

W883 99/00 CMM-C1

NEW SOUTH WALES STATE CORONER'S COURT

STATE CORONER: J ABERNETHY

FRIDAY 31 MARCH 2000

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

Mr A Hill with P Lazzarini assisting the Coroner
 Mr R Stanley with Mr Santamaria for the Bureau of
 Meteorology

Mr J Harris for the Cruising Yacht Club of Australia

Mr P Callaghan with Mr M Williams for Mr R Kothe

Mr N Hunt for Mr R Purcell

PART HEARD

<ROBERT MAXWELL KOTHE(10:19AM)
 RESWORN, EXAMINATION CONTINUED

CORONER: Where are we up to, Mr Harris.

HARRIS: Yes, your Worship, I did indicate I wanted to speak
 with Mr Kothe, but I've lost that desire since we've cleared
 up the safety harness.

HILL: Q. Mr Kothe, I've got some further questions that I
 want to ask you and they are these. It's not quite clear to
 me about what happened on the turn when you turned to go
 back. You say the motor was running and it was engaged?

A. I can only say what I know.

Q. Yes?

A. Which was I instructed them to turn the motor on and it
 was on. There's a distinct difference in the volume when
 it's idle and when it's in, you know, in active forward
 motion or reverse motion and it was loud, as if it was in
 forward motion. There was way too much noise to hear if
 there was the click of it being in gear, but I have no
 reason to believe it wasn't in gear and it was certainly
 loud - indicated that it was, you know, the boat was using
 its motor.

Q. Using its motor to turn?

A. Yeah, yes.

Q. It was helping the turn?

A. Correct.

Q. And go back. Now after that, just so that I'm completely sure, you radioed in that you were, and what I've got is "heading for Eden, not retiring."

A. Yes.

Q. Well when you say not retiring, was your intention to continue the race when the weather abated?

A. We weren't sure what would happen. We were effectively reserving the right such that if we got up near the Victorian coast and it moderated we could have, or if it had, you know, we decided to go. We hadn't actually made that decision at that time. Many boats in Sydney Hobarts do shelter behind islands and continue on, that's a - that's a - well take shelter and then continue on.

Q. But look, you couldn't have done that, you couldn't have continued to race. You'd used your motor, you were disqualified.

A. Possibly. I'm not sure about that. I understand that you are allowed to in the going back, but we certainly hadn't made any definitive decision and if that had been the case, yes, we would have been retired.

Q. Now look. Sir, you know that the sailing instructions forbid you to use the motor whilst you are racing. You know that don't you?

A. I think you're allowed to make a declaration, and I believe that boats have done that quite routinely.

Q. Look, it says, and these are the sailing instructions, "for the purpose of sailing instruction 2.1 mechanical propulsions may only be used to assist with berthing or anchoring. Crew intending to continue to race may go ashore solely for the purpose making fast and thereafter shall immediately re-embark. The only time you are allowed to use your motor is a yacht after starting may use its motor to assist with anchoring or berthing, when taking shelter from extreme weather or disembarking sick, or attempting repairs wholly on board." So when anchoring or berthing.

A. No. Didn't you mention something about extreme weather in there?

Q. Yes. Listen, I'll read it again. Would you like a copy of it?

A. No, I'm quite comfortable.

Q. "A yacht after starting may use its motor to assist with anchoring berthing when" - so anchoring or berthing - "taking shelter from extreme weather." Your term was not anchoring or berthing was it?

A. No, you're right, you're right.

Q. So you could not say to them that you were not retiring because you were already disqualified.

A. I believe that you are allowed to make a declaration of anything that happens in the race and the decision is made by people other than you.

Q. Well you didn't make that declaration.

A. It was hardly relevant. We were long gone. We weren't - you know, we rolled over and we'd lost a man. Be sensible, really. In these circumstances--

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Q. I am being sensible, Mr Kothe, and what I'm going to suggest to you is that the motor was not used and that part of your evidence is in collusion with Mr - what's his name?

CORONER: Senogles.

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HILL: Q. Purcell's evidence, to take any heat out of the fact that Mr Purcell's vessel sailed past you.

OBJECTION (CALLAGHAN) (HUNT). GROUNDWORK FOR ACCUSATION SHOULD BE LAID. NO MATERIAL TO SUBSTANTIATE ALLEGATION.

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HILL: Q. Very well, I'll go on this way. When you made the press statement about the Margaret Rintoul doing everything it could have done, how did that come about?

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A. The qualified statement I made?

Q. Yes, the qualified statement that you made.

A. I was asked - I was asked by the CYC numbers of times was there any way I could defuse the issue and numbers of times I said I don't think so, and I finally resolved that if I did - if I said that, that it would help defuse the issue.

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Q. Who at the CYC asked you that?

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A. Specifically the Commodore.

Q. Did Mr Bush also ask?

A. No.

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Q. Just the Commodore?

A. Yes.

Q. When did he ask you to do that?

A. It's in the record of interview. I can't tell you the date but it was - I made a statement on it. I think it was in June, July period, prior to that statement plainly. I mean I was even asked by members of the Police Force could I do it.

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Q. Who asked you from the Police Force?

A. It's in the record of interview.

Q. Who asked you from the Police Force?

A. David Upston.

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Q. Asked you to do what?

A. Asked was there any way I could reach a accommodation - it's in the record of interview - with Mr Purcell.

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Q. About what?

A. So that there wasn't a public argument.

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Q. So there wasn't a public argument?

A. It's referred to specifically in my statement.

Q. Just a moment, I'll take some instructions.

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CALLAGHAN: Statement 4, page 54, statement 5, page 10.

CORONER: Thank you.

HILL: Q. And you say that you were asked to reach some accommodation with Mr Purcell?

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A. I was rung up by David Upston - Upton - and he asked me could I speak to Richard Purcell on the subject.

Q. And did you?

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A. Yes, I did.

Q. And what was said between you two?

A. There was no accommodation reached. I again in interview, I asked that he give me some explanation of what happened on the boat in a way that I could carry to my crew and make them feel that something - that the events had been carried out in a seamanlike manner. That's a paraphrase but that was the basic content.

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Q. And how did it come about then that you reached this conclusion where you launched this press statement?

A. This was after - after David Upston's request, after the conversation nothing happened. I didn't get any information that gave me any comfort. I then had a - then was contacted by Hugo Van Kretschmar. He asked me the same thing, was there any way that we could reach an - reach an agreement on what happened, and that qualified statement, which is deliberately qualified, was the only thing I could come out with.

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Q. Well where did the assertions in that statement come from?

A. The assertions?

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Q. Yes, that Margaret Rintoul had done everything it possibly could do.

A. What I'd said I had been advised. My statement says that I'd been advised. I--

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CALLAGHAN: Perhaps counsel should show the witness a copy of the statement.

HILL: Yes, I call for that statement, that press statement.

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CALLAGHAN: Isn't it before the court?

HILL: Yes, it's before the court.

CALLAGHAN: Is it in the brief?

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HILL: No, it's not in the brief.

CORONER: No.

HILL: I understand that my friend Mr Hunt has it.

CORONER: Mr Callaghan, where did you say these-- 5

CALLAGHAN: The reference to this press release is in what I call the fourth statement.

CORONER: Which one is that? 10

CALLAGHAN: That's 24 July, it starts at page 53 your Worship. See about point 3 they start the Rintoul business there, about point 3 on the page? 15

CORONER: Yes.

