their understanding of the weather?

A. Yes.

Q. And that meant a lot of work had to be done between then and the actual start of the race?

A. Yes.

Q. And did you attend at the CYC on the morning of the race and observe the stand of the weather bureau?

A. No.

Q. Perhaps I should have split that question up. You did attend the CYC?

A. Yes I did.

Q. But you didn't attend at the display?

A. Correct.

Q. Did you see it?

A. No.

Q. So does it follow that you did not speak to anyone from the bureau at the yacht club on the day of the race?

A. Correct.

Q. But you did get a briefing from another - well a person you believed to be some sort of weather expert?

A. Correct.

Q. Was this a fellow from New Zealand?

A. Yes.

Q. And he came on board your boat did he?

A. Yes.

Q. And gave you some advice?

A. Yeah well in addition to that we had the information from the weather bureau at that time.

Q. So did you know by then that a gale warning had been issued?

A. A gale warning had been issued by then, yes.

Q. You'd found that out from someone on the boat had you?

A. Yes.

Q. Did you know that the bureau had a stand at the yacht club, that it was their practice?

A. No. I'm not a frequent user of the CYC.

Q. Mr Kulmar, you and those on your boat finally decided to retire, you've told us, when the winds got back to 55 to 60 knots?

A. Correct.

Q. And it was that fact, it was sufficient to bring you certainly to the decision that retirement was the appropriate course?

A. Correct.

Q. And you thought winds of that speed presented a situation that involved considerable risk to the boat and to the crew?

A. 50-55 knots in a boat is manageable and you can sail a boat in 50 to 55 knots and I've done that on many occasions. What was clear to us was that from the lack of information we'd gathered that we believed that a low pressure was still to the south of us and we believed that because we were only 65 to 70 miles into Bass Strait that the prudent and correct decision was to retire due to the fact that we would be seeing increasing wind as we went further south.

SHAND: I'm sorry, due to?

CORONER: The fact that we would be seeing--

WITNESS: Increasing wind as we went further south.

STANLEY: Q. Mr Kulmar do you believe that yachtsman as a

breed in this sort of race which is very competitive, I put to you, are ever going to consider retirement simply on the basis of a forecast?

A. No.

WEBER: I don't wish to cross-examine Mr Kulmar, your Worship.

CORONER: Mr Shand do you--

CALLAGHAN: I'll go first I think.

Q. In relation to this briefing on board down at the CYC on the morning of the race the chap from New Zealand had with him material from Doctor Badham did he not?

A. Correct.

Q. And he went through that in considerable detail?

A. Yes.

Q. With you, with the skipper, Mr Kothe, and various of the other, shall I say, senior members of the crew?

A. Yes, correct.

Q. Some time was taken over the briefing and it was rather - is that correct?

A. Yes.

Q. And you regard it as a thorough briefing?

A. Yeah a good briefing.

Q. You spoke of the location of the centre of the low pressure cell was given in the forecast in the early hours of the morning of the 27th?

A. That's correct.

Q. And it fixed it with a longitude and a latitude and to the east of Eddystone Light?

A. Pretty much, yes.

Q. At 60 miles to the east of Eddystone Light?

A. Yeah I think the position they gave it was 41 degrees south and 149 degrees east.

Q. I don't think we need to go to a chart but that's good enough for the moment I think--

A. Yeah, that basically put it off Eddystone, yep.

Q. And did it also include information that the centre of moving in a north-easterly direction at about 20 knots?

A. Yeah something like that.

Q. And in terms of location of the centre of the low pressure cell that was the only intelligence you'd received in terms of a forecast that day, is that so?

A. The day of the 27th?

Q. Yes.

A. Correct. In fact I think the forecast that comes up later went nondescript on us, it didn't give any--

Q. Yes that's right, the one at midday spoke of being a low pressure cell being in eastern Bass Strait, which covers a lot of sea? 5

A. Yeah a lot of seaway.

Q. You've told the inquest that you and Mr Kothe agreed that you'd wait until the sked at 14.00, 2pm, and you'd engage in this process of communicating your data to the fleet? 10

A. Correct.

Q. And that was done? 15

A. Yes it was.

Q. Were you aware that Yendys in fact gave some information or indication of agreement with those sorts of conditions as had been described by Mr Kothe? 20

A. Yeah I think Yendys came up after us in the sked and confirmed the weather condition.

Q. Well in alpha order she would be later.

A. Because she was within our vicinity, yeah. 25

Q. A bit ahead of you?

A. In out vicinity.

Q. And are you aware that following that intelligence communicated by your boat to Telstra control at the end of the sked that information was repeated by Telstra control to the fleet? 30

A. Correct.

Q. Are you also aware that at the conclusion of the sked Mr Kothe was engaged in continuing radio communications with Telstra control and boats like Team Jaguar and Ausmind(as said) I think relaying information backwards and forwards? 35

A. Yes, correct. 40

Q. That went on for about half an hour or so. Would that be right? Have you got any recollection? 45

A. I can't remember how long, yes.

Q. But it was at about this time that the conditions abated?

A. Correct.

Q. And indeed so much so that there was some discussion about perhaps putting a bit more sail up? 50

A. Correct.

Q. Mr Kothe was quite definite no more sail was to go up?

A. I can't remember that. 55

Q. And you're agreements with Mr Kothe involved the other senior people on board, the other experienced people on

board?

A. Correct.

Q. And those agreements included that if the wind got up again to 60 or above 55 that was it you were going?

5

A. Yes.

Q. And as soon as that happened there was unanimity was there in going?

A. Correct.

10

Q. And you were going to proceed and gybed around and you went in a generally westerly or a bit nor-westerly direction towards Gabo?

A. Sort of about 350 towards Gabo.

15

Q. And you at that stage, correct me if I'm wrong but you've said it a number of times, had the belief that the centre of the low pressure cell was to the south of you and that you went on further into Bass Strait you'd be sailing into the bad conditions?

20

A. That's correct.

SHORT ADJOURNMENT

25

<STEPHEN GARY KULMAR
ON FORMER OATH

SHAND: Q. Mr Kulmar, I want to understand if I can perhaps a little more clearly from my point of view what you say about the proposition that in heavy wind conditions it's customary to refer to what might be regarded as a constant wind speed and to add to that the likelihood of gusts being considerably stronger than that constant speed. Are you saying that's not an ordinary way of describing winds in extreme conditions?

30

35

A. That's correct.

Q. Do you say that where you get extreme wind conditions you don't get periodic gusts which are a good deal stronger than the constant force?

40

A. That's correct.

Q. You've never experienced that?

A. I've experienced it.

45

Q. Well do you say that's an extraordinary happening or do you say it's a frequent happening?

A. Extraordinary.

50

Q. And what do you mean by that? You've had a lot of experience. How often have you encountered that situation?

A. In respect to weather forecasting generally we've found over the years the weather forecasting to be amazingly accurate.

55

Q. I'm not asking you that--

A. I know you're not asking me that its--

Q. --if you don't mind, will you please answer my question.
What do you say as to the frequency that you have
encountered extreme wind conditions plus gusts but which
have considerably greater force?

A. Irregularly.

5

Q. Irregularly?

A. Very infrequent.

Q. Well how many times has it happened to you?

10

A. Not often.

Q. Well what's that mean? How many times has it happened
to you?

A. Beyond saying not often I can't answer the question.

15

Q. Well once? Ten times? Twenty?

A. No I can't answer it.

Q. No idea at all?

20

A. I said I can't answer the question.

Q. Can't give this inquest any idea about the frequency of that condition which I think I can fairly suggest to you has been vouched for by a number of witnesses already?

A. You are asking me my specific experience in where the conditions are that extreme or above what the forecast is. 5

Q. Where the conditions, for instance, as to wind are extreme I am asking you whether in fact it has not in your experience frequently or usually, whichever, been the fact that there have been gusts accompanying that somewhat constant extreme wind force which are considerably stronger. 10

A. No, I am answering you it's happened very very infrequently.

Q. And I am asking you how often it has occurred to you. 15

A. In 30 years of racing boats I can't count the number of times but it is very very infrequent.

Q. That doesn't tell the inquest anything really, does it? Does that mean once or twice in 30 years? 20

A. I can't answer 2 or 10, I am sorry, I am telling you infrequent.

Q. It's an extremely rare happening you are telling us, are you? 25

A. Correct.

Q. And when it has happened it really introduces a factor of very considerable gravity, doesn't it?

A. In respect to the '98 Hobart yes. The last Sydney to Hobart yacht race yes. 30

Q. The last what?

A. The race that we are referring to yes. 35

Q. The '98 Sydney-Hobart?

A. Yes.

Q. It did introduce a matter of great gravity?

A. Correct. 40

Q. And on the previous occasions when it has happened to you it did the same thing, didn't it?

A. No. 45

Q. Didn't matter in terms of seriousness?

A. I have already answered the question previous when I said the infrequency of it is incredibly infrequent.

Q. But when it did, when it did happen and you were involved, did it not introduce the same factor of very considerable gravity? 50

A. No.

Q. Why not? 55

A. Didn't happen.

Q. Are you saying it never happened apart from in the '98

race?

A. In that situation yes.

Q. Look, I am just asking you about gusts added to wind strengths of extreme force. Do you understand what I am asking you about? 5

A. I believe so, yes.

Q. Do you now tell us it's only ever happened to you once?

A. Where the wind was well in excess, extremely in excess of what the forecast was? 10

CORONER: No, where the gusts were considerably greater than the wind is what he is asking you about, nothing to do with the forecast. 15

WITNESS: I am sorry, I am confused by the question.

CORONER: He is asking you about wind speed and gusts and that's been the tenor of the cross-examination from the moment Mr Shand stood up. Am I not right, Mr Shand? 20

SHAND: That's so.

WITNESS: I am sorry, I was confused by the question, I thought ..(not transcribable).. 25

SHAND: Do we have to start again, do we?

CORONER: I think we should. 30

SHAND: Q. I am asking you about circumstances where there are severe wind conditions plus accompanying those gusts of considerably greater force than those severe conditions. Have you encountered those conditions? 35

A. Yes.

Q. And has it happened to you not infrequently?

A. Infrequently, yes. 40

Q. But you can remember previous examples of it, can you?

A. Yes.

Q. Do you agree that in fact the gusts have on those occasions been considerably stronger than the constant force of those extreme winds? 45

A. Yes.

Q. Let's move one step further on. Do the gusts on such occasions in your experience cause very considerably great difficulty for the boats? 50

A. Yes.

Q. What's the effect, how does it create that greater difficulty, what's the effect on the boat? 55

A. The effect on the boat is a combination of heeling, fighting its way through the waves or managing the best course through the waves.

