

SENIOR CONSTABLE UPSTON

Q1 This is a record of interview between Senior Constable David Upston and Peter Bartels on Friday, the 5th of the 11th, '99 at the Sydney Water Police at Pymont. The time on my watch is now 2.55pm and also present seated directly opposite me is Detective Senior Constable Gray from Bega Detectives. Peter, for the purpose of the interview, could you please state your full name?

A Peter Julian Bartels.

Q2 Your date of birth?

A 27th of the 3rd, '58.

Q3 And your - - -

A Address is 21 Tyne Street, Carlton, Victoria.

Q4 And your occupation?

A Well retired.

Q5 Retired. O.K.

A Well retired.

Q6 Retired. Thank you.

A Or just tired.

Q7 Well, it could be either a well retired or - - -

A Or retired, tired, exhausted or just mentally incompetent but I mean, you know, either one will do.

Q8 All right, any of those. Peter, as we explained prior commencing the interview, Detective Senior Constable Gray and I are making inquiries into the 1998 - - -

A Yeah.

Q8 - - - Sydney to Hobart Yacht Race and we are here to talk to you about today your involvement in the race last year on the vessel Terra Firma.

A Mmm.

Q9 Is that correct?

A Yeah.

Q10 O.K. First of all, could you tell me your sailing experience?

A I've been sailing since I was six, I did the traditional dinghy up until, well, I was still sailing dinghies when I started to sail big boats, which is, you know, what I'd classify sort of 36 upward, learned to really sail in the ocean in Victoria and Bass Strait and basically have sailed in the United States for the last 6, 7 years and in Europe and, of course, Australia and not so much New Zealand but cruised New Zealand, cruised the Pacific.

Q11 O.K. So you're a very experienced sailor?

A I'd say I am.

Q12 You would class yourself?

A I would class myself as a capable sailor.

Q13 O.K.

A You know, I can basically go wherever I want to go.

Q14 O.K. And last year you entered the race on the vessel Terra Firma?

A Yes.

Q15 Who owns the Terra Firma?

A It's an ownership between Stewart Neeman and myself and that's sort of basically an arrangement between the two of us, Stewart's the registered owner because it's easier that way and I'm the skipper of the boat.

Q16 O.K. And can you just give us a brief outline on the type of boat that it is?

A Basically it would be classified as a flat out ocean racer, I.M.S. designed, it's 4 and a half years old now, it's in my opinion definitely overbuilt which is, you know, a problem in terms of optimising performance but other than that it's in my opinion a very well rounded good sailing boat.

Q17 O.K. And what category do you sail in in the Sydney to Hobart?

A Open I.M.S.

Q18 Open I.M.S?

A Yeah.

Q19 O.K. All right. Now prior to, some months prior to the race - - -

A Yeah.

Q19 - - - a safety inspection has to be completed.

A Yes.

Q20 And do you recall that we had a conversation on the telephone - - -

A Yes.

Q20 - - - some weeks ago - - -

A Absolutely, sure.

Q20 - - - about the safety certificate.

A I was at Southport, yes.

Q21 And we discussed that Peter Messenger in fact conducted
- - -

A That's right.

Q21 - - - your safety certificate. Do you recall that?

A Yeah. Yeah.

Q22 And we pointed out a number of issues.

A Yes. I think you were referring mainly to the notation
or asterisk on the side of the completed form.

Q23 All right. I'll show you a photostat copy of that
form.

A Yeah.

Q24 Do you agree to that being a photostat copy of the
form?

A Yeah. Sure. Yeah.

Q25 And the date that it was filled out is?

A 25th of the 11th.

Q26 Right.

A That's early for me.

Q27 And it's signed by yourself?

A Yeah.

Q28 And Peter Messenger is the safety inspector that's
completed it?

A Correct. Yeah.

Q29 And we discussed a number of issues?

A His notations on the side, yes.

Q30 Could you just tell me about those, please?