CALLAGHAN: Question 243, and then over on 249, question 249, halfway through that answer "would you like a copy of my press statement which I did put out." 20

CORONER: But I'm particularly wondering where the assertion is that constable Upston--

CALLAGHAN: And then the fifth statement at page 10. I can't quite at the moment give you that reference to constable Upton and I more have in mind the press statement references generally when I gave it to-- 25

CORONER: Of course, well I'm obviously interested in this business about constable Upston. 30

Q. Where do you assert Mr Kothe that constable Upston--
A. It's a little - it's a little comment in there. I've got to find that little comment where it says - refers to Dave, because I was talking to Dave Upston at the time. 35

Q. I know you were talking to him. You've talked to him a lot about it.
A. Yeah. 40

Q. You've made an assertion that he was suggesting--
A. Yeah, I mean I--

Q. --you try to sort out the business between yourself and the Margaret Rintoul.
A. I have referred to it in this document. 45

Q. I'd like to see it.
A. Yes, okay mate. 50

Q. Because on my reading of it I can't see anything of the sort.
A. I've read it again a couple of days ago. 55

CORONER: Perhaps Mr Callaghan you might be able to point me to it, or you may not, I don't know.

HILL: Is that the press statement?

CALLAGHAN: Yeah, I think it is. It's my only copy at the moment.

HILL: Perhaps Mr Kothe could look for that particular point later, Mr Coroner. 5

CORONER: Yes, all right. I'll leave that for the time being. 10

HILL: Q. The press statement.

A. Did I get the press statement in all that?

Q. I'm sorry? 15

A. Did I get the press statement in all that? I've got--

Q. You've got it?

A. I have it, yes. 20

Q. It says "we have recently been advised that the civilian fixed wing aircraft from Merimbula which pinpointed our position was responding to a radio report from Margaret Rintoul II." Who told you that?

A. Richard Purcell on the phone. 25

Q. "We have been advised that Margaret Rintoul II had managed to relay our position to the CYC's radio relay vessel." Who advised you of that?

A. Richard Purcell on the phone. 30

Q. "After our position was verified we were overflown by a naval helicopter and within eight hours all the surviving crew were winched from the stricken Sword of Orion."

A. Yes. 35

Q. That was your own knowledge?

A. Of course.

Q. "The crew of the Sword of Orion and their families are grateful for the assistance of Richard Purcell and the crew of Margaret Rintoul II and the Australian Navy helicopter crew who so bravely plucked us from the ocean, all the men and women of the various arms of the Australian rescue services who helped in our recovery." What precisely were you grateful for from the crew of the Sword of Orion - sorry, the Margaret Rintoul? 40

A. Richard Purcell told me, and it appears to be a fact now, but he advised me at that time that they had been responsible for the radio message, which I certainly didn't know at that time. 45

Q. When you say it seems to be a fact at this time, what radio message? 50

A. Well the fact that Margaret Rintoul did in fact radio a flare position through and the subsequent results of that. At that stage, prior to that, we had no knowledge on that matter, so it was a reasonable thing to say. If this - and 55

what I said is I was advised, so I didn't know it to be a fact but it's what I was advised, and I was only advised by Richard Purcell, but in - on the basis of that advice I felt it was a reasonable response.

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Q. Before that you say "because of the up and coming Coronial inquiry I had limited my comments."

A. Yes.

Q. What was it that suddenly made you unlimit your comments?

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A. A series of requests to try and stop the perceived bickering.

Q. Why?

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A. You'd have to ask the people who made the requests of me.

CORONER: Oh we shall.

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A. I mean their suggestions were it was damaging for everybody.

HILL: Q. Damaging in what way?

A. It was public, it was - well whatever. I mean David Upston rang me at the office and - on this specific subject.

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CALLAGHAN: I wonder if I could just interrupt. This questioning around the area may not be of as much assistance to this inquiry at the moment without reference to the answer to question 19 in the last record of interview, which really covers the area extensively and with some detail.

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A. Sorry, where is it?

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Q. The answer to question 19 in your last record of interview, number 5 of--

A. The third of the eleventh?

Q. Correct. Question number 19, not page number 19.

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CORONER: Thanks for that, Mr Callaghan.

A. Yes, that's the reference to Dave.

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HILL: Listen to the questions.

CORONER: Go on, Mr Hill.

HILL: I think I'm going to have to take him through this.

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Q. Mr Kothe, you say "so the circumstances, the background to the whole Margaret Rintoul thing, was confusing and it was a fairly emotional thing, and I certainly made no official complaint to the CYC and no request that they take any action. I discovered that they had in fact been discussing with their lawyers their legal position in terms of naming or sending it to a committee." You knew that?

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A. I was told that.

Q. Who told you that?

A. A director of the CYC.

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Q. Which director?

A. Roger Hickman.

Q. They were trying to find out what they should do but I was certainly asked could I make a statement which would make the whole thing go away." Who asked you to make a statement to make the whole thing go away?

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A. Hugo Van Kretschmar.

Q. Was he with anyone else?

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A. Yes, with - the first approach was made by Han Sommer. He said Hugo wanted to speak to me about it.

Q. This is the reference to constable Upston and I - you know Dave, that's constable Upston is it?

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A. Mm.

Q. You suggested also that it was not a nice thing and you'd like it not to be happening too.

A. Yes.

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Q. What was not a nice thing?

A. The conflict I imagine, the conflict, the public conflict.

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Q. Wasn't that about the public fighting in the newspapers?

A. David on the phone rang me specifically to ask was there any way I could talk to Richard Purcell on this subject.

Q. And you say "I had spoken to Richard, that's why the dialogue with Richard started. I haven't actually stopped and had a beer with him. All these things have been on the phone but the advice I had from my lawyers is I couldn't make a statement about what happened on the other boat."

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Well you'd been threatened with defamation have you?

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A. No.

Q. "When I did finally make a statement in July to the press which I'll give you a copy of, it was a heavily qualified statement which is I have been advised certain things happened, and if that is the fact the case then I thank Richard Purcell and his crew for what they did do. I was advised by Richard Purcell they had in fact told the rescue authorities of our situation and therefore that's why they came." What do you mean you had been advised by Richard Purcell that he had told the rescue authorities of your situation?

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A. I was referring to the signal, the radio call they made to the Telstra Control.

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Q. Well did you actually know what the words were?

A. No, no, of course not.

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Q. And you then go on and say "I have no idea whether that's true or not, so my statement is qualified because it effectively says I've been advised I don't know, and I only made that statement because I thought that Richard Purcell was certainly being given a hard time by the press and I had no knowledge of whether it was true or not. That statement, although it was heavily qualified, had the effect of defusing the situation." So the intention was to defuse the situation, is that it? 5

A. I was requested by a range of people, the CYC and David Upston, could I do anything to reduce the public conflict. 10

Q. Are you suggesting that David Upston is asking you to make a statement?

A. No, he didn't ask me to make a statement. He rang me up and asked me was there anything I could do, could I talk to him? He certainly didn't suggest making a statement. 15

Q. To do what?

A. To talk to Richard Purcell. 20

Q. Yes, but to talk to him about what? What was the intention that you had or thought you got from that conversation?

A. I was just looking to see if there was - if I'd actually used the words there. The sense of it was that it was public bickering or it was - yes, public bickering, public conflict, and could I do anything to reduce it. 25

CORONER: Q. What, he suggested it was making his job harder or-- 30

A. He didn't say anything. I was surprised by the phone conversation and he later said, seeing this has come out, I probably shouldn't have said that. He said that on the day of the interview. 35

HILL: Q. What, he said to you--

A. That I - you know, about the phone request.

Q. Well where's that in the interview? 40

A. It's not in there but I'm sure he can, you know--

Q. He will.

A. I'm sure he could on the stand make some comment on that too. I mean, you know. 45

Q. Let's go on. "But I hadn't even been able to make that statement earlier because, you know, it was only by really putting pressure on the insurance company and the lawyers that I had to say something, and so it was agreed that I'd make a statement which was factual." What was the pressure being put on the insurance company? 50

A. The - people were telling me I mustn't say anything which I didn't know was factual at any stage of course. That was the advice I had. And they plainly didn't want me to say anything because they felt I had nothing to say that could shed the light on what happened on someone else's boat. But I said look, there really is a lot of pressure to 55

try and defuse the situation.