Q. Was this the most extreme set of conditions you have ever encountered?

A. Correct.

Q. Could it be that you have been otherwise than on this race fortunate not to have, in general terms, encountered many rough conditions or extreme conditions wherever you may be racing?

A. No, I don't believe so.

Q. You haven't tried to avoid races that attract conditions like that, have you?

A. No.

Q. You don't regard yourself as basically a flat water racing yachtsman, do you?

A. No, I don't.

Q. You are prepared to accept whatever turns up in terms of weather?

A. Mostly, yes.

Q. Mostly?

A. Where we can sail, yes.

Q. You mean you do try to avoid it?

A. No, no I don't try to avoid it.

Q. You don't?

(No verbal reply)

Q. On this occasion you were, were you not, in your own view, and I am not suggesting if you held that view there is anything wrong with it, the most experienced yachtsman on the Sword of Orion?

A. I guess so, yes.

Q. And something of a leader for that reason?

A. Yes.

Q. You were one of the three primary helmsmen, weren't you?

A. Correct.

Q. And you have said, have you not, that it was for the helmsmen, I think you said, to make the decision as to whether to turn around?

A. Rob actually agreed with me that it should be left to the helmsmen to make the decision to retire.

Q. So it was left?

A. Correct.

Q. And did the three make the decision?

A. Yes, we did.

Q. You had been, before that decision was made, for a long time of the view, personally, that the boat should be turned around and headed back to land or towards land?

A. Correct.

Q. Why did you do that, why did you hold that view so long before?

A. The conditions between 10am and 12 noon, as I have said previously, had got progressively and rapidly worse to where around 12 noon or just before 12 noon we had 82 knots or approximately 82 knots of wind at that time.

Q. Was that a steady 82?

A. No.

Q. How long did that last?

A. Five minutes.

Q. So that was a critical time, wasn't it?

A. For me yes.

Q. It frightened you?

A. They were extreme.

Q. That frightened you, didn't it?

A. Yes.

Q. And quite apart from that five - do you say minutes?

A. Yes.

Q. Did you have what I'll call gusts - because you did call that a gust, didn't you?

A. I am not sure.

Q. Didn't you call that a gust?

(No verbal reply)

Q. Didn't you?

A. Fine, yes.

Q. It's fair to call it a gust anyway, isn't it?

A. Yes.

Q. Did you have other gusts which mightn't have been quite as strong as that but were in the same vicinity during that period?

A. As I said earlier we had wind increasing all the time, where every time it would abate it would come back stronger than before it had abated. So each time it was like it was stepping up the ladder and it peaked at that 82 knots at around sort of sometime between 11.30 and 12 o'clock.

Q. Thereafter there was what might have been called an abatement period, wasn't there, a period during which the winds did abate significantly. Is that so?

A. Yes.

Q. And then that finished, did it not?

A. Yes.

Q. With the wind increasing again?

A. Yes, back to around 60 knots.

Q. To about what?

A. About 60 knots.

5

Q. About 60 knots plus stronger winds from time to time?

A. No, I never saw it above 60 again.

Q. Well, 60 was the constant wind it got back to, wasn't it?

10

A. Yes, 60 was the gusts that we had it back at after that time.

Q. It was gusts, was it?

A. Well, if we are now using gusts yes.

15

Q. Well, I'd like to know from you. You are speaking about that as being generally the wind which revived after the period of abatement, is that right?

A. Yes.

20

Q. Well, that doesn't sound like gusts, does it?

A. Well, after the wind revived--

Q. I am sorry, it's a simple question. That doesn't sound like gusts, does it?

25

A. No.

Q. That sounds like a constant wind as we have just been talking about?

30

A. Correct.

Q. And you had gusts on top of that wind during that subsequent period, didn't you?

A. I never saw wind over 60 knots after it abated in the afternoon.

35

Q. It was just constantly at that extreme force, was it?

A. No, the top or peak of it was 60 knots in the afternoon before we retired.

40

Q. Mr Kulmar, haven't you told us that after the period of abatement you got constant winds of 60 knots? Didn't you just tell us that a little while ago?

A. I am confused, I am sorry.

45

Q. Well, that's what you told us, wasn't it?

A. I don't know, I am confused.

CORONER: Q. Why? The question is a bit complicated or something?

50

A. Well no, no it's not, it's not complicated. When the wind returned and we chose to retire it peaked at 60 knots, so that was the gusts--

55

SHAND: Q. So it wasn't constant then?

A. It was below 60 knots.

Q. It wasn't constant then you are now saying, are you?
A. Yes.

Q. You know perfectly well you told us it was constant a little while ago, don't you?

A. No I don't, I am sorry.

Q. You don't, well. At the time of the 82 knot gust what was the constant wind?

A. Around 70.

Q. You have told us, have you not, that your experience had caused you to know that in these sorts of conditions that you were facing on that day, 27 December, these abatements could happen quite rapidly? That's the first question.

A. Correct.

Q. And the restoring of the severe conditions could happen just as rapidly, is that so?

A. Yes, correct.

Q. Does that describe what happened after the abatement period we have been talking about when the severity of the wind increased again?

A. Correct.

Q. And you had no reason to believe, did you, that if there were a later abatement of the wind it wouldn't be followed in the same way with a rapid increase again?

A. Correct.

Q. Because during the period after 2 o'clock you were in considerable doubt as to where that low pressure system was, weren't you, in relation to your boat?

A. Correct.

Q. Basically you were of the view that it was still to the south or generally to the south of where you were, weren't you?

A. Correct.

Q. Which meant it might well be approaching you?

A. Correct.

Q. And there was absolutely no basis upon which you could safely assume that whether you had turned and were heading back or whether you were still heading south you wouldn't still be assailed by the same ferocity of weather that you had had earlier?

A. Correct.

Q. Let me ask you this, an isolated matter perhaps. You said, this is what my note tells me, that after the forecast the winds abated back to 60 knots. Remember saying that?

A. Yes.

Q. Was that the forecast which had been broadcast on the radio by your boat?

A. The forecast that we had broadcast?

Q. Had you broadcast a forecast yourself?

A. We did broadcast a forecast with the sked after we had skedded our position, yes, at about 2pm--

5

Q. I understood you to say that after that forecast you have just referred to the winds abated back to 60 knots and that you were due to come off duty at 1 o'clock. Was that right?

10

A. Correct.

Q. And then you said "we saw around 65 knots". Was that at or about 1 o'clock or thereabouts?

A. I am confused by the question, could you ask it again please?

15

Q. The words you used were "we saw around 65 knots", remember saying that? You nod but do you remember it?

A. I am sorry, I am confused by the time that you are saying I said that.

20

Q. Perhaps you might tell us then if you are unsure. When was it you saw around 65 knots somewhere about the time when the forecast we have been talking about was given by your boat?

25

A. That would have been the forecast we would have given at that stage, 60 to 65 knots.

Q. Somewhere about 1 o'clock?

30

A. No, no, no, it would have been closer to 3.

Q. Closer to 3?

A. 3pm, the time at which we would have given our skedded position.

35

Q. And what does your forecast say?

A. The specifics of our forecast?

Q. Yes.

40

A. I didn't get the specifics of our forecast--

Q. Well, it said something though, didn't it?

A. It said something to the effect of what you have just said, 60 to 65 knots, and I should imagine it would have said something between five to eight metres seas.

45

Q. Five to eight metres--

A. Five to eight metres seas and low visibility.

50

Q. And?

A. Low visibility, rain.

Q. There are a lot of side noises here, I am sorry?

A. Five to eight metre seas and low visibility.

55

Q. What did it say about wind?

A. Somewhere up to 65 knots.

Q. Did it make any statements about the low pressure system?

A. No.

Q. Did it indicate that you on board Sword of Orion were in considerable doubt about what lay ahead in terms of the low pressure system?

5

A. I don't believe so, no.

Q. Although that was your state of mind?

10

A. That was certainly our state of mind, yes.

Q. You said this, didn't you, that before the sked - which was at 2 o'clock, wasn't it?

A. That's correct.

15

Q. "Before the sked we would give our position", remember saying that?

A. Before the sked we would give our position?

20

Q. There was a decision made that before the sked you would give your position?

A. Yes, our decision was that when our name came up in the sked we would give our position and then request to make a forecast, a weather forecast, yes.

25

Q. And what's the purpose of giving your position?

A. Well, we give our position in the sked, all boats give their position. That is the reason we have a sked.

30

Q. Does that indicate for the assistance of others that whatever forecast you are giving is being given from a particular position?

A. It's unusual to request to give a weather forecast, normally in the sked you just give your position.

35

Q. Well, what were the unusual circumstances which caused you to decide to give your position?

A. Well, there was no unusual circumstances in respect to giving our position, we always give our position in the sked.

40

Q. I am sorry, what were the unusual circumstances which cause you to give a forecast?

A. The unusual circumstance was we were - firstly by giving the weather forecast was hopefully that somebody else, a yacht around us or indeed a yacht in further advanced of us, may well have given us their weather forecast.

45

Q. You were trying to attract further information for your own welfare?

50

A. Correct.

Q. This was all part of the very considerable anxiety which you felt, the group of you, you and Mr Kothe and so forth, felt about what this weather might be going to do to you. Is that right?

55

A. Correct, yes.

Q. You said that you would have made the decision to turn around three hours earlier than it was in fact made, is that so?

A. Correct.

Q. I suppose the only thing that necessarily restrained you was that you weren't the only person who you thought should join in the decision?

A. No, no, no, I never thought at any stage that I alone would make the decision.

Q. Did you attempt to persuade all others to accept your view?

A. No.

Q. Why not?

A. I expressed my view with Rob on a number of occasions. Clearly the decision to proceed or not to proceed is the skipper's decision.

Q. Indeed, but while you were attempting to persuade him, as you said you did, what were you telling him?

A. I was simply telling him that my opinion was that we should retire.

Q. But you were telling him why it was your opinion, weren't you?

A. Because of the conditions.

Q. Just tell us how you expressed it to him, would you?

A. I can't remember exactly how I expressed it but I would have simply said to him that the conditions and the nature of the conditions, I refer to this sort of stepping effect, was concerning me greatly and that we should consider retiring. Add to that that we were entering Bass Strait and to sail back to mainland Australia was a lot closer than attempting to sail on to Tasmania.