A

Basically the way a safety inspection works is the safety officer comes down to your boat and they, you lay out, lay out everything that is required on the safety certificate. Obviously you can't lay out the structural things, but they're obviously there to be seen. Then as always, I mean boats, boats are sort like houses, or garages, I should say, they just collect stuff and bits missing and there's always one or two items or three or four or five, up to a dozen sometimes, items that either someone's not happy with, either I'm not happy with or the safety officer's not happy with or just not there. Sometimes it's fire equipment, like, the extinguishers haven't come back, they haven't been serviced, life rafts sometimes, I mean you're lucky to get life rafts serviced on time, you've got to put them in months before, like, mine go in now in the hope that they'll be back sort of in time for the Hobart, which they always are but you don't know when you're getting them back. And I suppose the other thing that generally holds you up would be radios. Right? So, you know, like, I've been in a situation where I've had the radio come back from the repairer 3 days beforehand and you know, you've got someone there working on the boat all night making sure it works, you know, bolting it in, re-wiring, doing all the radio checks, doing that sort of stuff. So basically when you do a safety check, like, for instance, here you'll look down and you'll say,

emergency antenna for the HF, now that was in the container. You can't say, Well, stay there while I bugger off all the way around the, you see, what you do is you go down and you note all the things that you want to re-assess, either check again or aren't there and then you say, O.K. And when you've got all those things noted together the safety officer comes down and he says, O.K. because he keeps this in his file, you don't take this, he keeps this in his file and he goes, right, O.K. right, what are the things we have to check, and basically he notes off the things. Now obviously if you don't have anything he won't pass you.

Q31 Right.

A But if he has everything, if you have then satisfied the entire list then O.K. you get passed.

Q32 O.K. And that was in fact done?

A Mmm. Yeah.

Q33 And as far as you were concerned that was your certificate?

A Absolutely.

Q34 Now we have been informed - - -

A Yeah.

Q34 - - - as I explained to you earlier on the phone that a spot check was carried out on the day of the race.

A That's right.

Q35 O.K. What can you tell me about that?

A Quite a number, there was, each boat was, there's not much point having a spot check if they tell you what

they're going to check so I believe that this is the way they ran it, that they had so many people and they were all issued with different hit lists and they were given, the boats were notified that they were going to be spot checked and basically they arrived on the boat, in fact no, I think, was it Mark Robson might have done ours, I'm not sure who did ours, to be honest, but I believe Mark came down and he wanted, he had a hit list that he wanted to hit. I said, O.K. We opened up and everything that he obviously asked for was on the boat so - - -

Q36 O.K. Was anything mentioned about jack stays?

A Not that I know of, to be honest.

Q37 We have been informed that the jack stays on Terra Firma and, as I explained to you on the phone, didn't comply with the I.M.S. regulations where they should run in one continuous length fore and aft from the bow to the stern.

A Oh, no, they did, they do run one continuous length, yeah, no, they always, and they always do.

Q38 Right. Do you recall that when we had a conversation on the phone - - -

A Yes.

Q38 - - - some weeks ago we spoke about that - - -

A We did indeed.

Q38 - - - and you told me that on the day of the race they didn't run the one - - -

A No, I didn't say, no.

Q39 Well, could you - - -

A No, I didn't say.

Q40 - - - recall our conversation?

A Yeah. I'll clarify what I said. They always run, by their nature they run fore and aft but because the crew is my responsibility and nobody else's I deem it dangerous in the experience I've had to, to put a person in a position where he can fall off the bow and he doesn't stop until the boat has gone 43 feet or 44 feet. So I make sure that he, when he hooks on to the jack stay he cannot get washed past, say, 4 feet in length because in my opinion it's too dangerous.

Q41 O.K. How do you ensure that he doesn't travel any further than 4 feet?

A Well, it could be a trade secret but that's, I mean that basically depends on, I rig it so that you just can't, you can't slide further. So, but I'm also quite conscious that, basically when anybody moves around the boat on my boat, if he has to go forward of the mast which is really the area in question we're talking about he must take two tethers. So, and it's made very clear that if you want to sail on my boat that's what you do and you don't go forward of the mast without two, two tethers.

Q42 O.K. I understand what you're saying. But the rules say that the line should travel in one continuous length.

A They do.

Q43 Right? And from what I'm led to believe that - - -

A And mine do, by the way.

Q44 Right.

A They are continuous, they're not broken.

Q45 Well, from my understanding is that the, the jack stays that a person should be able to move freely from one - - -

A That's right. That's what they want to do.