Q. Well look at that sentence. "It was only by really putting pressure on the insurance company and the lawyers that I had to say something." Why did you have to say something? 5

A. Well I guess I probably didn't have to say something, but I certainly personally felt that - and have through this, that it's very hard to know what happened on someone else's boat, and I felt that there was a lot of judgmental stuff that was coming out that ultimately needed to be tested in some sort of forum, but I didn't think it was fair for there just to be media debate and media conversation on it, and I felt that I could say something which would defuse it and I had been asked to do so. 10 15

Q. And it goes on "and so it was agreed that I'd make a statement which was factual, which was that I didn't really know anything but I'd been advised certain things." So it was agreed. Agreed by who? 20

A. Myself and my solicitor.

Q. Yourself and your solicitor?

A. Yes. 25

Q. But you didn't have to make any statement, did you?

A. No, I didn't have to make a statement.

Q. So the purpose of this statement was to what?

A. Well I guess the impression that was being suggested is that Kothe was driving - and it's been - it was made numbers of times - that Kothe was driving the issue in relation to Margaret Rintoul. And I certainly wasn't and I wanted to make that plain, because I was getting a lot of media criticism about driving - you know, there was constant references in the media to the fact that Kothe was in conflict with Purcell, and it was not true. 30 35

Q. Well you knew that this matter had been brought before a committee of the CYCA? 40

A. Yes. Very late in the piece, I knew it was going to be.

Q. You knew that this inquest would inquire into the facts of that situation?

A. Yes. But I also knew that I was being publicly blamed for the conflict, and it just wasn't true. 45

Q. Who was blaming you for that?

A. Media. 50

Q. Yes, but they don't usually come out and say the Sydney Morning Herald blames Kothe.

CORONER: Exactly. 55

HILL: Q. They usually have some sort of source.

CORONER: Q. You're saying that the beat-up, the

implication in that?

A. Yeah.

CORONER: I think that's what he's trying to say.

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HILL: Q. Is that what you say?

A. Mm.

Q. It goes on "so that's the circumstance, but certainly as the matter of the discussion or interview with Peter Bush had with me and my crew, he certainly did say that, you know, Richard Purcell would be nailed, but having checked with the other guys present they say that he put a qualification which made it reasonable and proper, and I have agreed with that." -

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A. And I had to agree with that.

Q. And I have to agree with that, as a qualification on what Mr Bush has said?

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CORONER: About nailing Purcell.

A. Yes. He didn't use those words, it was a paraphrase, but yes, and I checked with my - the other guys who were present and they said that he qualified it quite substantially.

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HILL: Q. What did he say?

A. I've referred to it there. Along the lines - it was along the lines if in due process and when the evidence comes out - I'm paraphrasing - and that, you know--

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CORONER: Q. If Purcell had a answer well that would be reflected, is that what you're saying?

A. Yeah.

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HILL: Q. That was it?

A. Yes.

Q. You've told us that the problem with the mast, that you - going down the coast on the 26th, that's Boxing Day, you kept an eye on it and by 4pm you said you had decided that there was nothing wrong. Is that right?

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A. I said about 4pm I think.

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Q. About 4pm there was nothing wrong?

A. Yeah, yeah.

Q. Are you sure about that?

A. No. The timing - the only - the timing I would have taken, and that's what happens in this circumstance, you don't log things, you think of timing in relation to another thing. I - it would have been after - you know, some little time after the weather report, after I sent that - obviously after I sent the e-mail, and I would have thought it was around 4pm.

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Q. After you sent the e-mail? When did you send the e-

mail, do you know?

A. I don't have a copy of it. I'm sure it's - the information would be available.

Q. Perhaps if you would look at this copy of the e-mail. 5

HILL: I think everyone's got a copy and there's one for you, Mr Coroner.

Q. Is that the e-mail? 10

A. It appears - yes.

Q. That's Saturday 26 December 1998, 4.23?

A. Yeah. 15

Q. The last paragraph of that--

CALLAGHAN: So that's the time when it was sent. Not from Sword of Orion, 4.23. 20

A. That's the time it's come from INMA Satsea. There is some delay I understand in INMA Satsea. I don't know what time it was sent from the boat.

HILL: Q. Well how much delay do you say? 25

A. It goes to Perth, it's quite a convoluted thing. It can be 15, 20 minutes.

CORONER: Okay, so some time before--

A. Some - it was obviously before that. 30

HILL: Q. Yes, it generally is before that. I'm trying to work out what time before.

A. I don't know, I don't - you know, you'd need it from the other end to know the exact time and - so I can't give you that. 35

Q. Well look at the last paragraph. "Of major concern however is the damage sustained by the mast. There is a compression crease about two metres above the deck." 40

A. Yes.

Q. Didn't you tell us yesterday that by 4 o'clock you'd decided that what this was a rubbing mark?

A. I think what I said - I mean yes, I did say 4 o'clock but I think I also said it was after the - I'm sure I said it was after the sending the e-mail. I mean we sent the e-mail and then later on we discovered that it wasn't. Logged records of things that happened on the boat were on the boat, but I haven't got them. 50

Q. What I want to know is, is this a serious document or was this purely for the purposes of the protest?

A. It was primarily for the purpose of the protest which you do - and it's an overstatement, and I explained that yesterday, but you do need to record the fact that there's been a collision. 55

Q. I understand that you would record the fact that there's been a collision, but are you saying that - and you inflate your damage and that assists you somehow or what?

A. No, there was - at the time I sent that e-mail there was still as far as I was concerned a real possibility that we would discover in the next couple of hours we would have to retire from the race. 5

Q. The wording is fairly clear. There is a compression crease. 10

A. Yes. I genuinely believed there was a compression crease at that time.

Q. So that was your genuine belief, that it was a compression crease in the mast? 15

A. Yes.

Q. When did that go away, that thought that it wasn't a compression crease? 20

A. As we went down the coast, as we gybed, as we put the mast - as we decided to do, we put the mast under severe tonnage, we didn't need to wait for the breeze to do it. We put the runners on very hard and we can pull 36 tonnes, and we bent the mast, deflected the mast, and it didn't deflect in any abnormal way, and that was the test we-- 25

Q. Well who took part in that test?

A. I did. I - I'm the person who puts the runners on and I did it in conjunction with the other guys. 30

Q. When you say in conjunction with the other guys, what other guys?

A. Well I can't do it without the co-operation of the people on the boat. 35

Q. Was Senogles there?

A. Um--

Q. Was Watson there?

A. Yes. 40

Q. Was Kulmar there?

A. Yes.

Q. This would have been a fairly serious undertaking? 45

A. No, it takes about 60 seconds. You wind on the runners, someone goes, stands by the mast, no mast bent, it's okay.

Q. What happens if the mast bends?

A. If the mast bends then we were, you know, well able to retire. It's something you can control. 50

Q. The point I'm making is no one else has mentioned this test in their evidence.

A. I didn't mention it in my evidence. 55

Q. No. Senogles just said he kept an eye on it. He doesn't mention any tests.

A. It wasn't a - it wasn't a difficult thing to do but it has the desired effect.

HILL: I've nothing further, thank you.

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CORONER: Did you have anything?

CALLAGHAN: Q. Just on that, that's part of the gybing process is it not?

A. In a gybe, yes, you do do it.

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Q. You've got an evolution going on which is the gybe and in the course of that you pull it on?

A. You pull them on and ease them off, yeah.

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Q. Just one other thing. You were asked about the use of an engine during the race and your attention has been drawn to the sailing instructions. Overriding matters of safety though would be a factor to be taken into account subsequently as to how these rules should be applied. Would you do that?

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A. I'm quite offended by the allegation.

Q. Yes. Would it surprise you to hear that there's certainly one boat that finished the race that used its motor to stabilise the boat when they were undergoing dangerous sail changes during a cyclone?

A. My understanding is that--

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Q. Do you know anything about that?