Q. But you were making it clear to Mr Kothe that to go on rather than to turn back in your view, in your very serious view, was to put the boat and crew in great danger?

A. I don't know if I expressed it like that, no, I don't think I expressed--

Q. That's what you felt though, wasn't it?

A. No, I thought that it was a prudent and correct decision to retired. But, you know, we talked about--

Q. No, please don't worry about what you talked about, I am asking you about your view.

A. My view was that we should have retired earlier.

Q. Because of the likely danger to the boat and the crew if you didn't?

A. Yes, correct.

Q. But you must have told him that, mustn't you, Mr Kothe?

A. Rob and myself talked consistently--

Q. Please answer the question. You did tell him that, didn't you?

A. That I thought it was in our best interest to retire--

CORONER: Q. No, that you were concerned for the boat and the crew.

A. I don't think I ever used those words.

SHAND: Q. Why wouldn't you have told him that with your experience compared with his?

A. I don't know.

Q. Oh please try a little harder, would you.

OBJECTION (CALLAGHAN).

Q. Did you decide not to tell him that?

QUESTION ALLOWED.

A. I had told Rob earlier in the day that I considered it was a wise and prudent decision to retire.

Q. Look, that's not what I am asking you.

A. I know, but those aren't the words I used.

Q. Will you kindly listen to my question. You have told us that it was your view, and it's been repeated two or three times in the last few minutes, that it was in the interest of the safety of boat and crew that you should turn around, haven't you?

A. No, I didn't use those words.

Q. You have told us that was your view. Do you understand that word view?

A. It's my view, yes.

Q. Did you have some reason for not communicating that view to Mr Kothe?

A. No.

CORONER: Q. Why didn't you?

A. Why didn't I? I don't think I thought to do it that way.

SHAND: Q. You don't think what?

A. I don't think I thought to use those words.

Q. Or some words which were the equivalent of those, why not tell him?

A. I don't know, I didn't use those words.

Q. Would you recognise to say I don't know is a fairly unsatisfactory answer?

A. Yes.

Q. It was your duty to use experience and your skills accumulated over a long time to help him to the utmost,

wasn't it?

A. Correct.

Q. And you deliberately, did you, decided not to tell him that very significant view that you held? 5

A. I actually expressed to Rob that we should consider retiring a number of hours earlier. I had expressed that point of view to him.

Q. That's not what I am asking you now, I am asking you why you didn't communicate your view that we have been discussing when you first held it, which was some hours before the decision was made, wasn't it? 10

A. Yes, correct.

Q. Why not tell him? 15

A. I don't know.

Q. You weren't being much help to him, were you? 20

A. I guess not.

Q. You yourself had no doubt that you should have turned around those few hours earlier, three hours earlier, didn't you? 25

A. Correct.

Q. And your view hadn't changed during the subsequent three hours? 30

A. Correct.

Q. Yes you withheld it from him? 35

A. No, that's not correct, we spoke--

Q. Did you tell him? 40

A. We spoke continually and repeatedly over that period.

Q. But you didn't express that view? 45

A. I didn't use the words in the safety of the crew and the boat, no I did not use those words specifically.

Q. Did you get anyone near using them? 50

A. No, I did not.

Q. I am going to change the subject for the moment. Do you remember that after the commencement of the race there had been, while Sword of Orion was still within the limits of Sydney Harbour, a collision with Nokia? 55

A. Correct.

Q. Do you recall that following that collision there was an examination of the damage that had been caused to Sword of Orion? 50

A. Correct, by Darren.

Q. Obviously a serious attempt to assess what damage had been sustained? 55

A. Correct.

Q. Were you interested in that examination by Darren?

A. Was I interested in that inspection?

Q. Yes, in the results of it.

5

CORONER: Q. As a yachtsman.

A. I asked him - he actually went and inspected the boat and then he repaired the boat--

SHAND: Q. No, I am asking you whether you were interested to find out for your own sake what the extent of the damage was.

10

CORONER: Q. Your own sake as a yachtsman in the race.

A. I didn't look at the damage myself personally, no, but the damage that was there was repaired by him and he said it was fine.

15

SHAND: Q. Were you interested to know, if you wouldn't mind listening to the question once more, precisely the extent of the damage which had occurred from your own view as a yachtsman taking part in this race?

20

A. No.

Q. Why not?

25

A. I guess I jumped the question. Because Darren went and repaired the boat and he said the boat was fine.

Q. But even before then weren't you interested to find out the extent of the damage?

30

A. No.

Q. Did you ever find out the extent of it?

A. No.

35

Q. Are you serious?

A. Yes, correct.

Q. Who was at the helm at the time?

A. I was steering the boat.

40

Q. You were steering the boat and thus perhaps you felt you might have been at least in part responsible for it, did you?

A. Sure.

45

Q. And you weren't interested to find out what damage had been caused perhaps at least in part resulting from your steering. Is that true?

A. No, it's not true.

50

Q. ..(not transcribable).. that's what you have told us, isn't it?

A. In respect to going aft under the boat and having a look at the damage no. But I mean you have got to inspect the damage. Is that what you are saying, did I go and inspect the damage?

55

- Q. You said you weren't interested in learning of the extent of the damage, that's what you have told us.
A. I was interested in learning the extent of the damage, Darren went aft, he went below deck, he inspected the damage, he told us what had happened and he repaired the boat. 5
- Q. Despite the fact that you weren't interested?
A. Well, I am sorry, I was confused by the question. 10
- Q. Oh really? I seem to be confusing you quite often, don't I?
A. Yes, you do.
- Q. Well, let's go on. Do you recall that following the examination of the extent of the damage and e-mail message was sent from Sword of Orion? 15
A. No, I am not aware of that.
- Q. There were facilities for sending an e-mail message, were there not? 20
A. I am unsure if there were. There was a computer on the boat, I wasn't sure if we were communicating externally with it or whether we were just taking the information-- 25
- Q. There were facilities then for sending an e-mail, weren't there?
A. Correct.
- Q. And do you say you are unaware whether an e-mail message was sent after the extent of damage was ascertained? 30
A. Correct.
- Q. Who would have been the person to decide upon the sending of that message? 35
A. I should imagine Rob would have.
- Q. Rob Kothe. And to whom do you think it should have been sent?
A. I have got no idea. 40
- Q. Well, let me put this to you, that there was an e-mail message sent from the boat after the extent of damage had been ascertained and it was sent that very same day before nightfall or something like that. The boat was reported to have sustained severe damage, those words specifically used, including delamination of the starboard stern quarter and a compression crease on the mast just two metres above the deck. Does that describe what you learned was the damage? 45
A. Correct. 50
- Q. That it was severe damage?
A. In respect to the mast or the hull?
- Q. No, the words severe damage I am suggesting were explained by the details that I have just read to you as following that description. You are an experienced yachtsman, you were then. 55

A. Yes.

Q. You would know what was severe damage and what wasn't, would you?

A. Yes.

5

Q. Would you agree that the damage that was caused in that collision could probably be described as severe damage?

A. No, I wouldn't have thought so.

10

Q. Wouldn't you? So that if an e-mail was sent using that expression then it wasn't something that you'd have agreed with?

A. Correct.

15

Q. Did you really know what the damage was?

A. No, I didn't.

Q. No, so you wouldn't have know whether it was correct or not, would you? Would you?

(No verbal reply)

20

Q. You wouldn't have known whether that expression was correct or not, would you?

A. That the expression was correct or not, I agree.

25

Q. Despite the fact that you were the helmsman at the time, correct?

A. Yes - helmsman at the time the collision--

30

Q. At the time the collision occurred.

A. Correct.

Q. Did you regard yourself as being to blame for it?

A. The collision?

35

Q. Yes.

A. No.

Q. Not at all?

A. No.

40

Q. You hesitate?

A. Well, there has been a protest meeting since and we were found to be guilty. But yes I didn't feel I was.

45

Q. You were found to be guilty?

A. Correct.

Q. And you don't accept that verdict?

A. Well - we accept the verdict, yes.

50

Q. You were questioned about having sailed in the '93 and the '94 Sydney-Hobart races?

55

CORONER: 1984.

SHAND: I am sorry, '84 was it? Thank you.

Q. '84 and '93, is that correct?

A. '84 and '93.

Q. And do you remember giving details as to the sort of wind forces and gusts - perhaps I'll withdraw that. Do you remember it was put to you that there were in respect of at least those races winds of 50 knots and gust of up to 70 knots?

5

A. That's the '93.

10

Q. That's the '93 run, thank you. And you wouldn't disagree with that description of the conditions would you?

A. In an overall sense that's fine.

Q. So that we have there a clear example of a severe constant wind with gusts of 20 knots higher from time to time?

15

A. Correct. Not from time to time, the 70 knots was only ever reached once.

20

Q. Are you sure about that?

A. Absolutely distinctly sure about exactly when we received the 70 knots.

Q. Remember you were questioned about a wind speed which covered the span of 24 knots to 70 knots?

25

A. Yes.

Q. On a persistent basis?

A. Yes.

30

Q. Was that the feature of that same race?

A. No, I don't think it was.

Q. Do you remember Mr Stanley this morning referring to the '84 race had you agree that the conditions where you were were way over what Mr Stanley read to you from that report? Remember that's what you said?

35

A. This was the '84 race?

40

Q. '84 race.

A. Correct.

Q. 70 per cent of the fleet retired?

A. Mm.

45

Q. But your boat didn't?

A. That's correct.

Q. What was your yacht?

50

A. A 40 foot yacht, a boat called Indian Pacific, a far 40 footer.

Q. The conditions then must have been quite frightening, mustn't there, in that race?

55

A. Correct.

Q. Any more frightening then or less frightening then than

they were in this '98 race?

A. Yes.

Q. More or less?

A. Less.

5

Q. What was the difference?

A. The difference was in the 1984 Hobart race we knew exactly where the low pressure system was and its direction and we manoeuvred our way around it. We had severe conditions for only about three hours, absolutely severe conditions for about three hours.

10

Q. 70 per cent of the fleet retired you agreed?

A. Yes. As I had explained earlier too the actual currents that run down the east coast of Australia we had a southerly flowing current and a wind that was coming from south-south-west direction moving north, so we had a seaway that was quite large with virtually no backs on the waves and it was about manoeuvring your way around the seaway in that particular race to find the way for the boat down the seas.