Q46 Right.

A That's what, that's what - - -

Q47 Well, that's what I'm saying.

A Yeah.

Q48 And in your position on, on Terra Firma on the morning of the spot check - - -

A They - - -

Q48 - - - yours didn't comply?

A No, they did, they, most definitely they complied. You see, in my opinion when the boat leaves the, the dock it is nobody's responsibility but my own and I will, I will sail and ensure the safety of the crew the way I best see fit, not the way someone else sees fit. Right?

Q49 O.K.

A And, and so once the boat leaves the dock how the boat is rigged is my problem.

Q50 All right. Did you make some alterations prior to starting the Sydney to Hobart Yacht Race as a result of - - -

A No. I just - - -
Q50 - - - as a result of - - -
A I suppose you could say that I ensured that the crew
couldn't slide more than, off the foredeck, yeah.
Q51 O.K. But when you, let me say this.
A Mmm.
Q52 When you had a spot inspection - - -
A Mmm.
Q52 - - - the boat was - - -
A Complied, most definitely.
Q53 Most definitely?
A Yes.
Q54 You weren't directed by anyone to make alterations so
that they would not travel more than 4 feet?
A No.
Q55 O.K.
A No, that's my personal decision.
Q56 O.K. So after, all right, then.
A That's my decision as master of the boat, right?
Q57 When you left you, the boat complied as far as you're -
- -
A Absolutely.
Q58 Totally as you - - -
A Yeah.
Q59 No problem?
A At, this.
Q60 Yeah?
A Yeah.

Q61 O.K. So then when you left the wharf then you made alterations?

A Yeah. I ensured that people can't slide, yes.

Q62 So in actual fact you were in breach of the rules?

A No, breach of what rules?

Q63 Well, this is what I'm trying to understand, is there a breach of the rules that if you change - - -

A No, my jack stays run one continuous length.

Q64 Right.

A Right. Now it's a disagreement that has been going on for some time but at the end of the day I am negligent if someone gets damaged on my boat, legally as well as morally so, and this, I mean, you know, if this is a, an open interview rather than just an answers only deal, it's what everybody is running around scared about. No one, no one can tell a master or a skipper of a boat once he leaves the dock what to do because they're not there, you know, and, and it's, it's just inviting disaster for people to tell you what to do.

Q65 Mmm.

A If there's some question about the competency of a skipper or whether someone starts turning up with crew members that, you know, break legs regularly or whatever, then sure.

Q66 Yeah.

A There's questions have to be answered and I believe that is the basis of a board of inquiry but, and I'm, look, I'm well aware of what the rules say and in my,

to the letter of the law I comply, to the letter of the law I comply but I can't in all honesty ask someone to go and do something that I think is too dangerous for myself to do. And I didn't work this out myself, I was taught this from an early age, that you just, it's just something you don't do 'cause it's too dangerous.

Q67 Well, what I, I understand what you're saying and it is certainly an open conversation - - -

A Right.

Q67 - - - and an open interview and whatever you like to tell us - - -

A Mmm.

Q67 - - - you're welcome to do so. What I want you to understand is that I've been told certain things.

A Sure.

Q68 And what I will do is we'll just have a look through the Blue Book.

A Yeah, the Blue Book's there.

Q69 We'll have a look through the Blue Book and we might be able to point out - - -

A Mmm.

Q69 - - - where it mentions the rule on jack stays and then continue the interview.

A Sure, yeah, quite happy to do that.

Q70 The time on my watch is now 3.11pm. This interview is temporarily suspended.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE UPSTON

Q71 The time on my watch is now 3.24pm. The interview between Upston and Bartels is continued. Peter, I draw your attention and the short break, and do you agree we had a short break to locate - - -

A Yes.

Q71 - - - the A.Y.F. Rules Book.

A what is it, rule, section 4 on safety equipment and it was, specifically referred to jack stays, 4B, where it says, Jack stays shall if possible be fitted in such a way that a crew member when clipped on can move from a cockpit to the forward and aft end of the main deck without unclipping the harness. If a deck layout renders this impossible additional lines will be fitted so that a crew member can move as described with a minimum of clipping operations. Jack stays should be sited in such a way that a safety line can be kept as short as possible.

