

DETECTIVE SENIOR CONSTABLE GRAY

Q1 This is an electronically recorded interview between Detective Senior Constable Stuart Gray and Mr Robert Badenach at the Hobart CIB office on Friday, the 12th of March, 1999. Also present and seated to my left is Senior Constable Dave Upston from the New South Wales Water Police. The time by my watch is now 1.49pm. As we explained to you, Mr Badenach, Senior Constable Upston and myself are making inquiries in relation to the Sydney to Hobart Yacht Race and, in fact, on the 4th of January, 1999, we spoke to you here at the Hobart CIB in relation to your involvement in, in that race. What we're back here today to discuss, to discuss with you is the finer workings of the race committee in relation to the Cruising Yacht Club of Australia, Sydney Hobart Yacht Race. O.K. And previous to this interview, I explained to you a couple of things which we're going to discuss with you. Now, for the purpose of the record, could you please state your full name?

A Full name is Robert John Badenach.

Q2 And your address?

A 34 Red Chapel Avenue, Sandy Bay in Tasmania.

Q3 And your date of birth?

A 22nd of the 2nd, 1944.

Q4 And your occupation?

A I'm a solicitor, solicitor by profession.

Q5 O.K. Now, as I explained to you, we're making some

inquiries into the finer duties and roles of the, of the race committee. I show you a document here which is titled, "The Cruising Yacht Club of Australia, Telstra Sydney to Hobart Yacht Race, 1998, Sailing Instructions". Do you agree with that?

A Yes.

Q6 O.K. And on that document in part 3, it's titled, "Race Committee".

A Yeah.

Q7 And it goes on to state that the race committee consists of Hans Somer, Howard Elliott, yourself, David Boys, Bruce Rowley, Phil Thompson and Mark Robinson.

A Yeah.

Q8 O.K.

A That's correct.

Q9 O.K. Could you just sort of give me a quick background in relation to your role, or the Tasmanian role, in that race committee.

A The Sydney Hobart Yacht Race is basically the Cruising Yacht Club of Australia's event. It's a matter of history that the Royal Yacht Club of Tasmania finished the first race back in 1945, and ever since then we have been looking after the Hobart end of the race. The, as the race has got bigger and sponsors becoming involved, there's been a greater involvement by the Royal Yacht Club of Tasmania in the race and to such an extent that now we, the Cruising Yacht Club regards us as a, as a partner in that, in that race, and we share,

we get a share of the sponsorship money and we get a share of the entry fees. My predecessor, Rowan Johnson, was the race director for 25 years, and during the last few years, particular when I was flag officer of the yacht club, we've become very closely involved with the Cruising Yacht Club, and in fact we've got a very good working relationship with them. And as I cannot say historically when, when members of the Royal Yacht Club became members of the race committee, but certainly I've been a member of the race committee since, for, I was, been two years as race director. I was, I was on the, as commodore and vice-commodore, I have had five, so I've had seven years on that race committee. And I would assume that, well I know Rowan Johnson was on it for many years beforehand, but when we actually started to be a member of that race committee, I can't really tell you that, but I could find that out from historical records at the club. And that's sort of, but our role basically is to look after the, the Hobart end of the race, the finishing and the berthing of the boats. We provide the facilities down at the club for the race control centre and the, the race centre itself, where the plotting's done of the positions of the boats. We've got a radio room down there which is moved once the boats leave Sydney, the whole show swings to Hobart. So that's our involvement from this end. We do go to Sydney. I go to Sydney three times a year. I go to Sydney in early March,