15

20

Q. Was the major factor, the difference between the '84 and the '98 race, that you really knew where the low pressure system was?

25

A. It helped us a lot, yes.

Q. And you never really knew where it was at all on the case of the '98 race throughout the whole of 27 December, did you?

30

A. No.

Q. And the fact of the matter was, was it not, that throughout the whole of 27 December you were unable to expect that conditions would continue other than in the extreme form which had occurred when this boat was capsized, weren't you?

35

A. Could you repeat the question please.

Q. I will. On 27 December during this '98 race you had no basis for expecting that the conditions would get any better than they had been at the time the Sword of Orion capsized, did you?

40

OBJECTION (CALLAGHAN). QUESTION SOMEWHAT CONFUSING. QUESTION REPHRASED.

45

Q. Following the capsized of the Sword of Orion you had no reason to expect that the conditions would not continue to be just as severe as they were at the time of the capsized, did you?

50

A. I can't comment on that only because I wasn't on deck for the hour before the boat actually - half an hour, whatever the time was before the boat capsized. After we gybed and started sailing back towards Gabo Island I went below deck and I actually got in a bunk so I hadn't read the wind strengths in that period leading up to the capsized. So I don't know whether - I am not sure why you are choosing to

55

make a reference point of the capsize because I can't quantify for you the wind strength and the sea conditions apart from the fact that I understand we were capsized by a very large wave, but I can't quantify the wind strengths for you at the time of capsizing.

5

Q. But did you inquire from others what the wind strength had been leading up to the capsize?

A. No, I didn't.

10

Q. Weren't you interested to find out how this calamity came to happen?

A. I was in a weather bunk, I had been on deck for about three to four hours before and I was having a rest.

15

Q. You were having a?

A. Rest.

Q. Did you question anyone afterwards about what the weather conditions had been leading to the capsize?

20

A. Clearly after the capsize I came on deck and I could see the conditions.

Q. What were they?

A. The conditions were about 60 knots.

25

Q. 60 knots, well that's severe, isn't it?

A. Correct.

Q. And they didn't get any better after that, did they?

30

A. As I said earlier they actually abated after that.

Q. When did they abate?

A. They abated for the period about half an hour/45 minutes after the capsize back to about 45 to 50 knots and then held at 45 to 50 knots, and then much later in the evening at about 8 or 10 o'clock that evening the winds came back again strong again.

35

Q. Well up to what?

A. Back up to about - I don't know, I'd be guessing because we had no instrumentation but they'd be back up to around sort of the 55 knots, 55 to 60 knots.

5

Q. Well now from the time you came up after the capsized from where you'd been below having your rest you had no instrument to consult about the force of the wind did you?

A. Correct.

10

Q. And indeed having been dismasted you really weren't in by any means the same position to judge the force of the wind--

A. That's correct.

15

Q. --without the instrument?

A. That's correct.

Q. Is that right?

A. That's correct.

20

Q. You just don't have a basis for suggesting do you in those circumstances that you could really tell us whether the winds had abated or not during that subsequent period?

A. From the time in which the boat capsized and I came on deck the winds I believe were not as - not absolutely as strong as they had been at around midday, so that was my point of reference, a visual point of reference, I didn't believe that they were absolutely as strong as they were at midday.

25

30

Q. Not absolutely as strong?

A. Correct.

Q. What does that mean?

A. Well they weren't as strong so I had no instruments--

35

Q. Weren't quite as strong you mean do you?

A. I had no instruments so I can't tell you that it was exactly 60 knots versus 82 knots in the morning but it was not as absolutely as strong.

40

Q. All you can say is you think they weren't quite as strong as they had been around midday?

A. My opinion is they weren't as strong.

45

Q. Pardon?

A. My opinion is it wasn't as strong.

Q. Not quite as strong?

A. That's right.

50

Q. But really it's a bit of a guess isn't it?

A. Yes.

55

Q. Now Mr Senogles as you would regard, would you not, as being an experienced sailor?

A. Correct.

Q. Despite his fairly junior years?

A. Yes.

Q. Lot of experience in all sorts of conditions?

A. Yes.

5

Q. And a very reliable man?

A. Yes.

Q. He's given us a description that at the time the Margaret Rintoul was sighted the winds at that point of time were in his own words fairly ferocious. Would you be in a position to dispute that?

10

HILL: Just before you answer that, is that Mr Senogles that said that or Mr Watson?

15

SHAND: Sorry, I've got the wrong person. I withdraw that. Mr Watson gave us that description.

20

CALLAGHAN: Or gave in a statement.

SHAND: Q. Mr Watson, if we want to make this specific, said in his statement to the police that at the time the Margaret Rintoul was sighted the wind conditions were, in his words, fairly ferocious. Now you'd respect his ability to assess that wouldn't you?

25

A. Yes.

Q. And you're not in a position to deny it are you?

30

A. I wouldn't have used the word ferocious.

Q. But you didn't know did you? You were downstairs?

A. As Margaret Rintoul sailed past which is your point of reference?

35

Q. Are you downstairs then or not?

A. I was on deck, myself and one other were the only two members on deck for the entire time Margaret Rintoul sailed past.

40

Q. Would you agree with this proposition, and you can take it that I'm quoting from what Mr Watson told us that at the time of the sighting of the Margaret Rintoul the winds were in the vicinity of 55 knots and the seas were from 10 to 12 metres? Do you agree with that?

45

A. No I don't.

Q. Do you say it's inaccurate?

A. In respect to the wind strength we won't dispute that because there was no instrumentation on the boat but as far as seaway goes I would've said the seaway at that time--

50

Q. Please--

55

CORONER: He's answering the question.

WITNESS: I'm answering the question as accurately as I can

based upon visual--

CORONER: Please continue.

WITNESS: I would have said that the seaway was somewhere 5
between three to eight metres.

SHAND: Q. Well that's one very big difference between that
and 10 to 12 metres isn't it?

A. Yes it is. 10

Q. You don't have some sort of interest do you in playing
down the seriousness of the conditions at the time the
Margaret Rintoul was sighted?

A. No I don't. 15

Q. Are you sure?

A. I can't imagine I would have.

Q. Can't you? 20

A. No.

Q. Haven't you joined the body of opinion which condemned
the action of Mr Richard Purcell in sailing past?

A. No I haven't joined anybody of any action. 25

Q. But you do in fact choose to criticise him for doing so
don't you?

A. Choose to criticise Richard Purcell-- 30

Q. Don't you do that?

A. --no I don't.

Q. Isn't that what you do do?

A. No I don't. 35

Q. You don't criticise him for sailing past?

A. Well I'm a bit confused by the question.

Q. Really. Do you criticise him for having sailed past? 40
Is that a complex question?

A. Yes I do, I criticise him.

Q. You do, do you? A lot of hesitation before that answer
came out wasn't there? 45

A. Well only in respect to the fact that you suggested it
was in cahoots with somebody else.

Q. Did I?

A. Well that's the way I understood the question. 50

Q. I want to ask you this, do you remember that you were
sailing on the Sword of Orion in November 1998 on Sydney
Harbour - outside the heads, correction, do you remember
that? In November? Remember that? 55

A. In November I sailed pretty much every weekend on the
Sword of Orion and we raced outside of Sydney heads.

Q. Well I'll try and make this more specific. Do you remember an occasion in November 1998 when there was a boat called Quest which lost a man overboard within sight of the Sword of Orion at the time?

A. Yes I do.

5

CALLAGHAN: Your Worship I wonder what the relevance of this is to your inquest?

CORONER: So do I, Mr Shand.

10

CALLAGHAN: Are we going to have another yacht ..(not transcribable).. to be inquired into?

CORONER: How is this helping me?

15

SHAND: Well this witness has chosen to criticise what Mr Purcell did in sailing by.

CORONER: Can't we stick to that.

20

SHAND: Can I just put though why I'm putting it though, your Worship?

CORONER: Of course you can.

25

SHAND: Because your Worship will of course assess this witness's evidence in due course. I wish to put to him that on that occasion within view of himself and I think was at the wheel of Sword of Orion they saw the man go overboard from Quest nearby. There was at least a statement made by one member of the crew that this man should be picked up, they had to rescue him.

30

CORONER: What, you say flares were sent up or--

35

SHAND: No, no. No, your Worship, no, with respect, that he made the plain suggestion that this man should be rescued by Sword of Orion and the decision was made by this witness and others that they shouldn't bother.

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OBJECTION (CALLAGHAN).

OBJECTION (HILL).

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CORONER: The distinguishing thing to me is that if there was no distress or indication to the Sword of Orion that they needed help of some sort, what is the obligation? I don't know.

50

SHAND: Well, your Worship, let me just put the question then and your Worship will of course decide whether--

CORONER: I'll certainly reject it if I have to. I'll hear Mr Hill first then I'll hear Mr Callaghan.

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FURTHER LEGAL ARGUMENT.

CORONER: No, it's from the bar table. I'm not allowing it. I'm not persuaded that there's any similarity at all between that instance and the allegation here. That line of questioning I must disallow Mr Shand, I'm sorry.

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CALLAGHAN: As to that, your Worship, it's unfortunate that that was raised in the way it was from the bar table but this shouldn't be reported, it's a--

CORONER: I can't really nobble the press over something like this.

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CALLAGHAN: I'm not asking you to noble them.

CORONER: I note your submission about that. You know the Coroner's Act and the restriction on that type of thing and the cases that go with it. It's not a matter where I should suppress it but I will stress instead that it was a submission, it was made during a submission, it is not evidence before me and I've ruled that it shall not be evidence before me. I would hope the press would get the hint. Thank you.

15

20

SHAND: Q. Now do you remember an interview conducted by a Mr Peter Bush of three members of the crew of Sword of Orion on this '98 race at the Cruising Yacht Club, 23 March 1999?
A. No I don't.

25

Q. You've no knowledge of it happening at all, is that right?
A. Correct.

30

CORONER: Sorry, what was that?

CALLAGHAN: He was asked whether he remembered an interview of three other people by the CYC - perhaps he should be asked whether he was aware of it, he was asked if he remembered it.

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CORONER: Recall an interview with Mr Bush, Mr Shand, is that what you're saying?