A. No, I don't. I don't. My understanding is that you can make a declaration but people in the last Hobart made declarations and in other Hobarts have made declarations about what they did which was outside the sailing instructions. That then goes to the protest committee and the protest committee decides whether that's reasonable or unreasonable and we certainly had no suggestion or no intention of in any way cheating or doing anything like that.

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Q. In any event the CJC could assist on the application of those rules in the circumstances then prevailing?

A. Certainly, yes.

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HARRIS: Your Worship, could I just raise one issue? I'm not sure it's an issue but I'll be very quick.

CORONER: Yes.

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HARRIS: Q. Mr Kothe, you didn't think that the approaches by Mr Van Kretschmar were in any way improper, did you?

A. No, no.

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Q. It was an attempt to fix a club squabble, not an attempt to hide something from anyone?

A. Yes, I mean there were a number of attempts, but certainly I didn't feel it was improper in any way, shape or form. And as I say, it was coming at me from a number of places.

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CORONER: Yes, yes, I want to be sure of that at the end of the day, you see.

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WITNESS: I imagine you do.

CORONER: I do.

CALLAGHAN: I suppose I should raise this one matter. An unfortunate word was used, if I might say, at the beginning of the examination this morning.

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CORONER: He did withdraw it, he did rephrase.

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CALLAGHAN: If it was withdrawn - if I can proceed on the basis that any assertion of collusion is withdrawn I won't ask the question.

CORONER: Well certainly Mr Hill withdrew that question and rephrased it without that innuendo or nuance, if you like.

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CALLAGHAN: It is unfortunate, your Worship, particularly in

public inquiries like this, where from the bar table phrases or words are used which are denied--

CORONER: I know, and I don't want - there's no problem with that. Mr Hill deliberately reworded the question. At the end of the day, of course, I've got to look at everything and I propose to do so and if there's absolutely no weight to the proposition Mr Harris was just examining on, well that's that

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CALLAGHAN: Thank you, your Worship.

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HUNT: Your Worship, I just wonder--

CORONER: I thought you two didn't have any more questions, that's why I allowed Mr Callaghan to go. All right, what do you want to ask?

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HUNT: Just particularly I think matters arising today which obviously affect my client.

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Q. Mr Kothe, just in relation to that issue first on - all on the engine, did you give the instruction on the Sword of Orion for the engine to be turned on?

A. I gave the instruction to turn the engine on.

25

Q. Right.

A. To have it ready. The driver, Glyn Charles, had his hands full in those circumstances. Normally when you have a - in in-shore waters the driver would be also operating the motor control level but in a heavy seaway you wouldn't dream of that so Darren Senogles was sitting next to the driver on the port side--

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Q. Yes, I think you actually gave that evidence later.

A. That's right.

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Q. I just wanted to make it clear that you were the person that actually gave the instruction ..(not transcribable)..

A. I gave the instruction and I was the person who was deafened by the noise below.

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Q. Right, okay, and have you ever discussed this situation with the engine on the Sword of Orion with Richard Purcell?

A. Absolutely not.

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Q. No, I thought not. Yesterday in your evidence, I think right at the end of your evidence, in relation to the situation on Margaret Rintoul II where it's now known that they didn't have an engine, you made a comment that they shouldn't have been out there in those conditions without an engine. Do you remember that comment?

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A. Yes, I do.

Q. And am I right in presuming that what you meant by that was because it was just too dangerous in those circumstances?

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A. Well it is - now in the 1999 Hobart it was a matter of disqualification to enter Bass Strait with no mast.

Q. Right.

A. So there is a body of yachting opinion that feels it's an unsafe thing to do and you shouldn't be there without a mast on.

Q. Okay. Now if I could also just take you to a couple of other matters that have been raised here this morning, and perhaps this might assist the Coroner, that those conversations that you had with Mr Hugo Van Kretschmar and Mr Sommer that you've referred to in that statement in your evidence here today, did they take place in May prior to the publication of the CYCA report?

A. Yes. I discovered approximately one week before that the CYC had been having long and detailed discussions internally and seeking advice and I discovered about a week before that that they were in fact planning to have mention of the Margaret Rintoul incident in that report and I was unaware of that until that time.

Q. And it was at that time that there was a request made of you--

A. Yes.

Q. --to contact Mr Purcell. Is that correct?

A. Yes.

Q. And you had a conversation with him in May.

A. Yes.

Q. The latter half of May?

A. Yes.

Q. And were you aware at that time that a misconduct charge was being brought by the CYC?

A. No, I was not.

Q. Had you ever requested that such a charge be brought?

A. No, I had not.

Q. And then if I could just come forward then to the press release, the copy of which you've been shown this morning. Am I right in thinking that that was issued in the beginning of June following the press publicity that occurred after the publication of the CYCA report?

A. That's correct.

Q. So it was in response to that?

A. There was certainly a lot of media beat up and a lot of, you know, conversation.

Q. And did you have any conversations with Richard Purcell between the date of the publication of the CYC report on 1 June and 11 June when you issued that press statement?

A. I don't believe so, but I can't be absolutely sure.

Q. Okay, but you can't recall any conversation?

A. I can't recall. I certainly had conversations with the CYC.

Q. If it would assist I have no knowledge that there was any conversation during that period.

A. No.

Q. But I do believe you actually had a conversation with Richard Purcell later in '99 and in fact it's the conversation that's referred to in this record of interview that you gave on the third of the 11th that - which has been referred to here this morning.

A. Yes, I made a statement on that, yes.

Q. And who initiated that telephone call?

A. I can't remember. It was a phone call from Richard to me I believe from his solicitor's office.

Q. And during that telephone conversation did you say to Richard Purcell that - did you refer to the interview that you'd given to Mr Bush as part of his - the review process that you, I think, Carl Watson and Darren Senogles had given?

A. Yes.

Q. And did you say to Richard Purcell that during that interview you - at the stage when you were discussing the pyrotechnics and how you'd found them that you actually talked in reference to the boat that had gone past you and that then Mr Bush said words to this effect to you, "Between us and these four walls we're going to nail Margaret Rintoul II. We know what he did. Can't say too much"?

A. Yes, that what's I said, that.

Q. And that's what you were relaying to Richard Purcell during that telephone conversation?

A. Yes. I later discovered there was need for - there had been qualifications.

Q. I'll come to that in a moment but that was what you were actually saying in this conversation--

A. That's correct.

Q. --which I think was about 12 October or thereabouts. Would that be correct?

A. It was certainly, you know, a bit--

Q. Before that?

A. Before this.

Q. Okay. And did you also, during that telephone--

CORONER: Really, is it helping me? They deserve each other, don't they?

HUNT: Well it was raised and there were - unfortunately that word "collusion" was talked about.

CORONER: Yes, and it was withdrawn.

HUNT: Okay.

CORONER: It's not in the evidence.

CALLAGHAN: The important word now is "qualification".

HUNT: Yes, okay, well perhaps if I could go to the qualification. 5

Q. In your record of interview on the 11th we go to question 16 which on my copy is p 8 but this might be an earlier print. It's question 16 and just towards the end of your answer to that question - are you able to find that? 10
A. Question 16 on p 8?

Q. Well on my copy it's p 8 anyway. 15
A. Yes.

Q. You actually refer to that qualification down the bottom. "I've recently since then, since the conversation - I better make sure that this is not just my own reality and I better - and so I checked with Carl Watson and Darren Senogles" because they were present with you-- 20
A. Yes.

Q. --when the interview was taking place and they said "I now have a vague recollection of it and, you know, I can't be sure, but they say that he qualified it which was, you know, if the inquiry finds that, you know, finds adversely then they will know him so there was a qualifying thing that made it proper." Now can I just ask you what inquiry are you referring to? 25
A. Well I was referring - the inquest. 30

Q. The inquest?
A. Yes.

CORONER: Q. Not the CYCA internal thing? 35
A. Well I imagined really that it was going - I'd been told by the police that it was a matter for this body.

HUNT: Q. Remembering this conversation with Mr Bush is taking place at the time of your interview which I-- 40
A. Yes. I didn't know there was any other vehicle for discussion other than the inquest, at that time. Or for a way lot later.