February, for a debriefing of the previous race. Then I go to Sydney in October to the launch where they have the official launch with the sponsor. And then I go to Sydney on Christmas, I'm in Sydney on Christmas Eve for the race briefing, which I then point out to the competitors any little things that they should look for in arriving in Hobart, and we take part in that briefing. The commodore who is on the race committee, says a few words, it's mainly, you know, wishing everybody a safe trip, and looking forward to seeing them in Hobart. That, so far as the actual entries are concerned, they are collected by the Cruising Yacht Club of Australia. We have, we have, we do have entry forms at the club. They're handed out to our members who may wish to enter the race, and they're forwarded up to the Cruising Yacht Club in Sydney. They do give us the courtesy of sending down a copy of the notice of race for us to peruse and have a look at, and similarly with the sailing instructions. So we, so we, we do have an input and, as a result of what's happened in this year's race, we certainly, our radio communications committee and have a fair bit of input into, into, into the radio section in the sailing instructions. So, you know, that's basically, as I said earlier, it's a good working relationship, very close, but that's about it in a nutshell I think.

Q10

O.K. Now, so far as the, as you just mentioned, the entry forms which you have down in Tasmania, you give

to members, they send them to Sydney and they're processed through the Cruising Yacht Club. Are you aware of the process when these forms reach the yacht club?

A No.

Q11 O.K. Have you ever been privy to that knowledge, or would have that information, or -?

A No. It's something that, that I've always left in the hands of, well, Phil Thompson's the race director for the Sydney Hobart race - - -

Q12 M'mm.

A - - - and he, he, he's always looked after that and it's an area that he's a full-time employee of the Cruising Yacht Club. I'm only a, you know, an ordinary volunteer down at this end, so I see that as, that as a fairly time-consuming task and I would, and he and Mark Robinson who's also on that race committee, they are, and Bruce Rowley, they're, they're, they're employees of the Cruising Yacht Club, so they've got the time to, to do it.

Q13 Do you feel, as a member of the committee, no matter how sort of minor, so far as you know the big picture, do you feel if a situation arose that needed discussion, would it be necessary for the whole committee to discuss it?

A Yes. We've had, we've had, we've had occasions over the years probably to get together, but it's basically there, that the committee is such that it, that it's

there at Christmas time when the race is on, and that's probably when, you know, the, the, the most, most, a lot of the decisions on the race are made by the Sailing Committee of the Cruising Yacht Club.

Q14 Mm.

A They, that's really, and we, we're the race committee at the, at, at this end to, you know, deal with, deal with any issues that come up in relation to sailing instructions or any matters that need to be attended to. And all those people on that, on that, on the race committee were, we're sort of, we're in the race control centre at the ..... each year.

Q15 Is it a situation that the committee should meet as a group if there was a problem?

A Yes. Well - - -

Q16 If it was ..... to your attention?

A Yes. Basically. We, we do, we do, we have a, I would communicate possibly, on the average, once a week with the Cruising Yacht Club, during the year. If we've got a problem from our end, with modern communications now, we normally, we normally solve it on the phone.

Q17 Mm.

A And it's vetted, I'm, we've got a Sydney Hobart committee from our club on, I'm chairman of that, and if there's any decision to be made like that, we would vet that. If there's any instant decision to be made, it would be done, done through the commodore or through myself in consultation. And, you know, I would perhaps

ring Phil Thompson or Bruce Rowley and, but most of the issues that seem to arise, you know, they, it's really, the same sort of things is there, they're part of it.

Q18 O.K. Well, I'll take you through a couple of things here. O.K. This is a photocopy of a, of an entry form, application for entry, and for the, well, it's the Business Post Naiad.

A Yeah.

Q19 From the way you understand is that the, the notice, the notice of race is sent to potential - - -

A Participants.

Q20 Yeah. They complete this blue document here, which I show you, which is application for entry in the 1998 Sydney to Hobart.

A Yeah.

Q21 They complete the number of details on that - - -

A Yeah.

Q21 - - - form. They also complete a number of details in relation to declaration of crew experience, and this additional information, yacht's racing history, so on and so on. That then is forwarded back to the Cruising Yacht Club of Australia, in particular the racing committee, who are responsible for the, for the management of these. Certain requirements are then put into place by the committee to check off a number of things which are supposed to come with these forms.

A Mm.

Q22 O.K. And on this form, one is an IMS certificate.

A Yeah.

Q23 ABS which is American Building Shipping approval.