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SHAND: An interview conducted by Mr Peter Bush on behalf of the CYCA of these three members of the Sword of Orion Crew in the '98 race, Mr Kothe, Mr Senogles and Mr Watson on 23 March 1999.

45

Q. Now the question I wish to ask is, do you know of that interview having been conducted?

A. I don't know of it, no.

50

Q. You were told of it by any one of those three people after it had occurred?

A. I don't recollect being told about it at all, no.

55

Q. Alright, well I want to ask you this. Mr Kothe you would understand is going to give evidence later so I'll be putting this to him. Did Mr Kothe discuss with you the fact

that there was intense electrical activity in cloud buildup ahead of you?

A. No, no I wasn't aware of that.

Q. And did he express his concern to you that the forecast of 40 to 50 knots was not reflecting what lay ahead?

5

A. No I can't recollect that.

Q. Did you know of this, while the race was taking place, can't give you the precise time of this, that the Sword of Orion - do you know what RCVF stands for at Eden?

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A. No.

Q. Did you know of a contact made by Sword of Orion to an authority in Eden on VHF which resulted in advice that there were 92 knots of wind recorded at Wilsons Promontory?

15

A. I heard of that on the boat some time on the morning of the 27th.

Q. Where's Wilsons Promontory in relation to the point at which Sword of Orion turned round?

20

A. It would be, I guess in respect to the position where we turned around it would be west to - somewhere in the western vicinity of approximately a hundred and - I guess somewhere between 100 and to 180 miles.

25

Q. 180 miles to the west?

A. To the west of us, yeah.

Q. Of that position?

30

A. Of that position.

Q. Right so you'd reached roughly the level of Wilsons Promontory?

A. I'm not sure we'd actually quite got that far south, that's why I'm saying west. I couldn't give you - without a chart I don't think I could give you an accurate position.

35

Q. Now did you hear from Mr Kothe particularly or someone else on the boat during the trip down towards or at that point somewhere not quite perhaps as far south as Wilson's Promontory, that despite that advice of 92 knots of wind recorded at Wilsons Promontory the forecast received from the meteorological people none the less remained at 40 to 50 knots?

40

45

A. I was - the forecast I think you're referring to is the one that was made some time in the early morning and that was the one that I'm most aware of.

Q. Did you hear of radio call from a boat called Rager which described extreme weather, a call made at 12.35 hours?

50

A. No I didn't hear it.

Q. Is this what you are aware of, that at 14.00 hours, at the time of the sked at that time, Sword of Orion advised the radio relay vessel, that's Young Endeavour isn't it?

55

A. Yes.

Q. Of extreme winds and conditions and Sword of Orion expressed it's concern that the Bureau of Meteorology forecast relayed by the Young Endeavour was not indicative of the weather ahead?

A. The first part of that I agree with, the second part I was unaware of.

5

Q. You mean you didn't or you weren't aware of a statement from Sword of Orion that the forecast of the meteorology people was regarded as not indicative of the weather ahead?

10

A. Yeah I was not aware that that was broadcast to the Young Endeavour, no.

Q. Nonetheless you knew that was Mr Kothe's view that the BOM forecast was not indicative of the weather that lay ahead of your boat?

15

A. Well it was not indicative of the weather conditions we had around us.

Q. What were the conditions when you actually sighted Margaret Rintoul?

20

A. Conditions were overcast, as I said a little earlier I believe that when we first saw them they were due north of us--

25

Q. No, look I'm not asking you, please. The conditions I'm asking you about?

A. I'm sorry, well, overcast.

Q. What were they?

30

CORONER: Q. I think he's asking particularly the wave, the wind and sea?

A. The wind and sea. The best of my knowledge the sea conditions were between three and eight metres and the wind conditions to the best of my knowledge were somewhere around 45 to 50 knots.

35

SHAND: Q. Now did you recognise at least the possibility of rogue waves being encountered by your boat at that time, that is 27 December?

40

A. Yes.

Q. In fact I suppose you gained the very ..(not transcribable).. impression didn't you that it was a rogue wave which had caused the capsizing?

45

A. Correct.

Q. And would you agree that in conditions such as those which followed the capsizing it would be reasonable to regard there as being a real possibility of further rogue waves being encountered?

50

A. Correct.

Q. And those you recognised as being the prospects at the very time you saw or around the time you saw Margaret Rintoul didn't you?

55

A. Could you please repeat the question.

Q. At the time or about the time you saw Margaret Rintoul you were conscious of the possibility at around that time or later of further rogue waves being encountered didn't you?

A. Correct.

5

Q. That apparently didn't affect your view as to what Margaret Rintoul should or shouldn't do did it?

A. No it didn't.

Q. A rogue wave, despite the fact that rogue waves might well have capsized the Margaret Rintoul what doing what you suggest it might well have done, that's so isn't it?

10

A. Yes it is.

Q. You agree with that?

15

A. Yes.

Q. In the light of that, you don't think, I suppose, it's at all unreasonable for you to suggest that Margaret Rintoul should have attempted to turn around, come within some relatively short distance from your boat and wait around, that's your view, isn't it? It wouldn't have been at all unreasonable despite that risk from rogue waves for her to do that?

20

A. Correct.

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Q. You don't see anything unreasonable in that Mr Kulmar?

A. Correct.

Q. You don't? You do or you don't?

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A. I don't.

Q. Obviously bearing in mind would you agree that the sort of purposes you've attempted to tell this inquest about which might have been served it would be ridiculously unreasonable to suggest that that boat should have done that wouldn't it?

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A. No I don't agree.

Q. Don't you? Your view is that Margaret Rintoul should have put herself at a very considerable degree of danger in order to stand by your boat, which is the expression you used I think wasn't it, to stand by?

40

A. Correct.

45

Q. That's the only purpose you put forward isn't it?

A. Correct.

Q. And run the risk of being knocked over herself? Is that what you say?

50

A. Correct.

Q. Nothing unreasonable about that?

A. Well of course it's unreasonable.

55

Q. Yes, well why do you put it forward as your view if it's unreasonable?

A. Well all I would suggest to you is that at that time the

seaway was not as large as you're certainly suggesting. At that time we saw and were affected by no rogue waves but clearly there were rogue waves around there. I'm not disputing that but at the time that Margaret Rintoul sailed past us in our vicinity there were not rogue waves and indeed we incurred no further rogue waves from then until we were taken off the boat the next morning.

5

Q. But that has no bearing upon what might be thought to have been the prospect at the time she sailed past does it?

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A. At the time she sailed past the sea--

Q. Will you answer the question?

CALLAGHAN: With respect the witness was.

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CORONER: I thought he was too.

WITNESS: At the time that which Margaret Rintoul sailed past the seas were three to eight metres, we had no incurred any more rogue waves than the one that had capsized us and we incurred no more rogue waves until the time that we were taken off the boats.

20

SHAND: Q. I want to ask this to you quite simply, and please listen to it would you? You've agreed that there was no basis for an expectation that there wouldn't be more rogue waves at or about the time she sailed past and thereafter haven't you?

25

A. That's correct.

30

Q. So that you expected this boat, Margaret Rintoul, to depend on the possibility that there wouldn't be any more rogue waves?

A. And her seamanship, yes.

35

Q. I see, even though the rogue waves would have put her in severe danger?

A. I can't comment on that.

40

Q. Well it's a very simple question isn't it?

A. Well it's not that simple.

Q. A boat without a motor, you knew that didn't you?

A. No I was unaware that she had no motor.

45

Q. Well I'm asking you for your view now. You knew - you know now she had no motor, don't you?

A. All I can answer you is that in the similar circumstances we would've stood by.

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Q. That's not an answer to my question. I'm asking you to give a view now upon what you know to have been her situation and what you say is this, isn't it, that you think she should have come over, come round without a motor and stood by within, you put it I think, within a reasonable distance stood off or stood by at a reasonable distance between your boat and stayed there?

55

A. At the time--

Q. Excuse me, is that what you say?

A. Correct.

Q. Despite the dangers obviously inherent in her doing that?

A. Correct.

Q. And you do agree that particularly having regard to all you can suggest she might have done that is obviously unreasonable, don't you?

A. No I don't.

Q. Well what was she to do that you haven't told us already, are you going to add to it? You told us only this didn't you that she could've radioed your position and stood by us, that's what you said wasn't it?

A. Correct.

Q. She did radio your position, you're aware now aren't you?

A. Yes I am.

Q. So standing by is all you suggest she could've done?

A. Well a radio of position should answer the question.

Q. Would you currently just answer my questions just one at a time. So upon the evidence you've given, standing by was all you suggest she could've done if she'd managed to make her way round to a position within a reasonable distance of the Sword of Orion?

A. Yes but I think there's more to answer.

Q. But you didn't give any more than that did you--

A. No I did not at that time.

Q. --in your earlier evidence, did you?

A. No I did not.

CORONER: Q. Well give it to me now please. This is an inquest, I'm going to allow you to give it now.

A. Thank you very much. At the time, I believe that if she had seen our flares, which she said she did and she'd seen the boat--

OBJECTION (SHAND). INTERPOLATIONS.

CORONER: Q. If she'd seen our flares, go on?

A. And seen our boat that I think what she should have actually done was firstly recorded our position and then to have chosen a sea pattern to have sailed back to us or to have chosen a sea pattern to have come near the boat to have used her UHF or her VHF, we could've spoken to her on VHF as we were able to speak about an hour or and a half later to the aeroplane who flew over the top, we could talk to them with VHF and we could've notified her at the time that we had lost a crew member overboard and we could've notified

her at the time of the injuries on the boat and the condition of the boat. We were grateful clearly that she notified the authorities about the position--

Q. I think you've answered me.

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A. Thank you.

CORONER: You'll be a little while Mr Shand?

SHAND: Yes I'll be a little longer, your Worship.

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LUNCHEON ADJOURNMENT

<STEPHEN GARY KULMAR(2.10PM)
ON FORMER OATH

15

SHAND: Q. Could you tell us your recollection as to what was done with the motor of Sword of Orion in the course of going around or turning back?

A. This is in the gybe, not the capsize?

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Q. Not the capsize.

A. In the gybe. Before we gybed we started the motor, we left the motor idling and then we - Glyn who was steering the boat picked a sea, a nice safe sea, we gybed--

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Q. What was done with the motor?

A. The motor was left idling.

Q. It didn't change from that?

30

A. We didn't engage it.

Q. It was in neutral?

A. It was in neutral.

35

Q. Quite sure about that, are you?

A. I wasn't - I didn't start the motor and I didn't have my hand on the gearshift but that's what I believe happened, yes.