Q72 All right.

A

Q73 And do you agree with that, section 4B?

A Do I agree?

Q74 Well, let me say, let me rephrase the question. At the start of the race do you believe that your vessel complied with that rule?

A Oh, yes, quite clearly, yeah, quite definitely.

Q75 O.K. When you said earlier that when someone is clipped on to your jack stays - - -

A Yes.

Q75 - - - that if they are washed over the side or lose their footing they can travel no longer than 4 feet - - -

A 4 to 6 feet.

Q75 - - - 4 to 6 feet along the jack stay?

A Yeah.

Q76 Well, then how, can you tell me how do you achieve that?

A I ensure that, that there is something to restrict the movement of the jack stay, oh, the harness so that people can't get washed too far away from the side of the boat.

Q77 Does that comply then with, in the portion of that rule - - -

A I think so, yeah.

Q77 - - - where it - - -

A I think it's,

Q77 - - - let - - -

A I think that that rule is, is open enough to, to allow my interpretation of it, yes.

Q77 - - - where it says, without unclipping?

A It actually says, Without unclipping the harness, sorry, yes, unclipping the harness, if deck layout renders this impossible, right, additional lines shall be fitted so that a crew member can move as, yes, it does.

Q78 O.K.

A Yes.

Q79 All right, then. Well, that's fine, Peter.

A That's it?

Q80 Yeah. Have you got anything else that you'd like to add?

A Well, no, other than, you know, obviously wanting to I suppose define the parameters of, of what will eventuate as far as the, the court of inquiry goes. My understanding, I'm just a little disappointed I suppose in a way that after something like this there is a general feeling of apprehension that, that invariably the finger will be pointed and I suppose, you know, things like this tend to, to generate that sort of behaviour. But my feeling on the matter is that if everybody had actually got together at the beginning and had somehow established a steering committee rather than actually go through separate camps, if you like, the C.Y.C.A. bringing out their own report, the inquiry brings out their own report, I am sure that the centre in Canberra for safety, they'll be doing their own study on it. I'm just surprised that no one actually sat down and said, Well, listen, we really need to, everybody needs to work on this to ensure that certainly it gets better because at the moment all I can see that's happening is everybody is trying to protect their own back, which is understandable, but I can't, I can't see meaningful change coming out of it

because it's protection rather than advancement that everybody's sort of running around chasing.

Q81 Well, who do you think is, who do you think is protecting or who or what do you think - - -

A I think people in general, I mean you wouldn't have to be Einstein to work out that the club may feel apprehensive because a lot of people are looking at it and saying, in my opinion quite incorrectly, that the club should do something, that they should have done something. And that, to me that's a nonsense, it's, it's, the club can't ensure, it does everything it possibly can to ensure, without being, you know, bordering on the bizarre and ridiculous, without going to those extremes it does everything it can to ensure that the people who do the race have the tools to protect themselves as much as possible and have the necessary experience on board. But until you actually get there, until you live through a storm like that and unfortunately in Bass Strait they do happen and not as irregularly as some people might think, then you don't know how someone is gonna perform, you know, and to expect someone sitting in an office, even on a tanker, if we have a tanker in the middle of the fleet it's going to sit there and go, Jeez, it's windy, isn't it, these seas are big, and that's about it. The guys out there, I mean we sailed up to Jaguar when it was trying to head home in the height of the storm and there was probably, there was basically nothing we could do for

Jaguar. Now our boat was intact, it, it has an extremely powerful motor with the sails, this boat, we can motor in almost any sea, it's an incredibly robust design, it's a strong little ship. But even so, and we had excellent, excellent people on board, but even so if, people perhaps falling in the water off the boat maybe you'd try something, there'd be no guarantees. You've just, people need to understand that when you set to sea you do place your life at risk and if it doesn't, if it pans out that you get that bad wave, then that's the risk. And I don't think that people are prepared to accept that, I think they want someone to say, Hey, don't go, it's too rough. And it makes a mockery of the race, it makes a mockery of the people that died too and, and I just think that that's wrong and I think that part of that's come around from people not being together on the issue rather than the separate boards of inquiry, but, and that's not you guys, that's, that's you guys, that's the C.Y.C, that's the safety centre in Canberra and whoever else is conducting their little investigations. At the end of the day, if everybody got together and said, well, look, nobody is going to be held responsible, right, 'cause basically there's no criminal blame, there's no moral blame so let's clear the board and say, O.K. no, this is not a witch hunt, everybody's in the clear, you're all off. So, so that wipes the board clear. So O.K. now what do you reckon we can possibly do and I

think you'd probably find that you'd get a lot more, a lot more answers and a lot more people talking freely. I don't know, what do you think?