Q. And then I think you've already told us that there was no - that you hadn't been pushing for any inquiry into this incident by the CYCA? 45
A. Yes, that's correct.

Q. So you're referring there to the coronial inquiry. 50
A. Well that's the only one I knew of, so yes.

<WITNESS RETIRED AND EXCUSED

SHORT ADJOURNMENT 55

RESUMPTION

<DAVID UPSTON(11.35AM)
SWORN AND EXAMINED

CORONER: Before we go can we mark that e-mail. I don't think that's in, is it? 5

HILL: No, it's not in.

EXHIBIT #27 E-MAIL FROM SWORD OF ORION TO THE CRUISING YACHT CLUB OF AUSTRALIA TENDERED, ADMITTED WITHOUT OBJECTION 10

HILL: Q. Your name, rank and station, if you would?

A. Senior Constable David Upston from the New South Wales Water Police in Sydney. 15

Q. And you are one of the investigating officers on this inquest?

A. That's correct.

Q. And you've been in court whilst Mr Kothe gave his evidence? 20

A. That's correct.

Q. Now you've heard what he said?

A. I did. 25

Q. And what do you say to that?

A. In relation to what Mr Kothe mentioned at the inquest is I in fact did call Mr Kothe as I also called Mr Purcell and as well as calling Detective Senior Constable Grey and also Peter Bush in regards to the amount of media that the two persons being Kothe and Purcell were having at the particular time and in fact when I had a conversation with Detective Senior Constable Gray we both agreed that the information that was going out in the press at the time could hamper our investigation. 30 35

Q. Yes, and what did you tell them to do?

A. I spoke to both Purcell and Kothe and advised them that they should settle the differences and not so far settle the differences but sort out what was going on. And in fact I told Peter Bush that we would also be calling them. 40

CORONER: Q. To give evidence?

A. No, to settle what was going on in the papers. 45

I see, all right.

CALLAGHAN: Q. What Mr Kothe said to you, detective, in the last record of interview, and we went through it this morning, you heard it, was this. "And I, you know Dave, you suggested also that it was not a nice thing and you'd like it not to be happening too." Would you agree that was the thrust of what you were suggesting to Mr Kothe? 50

A. No, no, that's not what I was suggesting to Mr Kothe at all. 55

Q. What, that the dispute was not a nice thing, you were

suggesting that?

A. No, I was suggesting that they settle the differences and not talk to the media.

Q. Yes. Well I'm sorry, we might be at cross-purposes. You were suggesting that they settle their differences and not talk to the media. My understanding, I might be wrong, is that Mr Kothe was talking to you in that record of interview about this press publicity and you would agree that you said something to the effect well it wasn't a nice thing. The press publicity.

A. Well I don't recall saying to Mr Kothe that it's not a nice thing.

Q. Yes.

A. I just advised that they stop talking to the press as we did not want it to hamper our investigation.

Q. Yes, very well, and you left it to them to do what they thought fit to settle it down?

A. That's correct.

Q. And you of course didn't speak to Purcell and to Kothe together?

A. No.

CORONER: Q. You spoke to three of them by telephone?

A. Yes, I spoke to three of them by telephone.

Anything, Mr Harris?

HARRIS: No.

<WITNESS RETIRED

<PAUL GRAHAM LUCKIN(11.40)
SWORN AND EXAMINED

CORONER: Where will I find this?

HILL: Dr Luckin's report is at - perhaps if I just hand you up a spare report it might be easier.

CORONER: Well he's got a copy.

HILL: Q. Have you got a copy, doctor?

A. I have, thank you.

Q. Sir, would you give your full name, please?

A. Paul Graham Luckin.

Q. And your address?

A. I live at Retreat Street, Bridgeman Downs in Brisbane.

Q. And you're a legally-qualified medical practitioner?

A. Correct.

Q. And I think that you have a particular experience in

search and rescue matters, is that correct?

A. I have been involved for 25 years in search and rescue in various forms and in various countries, yes.

Q. Now you made a report, and I think it's a ten page report, on the matters involved in this inquest? 5

A. That is correct.

Q. Well perhaps if I work through that report and I'll take you to p 3 and the first paragraph I want to bring to your attention is paragraph 2.1. At the top there Mr Charles is described by Mr Senogles as being "happy with what was going on and we were quite comfortable and still quite fresh, talking and kidding and joking. Everything was normal." 10

Now from that you draw the implication that Mr Charles was at that stage - had a normal body temperature, was not dehydrated, was fed, active and alert and had no injuries. Would it alter in any way if you were told that in fact he had been seasick all morning and was still seasick when he went up on the wheel? 15 20

A. Marginally in that he would have already been partly dehydrated. He would have lost some fluid. I don't think that he was any more likely to become hypothermic as a result of seasickness preceding that. Whether his judgment was affected or not by a feeling of nausea and motion sickness, that's possible. 25

Q. Okay, you then go on to say in para 3.1, and it's the second sentence, "When the boat was pushed over onto its starboard side he would have remained on the port side supported by the wheel or fallen downwards towards the boom and the water". And then you go on to describe the probable mechanism of injury. I think you say "It seems most probable that Mr Charles either fell directly downwards from the port side towards the boom and water and his fall was arrested by the harness or by hitting the boom or other part of the boat". They in fact are the three things that probably happened. I mean it's one or the other, isn't it? 30

A. I believe so. I think that he may not have fallen as much as been propelled because as the boat was rolling with a 60 kilometre an hour wave behind it there would have been a fair deal of horizontal velocity as well so whether he fell or he was actually catapulted off the vessel I think that the principle is the same and the possibilities of what happened to him largely remain the same. 35

Q. And then you go on in 4.2 "The possibility of being hit by the boom or hit in the boat itself and the fact that a lanyard was broken suggests specific patterns of injuries". And you say "The lanyard was attached to the chest harness and was broken at this point and the forces required to do this and the acceleration or deceleration of the thorax while the rest of the body was in motion make major thoracic and spinal injuries probable, even if Mr Charles was not hit by the boom." Then you go on to describe the type of injuries and we're talking about injuries to the chest and you talk about flail chest as chest and I take it that that is where the ribs have been broken and the portion of the 40 45

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ribs are moving independently, is that--

A. That's correct. It requires that you have a number of ribs broken in at least two places so that as the chest expands on inspiration that section of the chest sucks in so it gives an abnormal movement and the effect is that it's not possible to inflate and deflate your lungs properly.

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Q. You also say that - you go over the page at p 4 and you talk about "the abdomen would have also suffered injuries" and what do you say about that?

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A. I think that a major blow to the abdomen or the scenario of somebody being projected and then arrested by the harness with sufficient force to actually break the stitching on the harness makes it very possible, makes it likely that there would be damage to organs within the abdomen, particularly if there's a rotational component involved so that if for example he is thrown partially sideways and then spun round as the slack on the harness is taken up this makes things like tears in the liver, the spleen, the blood vessels that supply the gut, those I referred to as the mesenteric vessels, and to the aorta in the chest. Those injuries become highly likely in that situation. It's rather analogous to somebody who is in a motor vehicle and catapulted from the vehicle. It's a similar sort of acceleration/deceleration injury that is probable.

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Q. You also point about the spinal column. How would that have occurred?

A. Well because then harness is attached on the chest when the fall is arrested by the harness a body will move in that direction, be arrested. The limbs and particularly the weight of the lower limbs and the abdomen will tend to move backwards and will tend to hyperextend the spine and that makes an injury of the lumbar spine or the thoracic spine quite probable and if that occurs with that kind of velocity and that kind of force involved it is likely that there'd be an injury to the spinal cord as well and that that would cause loss of function and loss of feeling below that level.

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CORONER: Q. Below but not above?

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A. Not above. The other possibility, as I mention a little bit later, is that the same thing could have happened with the neck causing damage to the cervical spine and damage to the spinal cord at the cervical level. That is a likely mechanism of injury but that specific injury is ruled out by Mr Senogles' description of him moving his arms later on.