A Mm.

Q24 Photo advertising category, and the fact that they wish to an IMS or PHS.

A Yes.

Q25 O.K. Now, these documents are then filed and some are in the Cruising Yacht Club.

A Mm.

Q26 I would assume in the sailing office - - -

A Yes.

Q26 - - - would be the place that they would be kept. Now, with the Business Post Naiad, I'll just show you this document. This application here. This form which has been sent in buy, we assume, Mr Bruce Guy.

A Yeah.

Q27 And you'll see that there's a tick there for an IMS certificate.

A Yeah.

Q28 And there's also something about a photo and also advertising category B.

A Yeah.

Q29 O.K. Now, this document has arrived at the Cruising Yacht Club with a certificate on it, indicating a limit of positive stability of 102.8.

A Mm.

Q30 And in fact, sorry, sorry. The stability index is 102.8, the calculated limit of positive stability is



104.7, and according to the Australian Yachting Federation, the higher number of the two becomes the number that they use to put into certain categories.

A Yeah. O.K. Yeah.

Q31 Now, you're aware, or are you aware of the, the requirements of category 1 races so far as stability index is concerned?

A Yes, I am.

Q32 O.K. If I show you a document here which is International Measurement System Offshore Racing Council, you'll see here that the rules part 2, limits and exclusions, relates to the race category and the minimum stability index. O.K. And you'll see that category 0 is 120, and I believe that refers to races like the Fastnet and that sort of thing. You have category 1 which is a Hobart, which is 115 degrees, and you have category 2 which is 110 degrees.

A Yeah.

Q33 O.K. Now, there has been a provision entered into the racing instructions and that is a race, in relation to grandfathering.

A Yeah.

Q34 Are you aware of grandfathering?

A Mm.

Q35 O.K. And quite simply in the notice of race which is at 6.1.7, grandfathering relates to yachts that have a stability index greater than 110.

A Right.

Q36 O.K. And that's the minimum that's allowed into the race. And those are in the regulations there. So what I'm saying to you here is, is it this IMS certificate has come into the club with application and, for one reason or another, it hasn't been picked up, that's what I'm saying to you. O.K.

A Mm.

Q37 Now, if you were aware from this side of the race, that that was the case, what would be the action that you would take, or, what action would be taken?

A Well, you'd have to, the, the, the, the, I know it's happened with other boats that have come in without that, sort of, normally it's, they've got a, they've got to go and do another stability test or, or, you know, sort of go and have the boat, boat rechecked.

Q38 Right. Now would you, or would it be the view of the committee to ensure that that was done before that boat raced, from your side of things, if you were a committee member .....

A Yes, yes, most definitely.

Q39 And it would be incumbent upon you as a, as a member of the committee, to tell the owner that, "Look, the boat can't race because it doesn't meet the minimum standards".

A Well, that's, yeah, that's as I understand, it is normal, that's normal, as I said to you, we, I've had no, no direct involvement with this - - -

Q40 No.

A - - - but that's what would normally be told. They'd come in and check things out and if things aren't quite right, they'd, we had a similar situation with a boat down here this year. We had to get, we had to get the designer to, of the boat, to, to fax a letter to the Cruising Yacht Club for that, advising that, what the stability test was on that particular boat, and, and that sort of, that was fine, that was rectified in that way. But that was picked up.

Q41 That was picked up.

A Mm.

Q42 Was that picked up by your committee?

A No, no. It was picked up in Sydney.

Q43 O.K.

A Yes, it was picked up in Sydney.

Q44 O.K.

A Mm.

Q45 Do you know what boat that was, or - - -

A No.

Q45 - - - what race that was?

A Yeah, it was, no, it was the, what's the, it's a boat from the Ballarat Yacht Club. It was a Dunkerson 34, I saw a list of boats, I could tell you which one it is, but - - -

Q46 That's fine.