40

Q. I'm asking you whether you know, not what you believe by some means or another. What do you know?

A. I know the motor was started.

Q. That all? You have no idea whether it was in gear or in neutral, do you?

45

A. Correct.

Q. A moment ago you said that the gear was engaged, didn't you?

50

A. I never mentioned it was engaged.

Q. What did you say a moment ago about what you knew?

A. I said a moment ago I didn't start the motor and I wasn't the person who would have put the motor into gear but I believe that what happened was that we picked a sea, bore the boat away and then sailed off onto the opposite course.

55

Q. But that doesn't tell us--

A. Without engaging--

Q. --about whether the motor was engaged in gear or not, does it?

A. No it doesn't.

Q. So you don't know?

A. No.

Q. Do you remember answering questions before the adjournment and adding to what you say Margaret Rintoul could have done if she'd come within whatever vicinity was possible or reasonable, adding to what you'd earlier said in your evidence about that?

A. I'm confused by your question.

Q. Do you remember that I put to you before the adjournment that all you had said as to what Margaret Rintoul could have done if she had turned around and come within whatever distance she might have come within from your boat was that she could have radioed your boat's position, that's one, remember that?

A. Yes.

Q. And the second thing you said she could have done was to stand by you, remember that?

A. Yes.

Q. And then a little later before the adjournment you proceeded to add something further that you say she could have done, didn't you?

A. Correct.

Q. Something to do with attempting to use VHF radio to make contact with Sword of Orion, was that it?

A. Correct.

Q. What happened to that thought when you were first answering my questions about what she could have done?

A. I didn't think you asked me a question, I thought you made a statement to me that I had said previously that she could have gybed out and come back and stood by us and I agreed with that.

Q. May I suggest this to you, that you gave the answer I'm referring to in answer to Mr Hill. Yes, indeed, in answer to Mr Hill who was questioning you?

A. Correct.

Q. And he said to you a question in this form, what do you say she could have done had she turned around and come towards you. So it was his question and you gave those two matters only, didn't you, in answer to him?

A. At that time, yes.

Q. Do you remember this as being said after you'd given those two only matters. You said I'm not sure she'd need to

do much more, remember that answer?

A. I don't know.

Q. I can assure you you did.

A. I'm sure if you've taken it down you're correct. 5

Q. That would certainly make it appear would you agree that you had nothing else in your mind as to what she might have done apart from the two things you mentioned, wouldn't it?

A. At that time, yes. 10

Q. You thought you'd scratch around and see if you could add to it later, did you?

A. No, I didn't think I'd scratch around and add to it later. 15

Q. You didn't?

A. I thought when the question was being addressed to me I chose to answer it as fully as I possibly could. When the question was readdressed to me I chose to answer it as fully as I could. 20

Q. Why didn't you answer it fully to Mr Hill?

A. At the time I guess I'd forgotten. 25

Q. Let me ask you something further. You agreed again in answer to Mr Hill that you had heard subsequently that the Margaret Rintoul had no motor, remember saying that?

A. Yes. 30

Q. Then you made some remark about her manoeuvrability in the light of the fact that she had no motor, isn't that so? You said something about that?

A. Yes. 35

Q. What did you say?

A. I can't remember.

Q. What would you say now?

A. In respect to her manoeuvrability without a motor? 40

Q. Are you asking me a question or making a statement?

A. I'm asking you to confirm the question please.

Q. What would you say now as to her manoeuvrability on the assumption that she had no motor? 45

A. Within the conditions, she could manoeuvre.

Q. What's that mean? Could manoeuvre? Any boat can manoeuvre but the question is to what effect in those circumstances isn't it? 50

A. She could manoeuvre effectively to gybe and to have returned in the proximity of our yacht.

Q. How does she maintain a position standing by? 55

A. You don't maintain a position by putting the boat head to wind in those circumstances. What you actually do is you come back in the proximity of the boat, you press your MOB

or you take the position of the boat on a chart and then you can sail across the wind in a similar angle to what we had been sailing on our way south or north, bearing into the sea and then sailing back across it.

Q. And then what? 5

A. And then coming back to us, or staying in the proximity of the region.

Q. How does she maintain that? 10

A. To make radio contact.

Q. In seas of perhaps 12 metres?

A. Three to 10 metres. 15

Q. Mm?

A. Three to 10 metres.

Q. Let's take 10.

A. Well, by handling the boat with care, the same way as what we would have. 20

Q. With care? With 10 metre waves and winds of above 50 knots?

A. Correct. 25

Q. What sort of care do you suggest has to be brought to bear to enable--

A. A reasonable level of seamanship. 30

Q. That's easy to say isn't it?

A. It's no different to the word care.

Q. Simple, in those conditions?

A. It's not simple and nobody is even suggesting to you or anybody else that it's simple. 35

Q. It's a matter of very, very great difficulty in those conditions which existed at the time, wouldn't it be?

A. Correct. 40

Q. You see, it's quite simple for you now to put forward your theories as to what she could have done, isn't it?

A. Put forward now? My theories on what she could have done remain unchanged. 45

Q. It's quite simple for you to sit there in your witness box and put forward these theories, isn't it?

A. Theories - I'm a little confused by the question. These are my theories, yes they are-- 50

Q. It's easy to sit there now--

CALLAGHAN: Just let the witness finish please. 55

SHAND: I thought he had.

Q. Do you want to go on?

A. No.

Q. Without addressing yourself to the true magnitude of the situation as it really existed at the time, it's simple for you to sit there and give these theories about what she could have done, isn't it?

A. No, it's not simple to sit here and re-live the circumstances of the situation and understand the magnitude of the situation at the time. It isn't simple at all. It's indeed very difficult to sit here and answer your questions.

5

Q. What would be meant by you saying it would affect strict manoeuvrability for her to have no engine - no motor?

A. What would I have meant by her not having a motor to assist her with manoeuvring would have been that a motor can assist you if you do get into trouble.

5

Q. She didn't have one though?

A. I was unaware of that.

Q. Well, now you know she had no defence in the form of a motor if she did get into trouble in attempting to assist, did she?

10

A. I'm confused by your question.

Q. Now you know she had no motor and we are clear about that now aren't we, Mr Kulmar?

15

A. Yes.

Q. Then she had no possibility of using that motor which she didn't have to assist her if she got into trouble, did she?

20

A. Correct.

Q. Which you've just referred to as being the situation which would obviously exist in those circumstances? That's a serious position isn't it?

25

A. Correct.

Q. What are the difficulties you would see her quite likely to get into? What troubles which a motor might have helped her out of but couldn't of course if she didn't have one?

30

A. In the circumstance and the situation to do with us she could have bore away, picked(?) to sea, gybed, come back towards our boat within that timeframe without a great deal of difficulty and certainly not have been pooped or knocked about by any large or freak wave.

35

Q. Did you hear my question?

A. I thought I answered your question.

40

Q. I'm going to put it to you again and you consider whether you did, would you. I asked you what were the troubles, which was the word you used, that she might find herself in which a motor might assist with but which of course it wouldn't assist with if she didn't have one? The troubles?

45

A. Troubles can exist without a motor, with a motor. I don't know quite how I meant to use the word troubles when I used it.

50

Q. Try and help us because you didn't use it for fun, did you?

A. No, I suspect not.

Q. You visualised the troubles that--

55

A. That we could have had jibing.

Q. No.

A. No?

Q. No, no. You were talking about the troubles that she might have in the circumstances if she came back and had no motor. Now what were they that you had in mind?

A. I didn't have anything in mind so I probably misused the word trouble so I apologise. 5

Q. Not very careful, are you. Are you?

A. Somewhat nervous, yes. 10

Q. You're very uneasy on this ground, aren't you, that I'm testing you about?

A. Uneasy with the way in which you ask the questions, yes. 15

Q. And uneasy in trying to give answers you think might be satisfactory?

A. Uneasy in the way in which you pick on particular words, yes. 20

Q. Really? If you don't put it - I take it you don't put it that she wouldn't have been faced with very considerable difficulties without a motor if she'd come back and tried to stand by?

A. She would have been faced with difficulties to have gybed and come back as you would find it difficult to gybe a boat in 50 knots of wind and sail back towards us. There was natural difficulties involved in that and a level of seamanship. 25

Q. Would you tell us whether you can provide the reason why the motor of the Sword of Orion was at least started, whether thereafter in gear or not, why was that done?

A. For safety. 30

Q. Yes. Safety in doing what?

A. The gybe. 35

Q. Because there was a really significant possibility that the gybe might end up in disaster, wasn't there?

A. Significant possibility, yes. 40

Q. And the engine was a form of insurance?

A. Yes. 45

Q. Not perhaps complete insurance but some insurance, that right?

A. Correct. 50

Q. But what you're suggesting is that it would be quite reasonable to call upon the Margaret Rintoul to undergo that risk of disaster without having the insurance at all, aren't you?

A. Yes. 55

Q. You don't find that a claim on your part that you'd feel considerable doubts about in those circumstances?

A. I feel doubts about it, yes.

Q. By the way, what's a reasonable distance within the radius or whatever from the Sword of Orion? You said it could have come within a reasonable distance?

A. We made radio contact very successfully with--

5

Q. What's the distance?

A. I'm answering the question.

SHAND: I submit he's not, your Worship.

10

CORONER: I don't know yet. I'm going to allow it.

A. We made radio contact with our VHF successfully with an aeroplane that flew over the top of us. I guess that aeroplane would have been within a couple of hundred metres of us. So I would suggest to you that anywhere around that distance would have been successful in making contact with us.

15

Q. Two hundred metres?

20

A. Whatever, yes, to make radio contact, yes.

Q. By the way, VHF's line of sight isn't it?

A. Yes.

25

Q. Line of sight?

A. Yes.

Q. With 12 metre waves or 10 metre waves, whatever, what chance would another yacht have?

30

A. I think they'd have a pretty good chance.

Q. Would it?

A. Yes.

35

Q. The waves make any difference when they're interposed between--

A. We'd actually rigged an emergency aerial on the stern of the boat that was about eight to ten feet tall, it was rigged on the stern of the boat. So we would have been able to have made radio contact with them on--

40

Q. It was no higher than one metre, was it?

A. The emergency aerial on the stern of the boat?

45

Q. Yes.

A. No, it was considerably higher than one metre.

Q. You can take it the evidence that's been given by someone who participated in rigging it placed it at one metre?

50

A. Okay.

HILL: Perhaps--

55

SHAND: Mr Senogles as I understand.