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Q. Moving his arms, yes.

A. Yes. He would not have been able to do that if he'd had a major cervical spine injury and a cord injury. Could have had a spinal injury but not a spinal cord injury. I'm sorry, he could have had a vertebral, a spine vertebral injury but not a cord injury to cause that.

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HILL: Q. You then also speak about the limbs, that there were possible fractures I take it?

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A. That is most likely to have occurred if he actually struck something solid. That is not so much an

acceleration/deceleration type of injury as an injury that would be sustained by hitting the boat, by hitting the mast, by hitting the boom or being hit by the boom or possibly even hitting the steering wheel. Those are all--

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Q. You then go on at 5.1 to - you take Mr Senogles' statement and then you apply that and you come to a conclusion from that and what is that conclusion?

A. I find Mr Senogles' statement consistent with what I would anticipate as a likely mechanism of injury and likely injuries and his account would fit precisely with the sort of injury that I would expect that may have been sustained and my opinion on the basis of that is that I feel it most probable that Mr Charles did suffer major injuries at the time of the rollover and of the breaking of the lanyard and that he died at or immediately after the last time that he was seen by Mr Senogles. Further, I believe it was not possible for him to survive those injuries under the prevailing circumstances. His chances of surviving those injuries had he been under optimal circumstances, outside a major teaching hospital, would have been small. His chances of surviving the injuries I believe he sustained under those circumstances were essentially nil.

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Q. You then go on to say at 7.2 "Considering the probable mechanism of injury I believe it highly improbable that Mr Charles was left alive and uninjured in the water following the rollover." So what you have is the description of what Mr Senogles saw and the effort to swim and you say that that is indicative that there were injuries and injuries of the type that you've described.

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A. I believe that that statement entirely supports what we would believe to be the most likely mechanism of injuries.

Q. All right, and the probability is that if he was seen to do that that he was injured and would have died shortly afterwards?

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A. Yes, that would be my conclusion.

Q. Now putting that to one side, supposing that by some stroke he in fact did survive uninjured the fall from the vessel, do we then apply what you've said about Mr John Dean?

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A. Yes, I think that that's the case. If he was left floating in the water without a life jacket but uninjured and alive then I think that the discussion for Mr Dean with respect to drowning and hypothermia would be relevant.

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Q. But you're still of the opinion that the probabilities are that he was injured during the rollover?

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A. Correct. I'm firmly of the opinion that he was very severely injured at that time, that his survival was basically impossible and that he died immediately following or the last time that he was actually described as being seen on the surface of the water.

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Q. Now if we then go to p 6 we deal with Mr Dean and there at 2.1 you set out Mr Dean was at the raft and immersed for

approximately eight to ten hours until 0230 hours on 28 December and that was when he would have been washed out, we've been told.

A. Mm mm.

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Q. Now at 2.2 you talk about the hydration. What are you actually saying about that?

A. It is he'd had no fluid intake during the time from abandoning the Winston Churchill until the time that he was lost from the raft, or if he had, he'd had very small quantities of fluid from the stores in the raft, nevertheless we are normally very well hydrated. The human body generally has a lot more fluid than we need and even after that period of time I do not think that he would have had any significant degree of dehydration.

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Q. Okay, and the body temperature at that stage?

A. Well what I have done is to compare the information that we have from Mr John Gibson and Mr John Stanley who had been with him in the raft until the time that he was lost and subsequently rescued and made some deductions from their condition. It is not possible to be absolutely precise about the rate at which temperatures of the three people, and by inference Mr Dean's body temperature, would have dropped. There are quite a number of confounding factors, but I feel that what had happened - firstly the temperature drop would not have been uniform over that period of time. It initially would have dropped reasonably slowly. Once body temperature drops to a couple of degrees below the normal range then it would start to drop more rapidly, but nevertheless by the time Mr Gibson and Mr Stanley reach hospital they had temperatures recorded in the hospital as 34.3 and 34.7 degrees. That was after about 30 hours in the water. They had then been winched up to a helicopter and flown back. Now it's quite possible that during the winching from the water to the helicopter, subjected to the very high wind currents below a helicopter, that they may have cooled slightly further. Once in the helicopter out of the water with the doors closed and protected from very high wind velocities, but nevertheless wearing wet clothing and with no effective heating in the rescue helicopters, they probably started to re-warm very slightly. The effect is probably that the temperature they had when they reached hospital would be much what it was when they left the water, so I think it's reasonable to assume that Mr Dean's temperature at the time that he was lost from the raft would have been much what theirs was at the same time and that we can assume he would have cooled at much the same rate that they did.

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Q. So when he was lost from the raft what would his body temperature have been, approximately?

A. I would think that - I would have thought that at the time he was lost from the raft his temperature would have been close to normal, in the area of sort of 36, 36.7 degrees. Within a close range of the normal body temperature at the time that he was lost from the raft.

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Q. Then at p 7 para 3 you point out the likely mechanism of injury following loss from the raft. I think that this is also applicable to Mr Charles if he had not been injured. Is that right?

A. Correct.

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Q. So you talk about dehydration. What do you say about that?

A. I've outlined briefly the possible mechanisms of dehydration. Lack of fluid intake, the possibility of seasickness, and then the possibilities of diarrhoea due to swallowing salt water and fluid loss by evaporation. I don't think that any of those would have been a significant cause of dehydration and I think that it's unlikely that he suffered significant dehydration from fluid intake or evaporation and if seasickness and diarrhoea played a role I still do not think that it was likely that dehydration played a major role.

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Q. And then you deal with hypothermia. Now what do you say about that?

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A. Well from the Royal Australia Navy Sea Surface Temperature Charts I learned that the water temperature was close to 21 degrees and while it's not possible to calculate with absolute precision as I said the rate at which the core temperature would have declined, I think it is reasonable to assume that his temperature would have declined at a rate similar to that of Mr Gibson and Mr Stanley and that he would have had a temperature of about 34.5 degrees by 2300 hours on 28 December and at that type of temperature one would expect to see the early effects of cooling of the brain, cold narcosis such as hallucinations, delusions, periods of memory loss, starting to become fatigued and drowsy, and that's the sort of thing that you see in that temperature range, roughly 34 degrees and thereabouts. Hallucinations often occur at slightly lower temperatures but I think that fits well with the description given.

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Q. And I think you said that it would have then gone down to approximately 33 degrees?

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A. Yes, I think that once his temperature continued to drop by the time you reach a range of 33 down to about 30 degrees that is the typical temperature range during which the majority of people lose consciousness. Some people lose consciousness at above 33 degrees, some remain conscious until 30 or the very high 20s, but that region, 33 degree to about 30 degrees, that temperature range is the type of temperature at which virtually everybody would be rendered unconscious by hypothermia alone.

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Q. And then once you lose consciousness of course the drowning is inevitable?

A. It is inevitable. For a person floating in the water once they lose consciousness and they're unable to keep their head up and as high above the water as possible, then drowning either by immersion of the face in water or by spray hitting the face and being inhaled is inevitable and will happen in a very short period of time.

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Q. And in fact you've described what's called dry drowning or wet drowning and wet drowning is the inhalation of the water.

A. Correct.

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Q. And the dry drowning basically is that once the larynx gets some water on it it just stops you breathing. Is that--

A. Correct. Irritation of the vocal chords by, for example, a few drops of salt water can typically cause laryngospasm. This is what happens when one inhales a drop of water or a crumb while you're eating. The vocal chords go into spasm and it's impossible then to get air in or out.

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Q. Right, and of course if you're unconscious you simply stop breathing?

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A. Correct. What happens is that as you're unable to breath with the laryngospasm you can't get any further oxygen in or out. Within a short period you exhaust the oxygen reserves in the air in the lungs and in the bloodstream. The oxygen concentration in the blood and therefore in the brain drops. As that happens you lose consciousness. Once you become unconscious the situation is irretrievable.