A But it was a boat, it was a Dunkerson 34 from here and they had to, they got in touch with the designer. I think he, a bloke called Bruce Dunkerson, he lives in

Thailand now. They had to get, get in touch with him. That, that sort of, that, he had, he was told he had a problem about his stability test, and he fixed that by, yeah.

Q47 If I show you a list of the yachts, the competing yachts, would you be able to pick it out?

A Yeah.

Q48 So, you can - - -

A ..... he rang me at the office about this. This is the only reason I know about it, because, and then I referred him to Rowan Johnson and he, in turn, referred him to Phil Thompson, I think.

Q49 Right. The list I show you is the list of competing yachts.

A Yeah.

Q50 Disregard the yellow highlighting.

A Yeah. Yes, I ..... I know the boat anyway. There it is. Maurice Contessi, it was, sorry, Liquid Asset, Liquid Asset.

Q51 Right. Now, would you consider it a, from your point of view, I'm not, I'm not putting you into the situation of the racing committee in Sydney, I'm putting you in your position down here as a committee member. Would, if you came into a situation down here, would you feel it necessary to contact the other half of the committee in Sydney, in a similar situation?

A No. I would regard an entry form like that as being an administrative thing. It's, we've got the similar

thing down at, we've got a sailing manager down at the yacht club. You've come and entered your boat for the summer pennant season. You fill out the entry form.

Q52        Yeah.

A            If there's, if there's a problem with it, and it's basically filling, filling forms out, the, the sailing manager would, would get you to provide that information on the spot, because you have to supply certain information even if you're just going through and check, to see that it's there.

Q53        Yeah.

A            'Cause any problem with it, then, then he would refer it.

Q54        Right.

A            Refer it to a sailing committee or anything, but in this instance I would, the, the office at the Cruising Yacht Club would process those forms.

Q55        So, do you agree that it is necessary to quality control or vet these forms on receiving them?

A            Yeah, most definitely.

Q56        And, I mean, that's just a straightforward standard procedure?

A            Yeah, yeah.

Q57        O.K. Apart from the yacht that you just mentioned, in your seven or eight years on the committee down here, have there been situations where a yacht hasn't complied and a member of your club has spoke to the owner or the skipper of that yacht, and told them they

can't race until such time as they comply? From your experience.

A I can't recall - - -

Q58 Yeah.

A - - - any specific instances, but I know it happens all the time - - -

Q59 Right.

A - - - because fellows are trying to, modifying their boats, trying to make them a little bit, and, and, a little bit faster and more competitive.

Q60 Yeah.

A And, and from time to time there are these little minor hiccoughs with their measurement certificates - - -

Q61 Yeah.

A - - - and they've got to go and get it fixed.

Q62 Yeah. Now, when you become a part of the committee for the Sydney to Hobart, do you nominate yourself down here in, in Tasmania to be on that team, or is it, how does the team change, so to speak?

A Well, I, it's really a shanghai job I suppose.

Q63 Is it?

A Yeah.

Q64 O.K. ....

A I mean, when, what happened, and I got my job out as a result if I said to Raymond Johnson as my last year as commodore, I said, I said, "Who's going to take over from him as race director?". He said, "You are", so that, so, you know, while I'm the race director, I

would always be on that committee and, and it's either been the vice commodore or the commodore of the club

- - -

Q65 Yeah.

A - - - who's been the other member of that race committee.

Q66 Yeah.

A So that, so it's sort, I suppose it's a, it's a, and that's the way I would imagine it will always continue to be. Whoever's race director will be on it, and a flag officer at the club.

Q67 Mm.

A But it's, so in a way, you get elected to it, because you get elected to the position in the first place, but after that, sort of, it's a, it's a, it's a job for life really, till you get sick of it, or, or you do a bad job and they throw you out.

Q68 O.K. Now, we've sort of told you about this information, how do you feel in relation to that information that we've just told you, about this boat?

A .....

Q69 In so far as that boat being allowed to race, getting through? A personal point of view, this is.

A Well, I, I really don't, I really, I don't really think I am in a position to comment on that.

Q70 O.K.

A I'd prefer not to comment on it.