HILL: In his statement or the transcript?

SHAND: In evidence as I recall.

CORONER: I think he did too.

SHAND: Q. Who rigged it?

A. I didn't rig it but I am aware of the VHF emergency aerial is in two parts, you normally join them together and it has a mounting on the stern of the boat.

Q. Would you be able to tell us when in relation to seeing the Margaret Rintoul - I'll just interrupt that question for a moment. Do you remember saying just before the luncheon adjournment that someone from the Margaret Rintoul at least had denied that she had seen the Sword of Orion?

A. No, I don't remember that at all.

Q. You don't remember saying that?

A. No. It was in reference to what?

Q. It was in reference to an allegation--

CORONER: I don't remember it either.

SHAND: It will come out in the transcript, your Worship.

CORONER: Yes but--

SHAND: I noted it at the time in my mind but I needn't press it because--

CORONER: I've got no comment to make. I can only say that--

HILL: Perhaps I can be of some help. I think there was a statement of I've heard or something like that, that someone said that was denied. It was a very quick--

CORONER: Maybe you're right ..(not transcribable)..
Mr Shand.

HILL: I think my friend was over-talking the answer so it may have disappeared but there was something about it.

SHAND: It came out as an assertion but it'll be there your Worship so I don't think I need to take the trouble to have it looked up. If it can be--

HILL: I'm told that my friend objected to the answer as it was coming out.

CORONER: That might be what happened. Let's move on.

SHAND: Q. I just want to go to another subject. Do you remember when you notified Lew, that's Lew--

CORONER: Carter.

SHAND: Carter, thank you.

Q. Lew Carter that Sword of Orion was retiring?

A. I didn't - I didn't notify Lew personally, that was handled by Rob Kothe, the navigator.

Q. That didn't prevent you from saying in your police interview what time we notified Lew that we were retiring, did it? 5

A. No.

Q. Well, when-- 10

A. I guess that was--

Q. --do you say as you told the police officer Lew was notified about the retirement?

A. Uh hmm. 15

Q. Can you remember?

A. Are you asking me for a time?

Q. Yes. 20

A. The sked was at 2 o'clock, 1400 hours, there were a number of boats to be done on the sked, I guess we would have come up probably an hour later. We then went through the arrangement of doing the weather and then after that I guess we probably would have notified Lew that we were retiring close to about 4pm, quarter to 4 I guess, somewhere around there, to the best of my judgment. 25

Q. I just want to refer you to question 30 of your record of interview with the police, page 11. 30

A. Uh hmm.

Q. Got that page?

A. Question 30? 35

Q. Question 30 on page 11.

A. Page 11.

Q. I'll just read it to you from the beginning of the answer, the first complete sentence starts "so I spoke to Glyn, Glyn was keen to retire, I had a chat with Brownie and Brownie said he didn't feel that he was in a position to make that decision, that he deferred it to myself and I thought that the prudent thing to do was to retire. So we then retired. We notified Lew that we were retiring. This would have been I guess at about 1340, 1340, 1345". 40 45

A. Uh hmm.

Q. That doesn't compare very well with what you've just said-- 50

A. No, it doesn't.

Q. --about the time, does it?

A. No, it doesn't.

Q. In fact, it involves about a three hour difference, doesn't it? 55

A. Yes, well certainly two hours and - two hours, yes.

Q. Well, it's nearly three if it's not three isn't it?

A. Well, 1345's quarter to two and I said quarter to 4 so yeah, two hours difference.

Q. How do you explain that discrepancy? 5

A. I can't. Clearly when I said it here it was to the best of my knowledge and I guess by sitting here and talking the thing through in more detail I get a slightly different point of view about it, yes. 10

Q. Where did you - what's the detail that you refer to that enabled you to come to a different answer? 10

A. Well, I guess doing the sked at 1400 hours, doing the weather first and then waiting your turn for the sked then radioing in and then going through the lengthy conversations and whatever that went on there, so I mean my timing's out, I'm sorry. I mean it could have been - I don't know, I say quarter to 4, it could have been earlier, I wouldn't know how much earlier, I didn't - I wasn't looking at my watch. 15

Q. What you told the police officer is grossly wrong isn't it? 20

A. Well, yeah it's somewhere - yeah, yeah. I'm unsure. I can't tell you categorically it was quarter to 2 or quarter to 4. I'd say to you that it was somewhere in the vicinity of that time. 25

CORONER: Q. But you can, can't you? You know it was after--

A. Yeah ..(not transcribable).. 30

Q. Don't you know it was after the sked?

A. Well it was after the sked, yes.

Q. That takes it to what, 2.30 at least? 35

A. Yes, that's right. So it was after the sked.

SHAND: Q. You were talking about it with an accuracy of about five minutes when you gave this answer, weren't you?

A. Yeah. 40

Q. Didn't seem to have much doubt about that, did you?

A. No.

Q. What you were referring to there was, undoubtedly was it not, that at about that time you, meaning you singly, in the ultimate, had made the decision about retiring, weren't you? 45

A. Well, it's not what I meant. I mean I'm not the skipper of the boat, I can't make that decision alone. 50

Q. You shouldn't have said what you did, should you?

A. That's the word that I've used, it should be we not me.

Q. We notified Lew that we were retiring, that's what you said in part? 55

A. So that's collective, isn't it?

Q. It reads--

A. So we - we then retired.

Q. --as I put to you that you say a little earlier on that Brown, Adam Brown had said that he wasn't in a position to make that decision and he deferred it to myself, meaning you? 5

A. That's what he said at the time, correct.

Q. So you made the decision in the ultimate, didn't you?

A. No I did not. I'm not in the position to make the decision alone. I'm not the skipper of the boat. 10

Q. It looks as if you said so, doesn't it?

A. No, it says here "so we - we then retired. We notified Lew". I mean clearly I mean it's not meant to be that way. 15

Q. We, the boat, then retired?

A. We as in the crew made the decision to retire.

Q. Now what I want to find out from you is this. Even if one takes the decision as having been made after the sked, that would place it at shortly after 3pm, wouldn't it? 20

A. Yes.

Q. Will you agree that the radio call to Telstra Control wasn't made until 1644, quarter to 5 in the afternoon? 25

A. To retire.

Q. More than that, that's when Telstra Control was informed about the decision to head for Eden, wasn't it? 30

A. At 1644.

Q. Yes.

A. That's certainly closer to my recollections, my most current recollection, yes. 35

Q. There's one question that comes out of that. If the decision had been made shortly after 3 o'clock then for some reason the information wasn't passed on to Telstra Control for something like an hour and three quarters, was it? 40

OBJECTION (HILL). NOT THE EVIDENCE. LEGAL ARGUMENT.
QUESTION ALLOWED.

Q. You may take it that the radio log at Telstra Control shows that at 1644 Sword of Orion called, announced its position, said it was heading for Eden and then communicated the words "not retiring". That's what the entry says. 45

A. Uh hmm. 50

Q. That means that there's something like an hour and three quarters to account for between the time at which you said the decision was made shortly after the sked--

A. I'm unaware-- 55

Q. --and the time that signal went through to Telstra?

A. I'm unaware of the accuracy of the timeframe. You obviously have it there.

Q. I do.

A. What time did we actually sked in, to give our position?

Q. This says this call was made--

A. This was after the sked though.

5

CORONER: I think so, yes.

SHAND: Q. I'm telling you when this call was made to the Telstra Control, 1644.

10

A. Right.

Q. Getting on for if not quite as much as an hour and three quarters after the decision was made?

A. Uh hmm.

15

Q. What I'm asking you is what was going on between the end of the sked and the decision being then made and the making of the call if the decision to retire was made just after the end of the sked?

20

A. My recollections are towards - we chose to give our position in the sked and request information and we gave our weather position - we gave a weather information as well.

We then waited till the end of the sked, hoping that somebody else would give more information on the weather so we could ascertain whether the low was to the north of us, to the south of us. Soon after that the breeze abated for a while then it came back up again and then we - and then we made the firm decision to retire, because we were confident then that the wind or the low pressure we believed was still to the south of us, so then we gybed and retired to come back to Gabo. So in a timeframe sense I don't know, I can't answer the question specifically what happened in that hour and three quarters beyond saying that we skedded in, we gave a weather forecast with our sked, hopeful to get somebody else's weather forecast. We waited till the end of the sked, the breeze abated for a while, then the breeze came back strong. We then - we then retired and that's when we notified - we notified Telstra that we were retiring, or heading back to - heading back to the east coast of Australia, back to Eden.

25

30

35

40

Q. But isn't this the situation that having made the decision to turn around, preparations were made to make sure that that could be done safely?

45

A. I don't think it took us an hour and a half to prepare to turn the boat around. I think--

Q. Let me get on with the question.

A. Sorry.

50

Q. Preparations were made such as making sure ropes wouldn't foul and that sort of thing--

A. Yes.

55

Q. --weren't they?

A. Yes, they were.

Q. And the boat was shipshape to gybe?

A. Yes, correct.

Q. How long would that have taken?

A. I guess that would have taken 10 minutes, maybe 15 minutes to make sure the motor was started, all the ropes were in, the boat was tidy, everyone was ready for the gybe, yes, 10 to 15 minutes.

5

Q. And then the gybe would have been commenced?

A. Then the gybe would have been commenced.

10

Q. There's one lot of time isn't there - I withdraw that. But you say there's no doubt that Telstra Control was informed about the change of heading to Eden before you started to go about by jibing?

15

A. I'm not sure, I didn't - I didn't radio that in to Telstra. I can't tell you whether that was radioed in before we gybed or after we gybed. I don't know.

20

Q. When did the capsize occur?

A. As I said earlier today, I'd been on deck for a number of hours, I'd come - after we'd completed the gybe--

Q. Please, Mr--

A. I would say it could be any time--

25

Q. Please don't give me all this material.

A. I'm sorry. It could be any time between 20 minutes and an hour.

30

Q. After what?

A. After we gybed.

Q. Clearly enough you didn't capsize until some time after the call to Telstra Control was made about changing heading to Eden, did you?