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Q. And in your opinion that's probably what happened to Mr Dean?

A. Under the prevailing circumstances, given the wind and the water conditions, I think that that is highly probable and I think that that is the most likely mechanism of death.

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Q. Basically hypothermia, unconsciousness, and then dry drowning?

A. I think so. I think that hypothermia was a contributory factor, drowning was the absolute mechanism but made more likely by the contributory component of hypothermia.

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Q. And if the situation was that Mr Charles had survived from the fall from the Sword of Orion uninjured that would have been the same mechanism that would have occurred in regards to him?

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A. Yes. I think that if he were left uninjured floating in the water, bearing in mind he didn't have a life jacket on and it was more difficult for him to keep his head up, I believe he would have drowned and the most likely mechanism is dry drowning by laryngospasm.

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CORONER: Q. Have you seen the post-mortem reports in respect of the other two who were lost?

A. No, I haven't. I have not seen their post-mortem reports.

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Where are the post-mortem reports of the other two that were lost from - that were recovered from--

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HILL: I'm sorry?

CORONER: The post-mortem reports for the other two who were

recovered, whose bodies were recovered from the life raft after they--

HILL: Yes, we do have those.

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CORONER: Where would they be? Just in the last paragraph on the drowning section of p 8.

Q. Would you be assisted if you saw those?

A. Probably not, sir. It would allow me to make inferences perhaps as to time.

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Q. Yes?

A. But I don't think it would give me--

Q. I'm going to be left with on or about or between 28th - on either 28th or 29 December, aren't I, probably?

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A. I think you are. I think sooner rather than later.

Q. Yes.

A. I think that during the night, in other words during the six, seven, eight hours immediately following his loss, that I believe is when drowning would have occurred. As I've said I think it possible but not terribly likely that he was alive by daylight the following day.

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Q. The 29th.

A. Correct, and very unlikely that he was alive by later in that day.

Q. All right.

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A. Sooner rather than later, is my estimation.

HILL: I'm just getting those documents now.

CORONER: Just the external examination section might assist your premise.

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HILL: Q. Whilst that's being collected, doctor, if Mr Dean was an asthmatic would that affect your opinion in any way?

A. Yes. Asthmatics have hyperirritable airways and one of the known triggers for asthmatic episodes is aspiration of salt water and if he had aspirated even a small quantity of salt water then he may well have had a very severe asthmatic episode and if he had an asthmatic episode in wind and waves like that then I think that that would have hastened his demise considerably. And if it was a very severe episode--

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CORONER: Q. He may have died of asthma?

A. Sir, I'd say he would have died of drowning but with asthma as a major contributory factor, yes.

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HILL: Q. This is one of the life preservers. Perhaps you might look at those.

CORONER: May as well.

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A. Thank you.

Q. Do you want five minutes to have a look at them, digest them? Would that be convenient? I mean it's very hard to just sit here and read them. You can if you wish.

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A. If I may, if I could.

Q. Okay, you've seen the post mortem reports of Mr Bannister and Mr Lawler have you?

A. Yes sir, after a brief and unfortunately rather superficial examination, a couple of points come out.

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Q. Is there enough there to look at them more closely or not?

A. I suspect not, sir. There is no evidence of the temperatures and the suggestion is that both bodies were cold to the touch and there was post mortem lividity. That suggests the rigor mortis was wearing off. The suggestion of implication from that, assuming the bodies were examined by pathologists reasonably quickly after they were recovered, and I don't know if that's the case, the suggestion--

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Q. ..(not transcribable).. I think. Show me one of them. Dr Defloe carried out - the autopsy was conducted at 8.15 on 30 December, so it's about 24 hours after roughly.

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A. Twenty-four hours after, okay. Well then the gross description of the body would not give any information as to time of death in that those changes would all have been present, regardless of whether the two people concerned had died shortly before recovery or not. Both accounts describe the lungs as being full of pulmonary oedema fluid. Heavy oedematous lungs and the weights of lungs are given and are both quite high, and in one of the accounts there is described as an elevated blood - there is noted to be an elevated blood chloride level. Those are consistent with wet drowning, with aspiration of sea water and passage of chlorine from - of chloride ions from the salt water in the lungs into the blood stream. So those accounts would both fit a superficial examination with wet drowning rather than dry drowning.

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HILL: Q. If I could take you back to your opinion at page 8. Is it still your opinion that it was unlikely, and I'm looking at 4.1, that Mr Dean survived beyond the middle of the day of 28 December?

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A. I think that it is very unlikely that he survived beyond the 28th. I would think that it is probable that he drowned, given the prevailing weather conditions, either during the night after he was lost or very early in that day, but survival beyond the middle of the day is unlikely.

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Q. Doctor, you also questioned the life preservers. That

was a - what you have before you now is a life preserver that was found on a beach in Tasmania but it clearly belongs to the Winston Churchill, it has Winston Churchill on the front, and I think that you had something to say about these.

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A. Well I note that when Mr Dean was lost from the raft, both Mr Stanley and Mr Gibson had their jackets of this type washed off.

CORONER: That's right.

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A. One of them, I think it was Mr Gibson, retained his because it was still attached by the linen tape around his waist. But this type of jacket is extremely easy to lose in those circumstances in that it fits over the - fits over the head and is then secured by a tape around there, and it doesn't require much of a wave or much of a blow to actually lift this, and if you're unfortunate they should come off a lot more easily than that in the water, to wash it right off. A jacket that actually fits more as a vest is a very much more secure type of jacket to wear and is far less likely to come off, particularly if one is in the situation for example of jumping from the side of a boat with one of these. As you hit the boat it's very easy for it to ride up, very easy for the tapes to come undone or snap and for you to lose your life jacket. A vest type that fits around the thorax, fastens at the front, especially if it has a crutch strap fitted, is a very much more secure type of jacket to wear, especially in very extreme weather conditions.

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Q. So that particular life preserver, you would not recommend that?

CORONER: For ocean racing, in the context of the Sydney Hobart yacht race.

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A. I would not. I would recommend a better fitting, more secure type of jacket. I don't consider those adequate for my family to wear in the closed water of Moreton Bay. My family all wear full vest jackets, not jackets of that type.

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Q. In Moreton Bay?

A. Even in Moreton Bay, sir. And if one looks at the jackets worn by for example Water Police and water rescue units around the country, they are not jackets of this type, they are jackets that are more securely fastened to the body and are far less likely to ride up, to break, to become lost.

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Q. So that's for dinghy sailing and things like that, your family, or bigger boats?

A. I have a 20-foot motor boat which we go out into the Bay, but it's still a small boat in relatively confined waters.

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HILL: I've nothing further, thank you.

CORONER: Nothing, Mr Harris?

HARRIS: No, thank you.

CORONER: Doctor, there's no cross-examination, no other examination, but the evidence is very important and it's particularly important that the relatives of both Mr Dean - indeed all of those people who were lost in that way, Mr Charles, Mr Bannister and Mr Lawler, and I thank you for coming down and talking to the inquest. It's very important evidence actually. 5
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<WITNESS RETIRED

CALLAGHAN: Could I be excused? 15

CORONER: Yes. Thanks, Mr Callaghan.

<SWAMIDAS SATHIAKULMA(12.11PM)
SWORN AND EXAMINED 20

HILL: Q. Doctor, would you give your full name to this inquest?

A. My full name is Swamidas Sathiakulma. 25

Q. And your address, sir?

A. Yes, Department of Electrical and Information Engineering at Sydney University.

Q. And your qualifications? 30

A. I am a Doctorate in Electrical Engineering and the area of specialisation is in electronics and control of machines and industrial drive--

Q. You have prepared a 20-page report in this matter? 35

A. That's right.

Q. Basically, as I understand your report, there are two recommendations, and the first is the particular wiring on the yacht. Is that correct? 40

A. That's right, on the wiring to the motor directly without involving any other parts, that's one. The other one is type of battery.