Q82 Well, what do you think? Do you think people - - -

A Well, you've spoken to all the people, right?

Q83 We've spoken to a lot of people, yes.

A And, and everybody's been falling over themselves to be helpful and informative and talkative?

Q84 Well, we'd hope they have been, but have, do you feel - - -

A Well, I haven't been there, you're the ones that have been there.

Q84 - - - do you, do you feel, well, we can't judge on what people have been - - -

A No, but you're experienced guys, you know.

Q85 But that's not for conjecture here.

A Yeah.

Q86 What it is - - -

A Mmm.

Q86 - - - is we've spoken to a lot of people, yes.

A Sure.

Q87 But what I'm going to say, Do you feel that, that people have been urged to silence themselves into saying things?

A Oh, no, that wouldn't be my place to say that, no, not at all.

Q88 Well - - -

A I mean, it's not my place to say that and it, it's a good question, you know - - -

Q89 Well, I'm asking you.

A - - - and I suppose you had to ask it, yeah, and I would say that without a doubt I would have no knowledge of people being coerced not to say anything because apart from being against the law that, you know, that's not my business. But I, from the general atmosphere around the club, let me say that, and also people that I meet, I mean I've just been, been at sea for 4 months, 3 months and I've spoken, and people all through Australia are watching, right? And everybody is interested, people from overseas, people from America, the lot, are all watching what we do and it would be a shame to be disappointed at the result because nothing constructive comes out of it because people are apprehensive and I can say that from my observation people are apprehensive that they're gonna be blamed for something that, that in all, in all fairness and I suppose when people sign on for this race they know that they're responsible. And now something's gone wrong they're saying, Well, Jeez, let's find someone else as well.

Q90 Well, within all fairness too, that, you know from sailing in last year's race and having a look at the inclusions of safety items and a number of things that have to done compared to this year's - - -

A This year?

Q90 - - - race, there's been a lot of things added, hasn't there?

A I think that's definite, there has been things added.

Q91 Well, what do you think about those? Do you think that that's obviously a step forward?

A No, not necessarily, not at all in fact. In fact, my honest feeling is that, that the club does too much, to be honest. I honestly think that the club gets too involved, they try and help too much and they don't really get people to understand one thing and that is that they are, like, you've got a boat, you are responsible, we will help you, we will do whatever we can to help you, but you're responsible. The club does so much for people trying to get them together that they think that the club's responsible and they're not. And if you look, I've been doing this for a long time, you look at that weather report and my father teach, has taught the subject, has written books on it and he's lived in Bass Strait, right? And he looked at that weather map and right up until the start of the race he was saying, This trough could disappear, you might not get past number 2, you could be light, not more than 20 knots the whole way down, you've just got to wait and see what the trough does because if it dissipates you'll get jack. And for 2 weeks after the race there was not a puff in Bass Strait, I motored, I took a band of school kids from Eden High and I motored, we motor sailed all the way back to Melbourne

and these are kids that were 13 or 14, you know. It's, it's that close. So if people aren't watching, if people expect the club to give 'em all the answers well then I'm, you know, sorry, that's why I believe the club does too much, they should, they should have less to do.

Q92 Mmm.

A They should say, this is the deal, here's the safety requirements because we, we believe that's the minimum you must have, if you want information come and see us, but otherwise, Jack, we'll see you on the starting line.

Q93 O.K. Nothing else? Stuart?

DETECTIVE SENIOR CONSTABLE GRAY

No.

A No.

SENIOR CONSTABLE UPSTON

Q94 All right. Peter, thanks very much for your time.

A That's all right, my pleasure.

Q95 The time by my watch is now 3.36. This interview is now concluded.

INTERVIEW CONCLUDED