35

A. Could you ask that again please?

Q. You certainly hadn't capsized by the time this call to Telstra was made about changing heading to Eden?

40

A. That's correct.

Q. Are you sure that there wasn't still after the sked had finished a fully fledged debate going on as to whether you were going to turn around or not which occupied the approximately hour and three quarters before you notified Telstra Control that you were returning - heading for Eden?

45

A. No, there was not a fully fledged debate going on. We had - we had discussed it, we'd agreed to retire--

50

Q. Look, please don't go through all the detail again.

A. No, I can answer it as no.

Q. There's no other way you can fill this time in, is there?

55

A. I don't want to fill this time.

Q. Other than by debate?

CORONER: Q. I'd like to know what happened between the end of the sked and the time that you told Telstra Control that you'd gone about?

5

A. What we'd actually done is the breeze had dropped away a little bit, we thought to ourselves well maybe the low pressure is still to the south of us and out to sea of us, we'll sail on. And then the breeze came back considerably, you know, back up to 60 knots. We then said well, you know, we're unsure, it's still a lot closer to get back to mainland Australia than it was to sail on to Tasmania, so then we gybed out and headed back.

10

SHAND: Q. You can't fill that time in, can you, with whatever recollection you have?

15

A. No.

Q. I want you to tell us again would you what were your activities, particularly in giving service on deck, during the morning of 27 December?

20

A. My activities?

Q. I'm just introducing the subject at the moment.

A. Uh hmm.

25

Q. When was it you had your rest?

A. I was below deck I'd say between 7 and 10 in the morning.

30

Q. 7am and 10am?

A. In the morning and then back on deck after 10.

Q. And then, after that?

A. And then below deck and then back up on deck, depending upon the circumstances and situation.

35

Q. Were you then continuously on deck after 10 o'clock?

A. No, I wasn't, I was on deck for about two hours, I then went back down for about half an hour, 45 minutes and then I went back up on deck again.

40

Q. Alright, so we've got two hours on deck, say roughly 10 to 12?

A. Yes.

45

Q. And what were you doing on deck during those two hours?

A. I was steering the boat mostly.

Q. Mostly?

A. Yes.

50

Q. Not continuously?

A. No. It's very difficult in those circumstances to have one guy sitting helming the boat in those seaways without a break.

55

Q. Please, look, I'm not asking you that. I'm just asking

you, you don't claim to have been continuously steering the boat during that two hours, do you?

A. No I don't.

Q. Who was steering it while you weren't during that period? 5

A. I think Carl was steering the boat for a while and I think later on I think Adam Brown was steering the boat for a while. 10

Q. What about Glyn Charles? 10

A. No, Glyn was below deck from about 9.30 or so up until about 1 o'clock. He'd not been feeling well. He was feeling pretty seasick and he was below deck for most of that time. 15

Q. Did he do any steering before midday?

A. No. Earlier in the morning--

Q. Quite clear about that? 20

A. --he had, earlier in the morning he had but not in the time that I was on deck, no.

Q. I'm just trying to find out just how close you are getting to the truth-- 25

A. I'm sorry.

Q. --in speaking about the time you spent on deck and of that time, the time you spent steering the boat, do you understand what I'm getting at? 30

A. Right.

Q. Now, would it be correct to say that Adam Brown had been steering the boat, he'd been on the helm, for five hours continuously that morning? 35

A. No, I don't think that's correct.

Q. Do you say it's not?

A. No, I don't think it is correct. I'm unaware of what hours you're specifying but I'd say that's incorrect. 40

Q. Are you able to say what you said - you say is the period during which he was steering the boat on that morning?

A. Uh hmm. 45

Q. What do you tell us?

A. What am I telling you? I'm telling you that, you know, the conditions were extreme-- 50

Q. I'm not asking you that.

A. --we were rotating helmsmen--

Q. Please.

A. We were rotating helmsmen. 55

Q. I just want you to give whatever you say, if you can say, is the period or periods during which he was steering

the boat leading up to 12 o'clock?

A. A specific time I was steering the boat would have been--

Q. No, he was.

5

A. Adam?

CORONER: Brown.

A. I can't answer a specific time about what Adam was steering.

10

CORONER: Q. Can you give an approximation?

A. I could - I could explain when I was steering the boat.

15

Q. No, no, no.

A. No?

Q. The question is Mr Brown.

A. He would have steered the boat before 11 o'clock, I don't know what time he would have started from. I came on deck at 10, so he was steering the boat when I came on deck and he steered the boat for probably an hour while I was - maybe a bit less and then I took over from him. I steered the boat for a while and then I think Carl took over from me.

20

25

SHAND: Q. What's the while during which you steered the boat?

A. An hour, hour and a half.

30

Q. Where's that getting us now, past midday?

A. About - yes, yes, that's right.

Q. Is it?

35

A. Yes.

Q. So far we've only had about half an hour of Mr Brown haven't we?

A. He could have been steering the boat for the time before I came on deck quite easily. He could have been there for three and a half, four hours.

40

Q. Do you know that Mr Kothe has spoken about this subject, you know that he's given an account of this particular topic I'm talking about to the police?

45

A. I haven't read Mr Kothe's report, no.

Q. You haven't? Are you still on good terms with him?

A. Yes, fine terms.

50

Q. Are you? Is this - and I'm referring your Worship to page 13 of Mr Kothe's record of interview of 4 June 1999.

OBJECTION (CALLAGHAN). RELEVANCE TO MARGARET RINTOUL. LEGAL ARGUMENT.

55

Q. How long do you say it was between the time the boat

rolled over and the time at which Margaret Rintoul was sighted?

A. I was asked this question earlier and it's about - my recollection is some time between an hour to an hour and a half. 5

Q. Would you accept that an hour and a half to two hours could well be the appropriate interval?

A. Hour and a half, yes. 10

Q. An hour and a half or two hours?

A. Yes.

Q. Is this the fact as far as you're aware of it that when the boom was swapped over from the leeward side to the windward side, do you recall when that happened? 15

A. It was actually the opposite to that.

Q. Opposite was it?

A. Once you gybe it's on the windward side and we lifted it over to the leeward side. 20

Q. How do you say that boom was secured?

A. Secured with rope fastenings onto the two staunchions. 25

Q. Staunchions?

A. Two staunchions, yes.

Q. So that you're clear about the fact that that boom was not secured by being tied to a strong point, namely the padai(?)? 30

A. A staunchion is commonly used like a padai for a bracing point, they're similar.

Q. The staunchion is not the padai is it? 35

A. There was no padai in the near vicinity and the staunchion is - when you actually go on deck to secure yourself with the end of your tether, you secure it onto either a padai or onto a staunchion. 40

Q. Yes, they're two different things aren't they?

A. Yes they are.

Q. This was a staunchion, not a padai?

A. It was secured to my knowledge onto the staunchion. I didn't secure it. 45

Q. You saw where it was secured, didn't you?

A. Yes I did. 50

Q. Is it the fact also that this is the staunchion which in fact was damaged in the collision with the other boat close to the outset of the race?

A. I thought it was the staunchion after that one. The staunchion where the helmsman sits, alongside the one where the helmsman sits was the one that it was secured to. 55

Q. I want you to answer that if you can, was it the one

that was damaged in the collision between your boat and Nokia?

A. I don't think it was.

Q. And had to undergo repairs? 5

A. I don't think it was that staunchion.

Q. But you're by no means certain about that?

A. No, I can't be certain because I didn't actually fasten it to the staunchion. 10

SHAND: Yes, that's all thank you, your Worship.

CORONER: Is there anything arising, Mr Hill? 15

HILL: Q. You were asked a question about the motor and whether or not it was left in gear or neutral or whatever the case was. Who would have been working that?

A. I'm sorry, I don't know who started it or who had the control of it. I know we started the motor before we gybed but I'm not sure who would have started it. 20

Q. Where are the controls?

A. The controls to start the motor, I believe they're below deck. I think they're below deck on that boat. 25

Q. Where is the gear?

A. The gear is on deck.

Q. That's on deck. Where would it have been on deck? Where? 30

A. It would have been aft near the helmsman area, near where - either the helmsman or somebody trimming.

Q. Who was the helmsman at that time? 35

A. Glyn was the helmsman.

Q. Who else was with him?

A. Who else was on deck at that time? 40

Q. Uh hmm?

A. I think there were a number of us on deck. There might have been four or five crew on deck when we gybed the boat.

Q. Do you recall who they were? 45

A. No I don't specifically. I know Darren was on deck and I think Carl was on deck.

Q. Who was in the cockpit?

A. Pretty well everyone was in the cockpit for the gybe, we didn't have to go forward of the cockpit for the gybe. 50

HILL: Yes, I've nothing further, thank you. I would ask your indulgence for a five minute break if I could. It's purely an administrative matter. 55

CORONER: Yes, okay, I'll see you in chambers about it then.

<WITNESS RETIRED AND EXCUSED

SHORT ADJOURNMENT

CORONER: The next witness we were going to call is Mr Kothe 5
who was the skipper and owner of the Sword of Orion. That
would mean simply starting his evidence and then there'd
have to be a break until Thursday, because there are other
witnesses we really have to interpose because of their
commitments. Mr Kothe has his own commitments at the end of 10
the week. I hope we can satisfy everyone. Unfortunately we
won't have the continuity we'd like. We propose therefore
to call Mr Kothe on Thursday morning, there will be other
evidence concerning other issues tomorrow and Wednesday,
including the Business Post Naiad. I can't say anything 15
more than that. Mr Shand and Mr Callaghan and their teams
are excused until Thursday morning and of course any other
lawyer who wants to leave the bar table can do so. There's
no other evidence to be called today. Is there anything you
want to say at this stage? 20

HILL: No.

CORONER: Is there anything else from the bar table, 25
gentlemen?

SHAND: No, your Worship.

ADJOURNED TO TUESDAY 28 MARCH 2000 PART HEARD 30

oOo 35


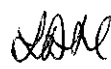
CERTIFICATION OF TRANSCRIPT

We, the undersigned being Sound Reporters, do hereby certify that the within transcript is a correct transcript of the depositions sound recorded at the New South Wales Coroner's Court in the matter of

INQUEST INTO THE DEATHS OF JAMES MICHAEL LAWLER, MICHAEL BANNISTER, BRUCE RAYMOND GUY, PHILLIP RAYMOND CHARLES SKEGGS, JOHN WILLIAM DEAN AND CLYN RODERICK CHARLES

on Monday 27 March 2000

Dated at Level 13 Goodsell Building, Sydney
this day of 2000

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