Q. And the other is the type of battery? 45

A. That's right.

Q. You say the type of battery that should be used is a gel battery?

A. That's correct. 50

Q. And it's a sealed battery is it?

A. It's completely sealed, maintenance free.

Q. Why do you say the gel battery is better than the liquid acid battery that's used? 55

A. The liquid acid battery has got different - many problems. One is when it is charging in the use it emits

gases like oxygen and hydrogen, and that is vented through the holes, vent holes in the top of the battery, and when this gas which become about 4 per cent of the atmospheric gas, then it could be explosive. So that's one danger of liquid type battery. The other one is the acid could spill out when the vent hole - through the vent hole because of a jolt. I mean it is tilted, the acid could spill out, and it is corrosive, it could corrode the cables or any other instruments which is nearby, and over and above, some of the lead acid batteries have the - in the grid there is antimony and arsenic, they are the metal which is allied with the grid, and during the reaction the gas which is a toxic gas could be emitted, and this could cause illness when it is inhaled.

Q. You've read the parts in the - of statements, rather, of particular yachtsmen, when their vessel was turned upside down they were actually affected by the acid, the battery?
A. That's right.

Q. So this is what you're saying, that when it turns upside down it creates a gas and--
A. That's quite possible.

Q. --they of course can be made ill?
A. People could feel uncomfortable, they sneeze, and if it is toxic, yes, it would - it could cause illness.

Q. If it is a gel battery, of course that's not likely to happen?
A. That's right. Gel battery is completely sealed and there is no liquid, and the electrolyte is in the gel form which is - which cannot flow through, and also the battery is completely sealed and there is no gas emission because of the type of electrode used in the battery.

Q. More importantly the reality is this, that if the battery is a gel battery and it hasn't lost its contents, it can simply be dried off and used again?
A. Yes, but that would take very long time compared to a liquid type battery where the life is about - the shelf life they call is only three months. When it is not used at all, in three months it could die out. And the--

Q. But I'm--
A. Sorry?

Q. What I'm talking about is this, that if you lose the contents of the battery under water because the vessel tips over, right, and it's flooded, would the gel battery, because that's self-contained, that can be pulled back up, cleaned off?
A. It won't come out at all first of all.

CORONER: It just won't come out.

A. It won't come out.

HILL: Q. But the fact is then it can still be used again, right there and then?

A. That's right.

Q. Whereas if you lose the content of the liquid acid battery, that's it? 5

A. The battery is dead, you can't use it at all unless it is filled again, right.

CORONER: Q. So are you saying that with a gel battery, if the batteries do become immersed in water, they'll keep working in effect? 10

A. Gel battery, yes. As long as - I mean it can't be left there for a long time but for short duration--

Q. No, in the short term? 15

A. Yes, it is - it will--

Q. It will keep working even under water?

A. That's right. 20

Q. Or if the boat's overturned for quite a while, it'll still work?

A. It will still work, say within half an hour from example. 25

HILL: Q. So the point what I want to make is that you would still have a source of battery power with a gel battery to work your radios, for instance?

A. That's right. 30

CORONER: Q. What's the life of a gel battery in normal circumstances of the type that you might consider putting on a, you know, a yacht of the nature, type of boat that went in the Sydney Hobart yacht race? 35

A. When you say life, there's a shelf life and the duration for which you can - it can be used.

Q. Yes, well both.

A. Okay, the shelf life is when the battery is not used at all, if it is lying idle it could last for one year, whereas for the gel - the lead acid battery, ..(not transcribable).. it's only three months. Within three months, if you don't use it the battery could die. 40

Q. So they've a longer shelf life than a lead acid battery? 45

A. That's right.

Q. What about the use life?

A. Use life depends on - as I say, there are two types of battery we have. One is the starter battery, the other one is deep cell battery. The starter battery is used only for starting the machine through a starter motor and that should be charged immediately as the engine starts running, it should be charged again. Whereas the deep cell battery can deliver power for a continuously long time but at a lower current rating compared to the starter battery. Okay, now you said how long it could use - could be used. As long as 50
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it is kept charged it could run longer than lead acid battery.

HILL: Q. The gel battery costs more than the acid, the liquid acid battery, is that right? 5

A. That's correct.

Q. But although it costs more, in fact it costs less in the long run? 10

A. That's correct.

Q. Is that right?

A. That's correct. It can be argued that it is - costs less. 15

CORONER: Q. Be more cost effective?

A. That's right.

HILL: Q. That's right, because they last two or three times longer than - that's the gel battery - than the liquid acid battery? 20

A. That's right.

Q. So that in fact although the initial outlay is more, you do save in the long run because the gel battery lasts longer? 25

A. That's correct.

CORONER: Well they're matters of great interest to yachtsmen and women and they're also of interest to this inquest, so I think they're matters that will be considered by the sailing community in the time to come. Are there any questions, Mr Harris? 30

HARRIS: Only one, your Worship. 35

Q. Dr Kulma, I'm out of my depth once we get beyond an Eveready, so this may be ridiculous, but is there a third form of battery known as a closed cell or is that also a gel? 40

A. A closed cell battery is called a maintenance free battery which is also similar to the gel battery, but whereas the inside electrolyte is still the acid. Only the implement and the electro produces the gassing whereas in the lead, the commercial lead acid battery the gas could evolve, whereas in the enclosed, the maintenance free battery, the evolution of gas is not there at all but it is very less. So that is another type of battery which - the caste of which is intermediate between the gel acid battery - gel battery and the liquid acid battery. 45 50

CORONER: Q. If I could ask, Mr Harris, do you see any drawbacks with the closed cell battery as opposed - what puts the gel battery in your opinion - I think you're saying it's a better option than the closed cell battery, is that right? 55

A. That's correct.

Q. Why is that?

A. The closed battery, though it is closed and sealed, still the electrolyte is liquid. When the battery is broken or - it could spill out.

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Q. So it would depend on a fracture of the actual battery case?

A. That's right.

Q. Otherwise, subject to that, it's much the same benefit as a cell battery?

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A. A liquid type battery, yes.

Q. What about in terms of life?

A. In life, the shelf life is six months, it's better than lead acid, liquid--

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Q. But not as good as the gel?

A. Not as--

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Q. What about a working life?

A. Working life is also intermediate between gel and--

Q. So in your opinion, I'm not trying to put words into your mouth, it's very much the intermediate choice you feel?

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A. That's right, exactly.

HARRIS: Thanks your Worship, that's exactly where I was going.

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CORONER: Q. So it would lose an acid if it fractured would it?

A. If it's fractured, yes.

CORONER: Mr Hill, anything arising?

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HILL: There's nothing arising out of that.

CORONER: Thanks very much Dr Kulma for your evidence. That too is very important evidence.

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<WITNESS RETIRED

HILL: Mr Coroner, there are no further witnesses today. We need some time for administration.

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CORONER: I really have other work I must do. Three weeks I've put it aside.

HILL: We have to prepare for Monday. We have Mr Boyle who will come up, and that's on life rafts, and I should say that we've received a submission from a company in Melbourne that actually markets a self-righting life raft.

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CORONER: We'll have to have a bit of a look at.

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HILL: We're going to have to look at that as well and Mr Boyle will also comment on that on Monday.

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CORONER: I'd like that. I think it's important if we can, if Mr Boyle can possibly look at it, that'll be better than us looking at it I think.

HILL: Certainly.

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ADJOURNED PART HEARD TO MONDAY 3 APRIL 2000

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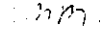

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CERTIFICATION OF TRANSCRIPT

I, We the undersigned being (a) Sound Reporter(s) do hereby certify that the within transcript is a correct transcript of the depositions sound recorded at the New South Wales State Coroner's Court in the matter of the Inquest into the Deaths in the 1998 Sydney to Hobart Yacht Race on Friday 31 March 2000

Part Heard

Dated at Sydney
this fifth day of April 2000

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