Q71 That's all right.

A You know - - -

Q72 That's fine.

A - - - I just feel that it's one of those things and, you know, I think, I, I, put it this way, I'm, my, I'm not, I'm not, I'm not an expert on the IMS rule, I'm not an expert on, on, I see my role both purely as administrative and, and I, I really don't probably fully understand it and don't profess to, so therefore I think it would be unwise for me to make any comment about it.

Q73 O.K. That's from the technical side of things. How do you, can you comment on the administrative side of things?

A I think it's, well, if that's the case, it's obviously, you know, it's just one of those, it's a, it's a, it's an error that's occurred. But, you know, I, I don't know if you, it's one of those things that's happened.

Q74 Mm.

A That's all I can say, I think.

Q75 O.K. I'll show you a document which you mentioned earlier about the vessel Liquid Asset, and it's a, this document is actually a letter from Morris Contessi, dated the 19th of October, and it reads, "In relation to my boat, Liquid Asset, complying with the stability index of an ORC race category 1 events, this boats have been racing offshore since 1976 and are well known for their seaworthiness. Liquid Asset is a stock standard Duncan 34. Equivalent boats that have been measured



for IMS have been calculated limited, a limit of positive stability figures on a vessel by the name of, spelt S-T-A-R-G-A-Z-A-R, and another, which is, shows an index of 117.7, and Take 5, the vessel Take 5 of 120 decimal 0", and the letter continues, it says, "I am sure there are numerous other examples available to you that fall in the, in the indicated range". Signed, Morris Contessi. I show you that document. Do you agree with the wording of that?

A Yeah.

Q76 I show you the document, the notice of race 1998, Sydney to Hobart, section 615 for PHS category yachts, going to 616C, and it reads, "Other information which clearly demonstrates that the yacht meets the requirements of the rule, race committee will be the sole judge as to the acceptability of such information". Would you agree that that would allow, that letter there would allow for Liquid Asset to comply, even though it has never been measured, although other two vessels have been measured?

A I, I think there was a, I, this, I think, was probably the, the letter, the letter that prompted the, prompted the phone call from, the fellow I was dealing with this with was Mark Aspinall. He, I think he sailed on the boat with, I didn't speak to Morris Contessi, I spoke to Mark Aspinall, and I think that they were having problems with it. I told him to go and see Rowan Johnson out at the yacht club and I think subsequently

Rowan must have spoken to him. He rang Phil Thompson and Phil Thompson said, "If you get, you get the designer to contact me, then that, everything should be O.K", that's as I understand it. But I'm not sure whether that letter came after my conversation or before, but - - -

Q77 Mm.

A - - - I know it was getting right on the death knock for entries because, and I think it might have been after, after that, after that.

Q78 So, in fact, it's possible that the entry date had passed and this vessel, or the conversations took place after the entry date - - -

A Yeah.

Q78 - - - had finalised, and then they accepted the entry after that date?

A No. I think, I think the basis upon which it was done, that the entry had been accepted, accepted subject to those, subject to those requirements. I mean, I think there, there, there are lots of cases I would imagine where the paperwork isn't quite in order. The main thing is to say, right, we've got your entry fee, we acknowledge, but you've got, you've got, you've got to - - -

Q79 Yeah.

A - - - comply with this, and I think that was the case here with Liquid Asset.

Q80 And keeping in mind what you mentioned to us earlier

about your limited knowledge on the IMS and CHS stability ratings, would you say, would you be, think it fair to say that just because two other boats of similar design fit those limited stability indexes, that another vessel, not being measured, would have the same rating as those?

A Well - - -

Q81 And then be allowed to race?

A Well, I think, think, the, the Dunkerson 34 is a well known, is a well known boat, there's a lot of them around in Australia, and, and they're all, they're all the same. They were a stock-built design and I think you, you could assume that that, that that information would be correct.

Q82 But would it be fair to say that lead ballast can be taken out, added, the vessel could be altered, the mast could be altered, over a number of years or a period of time, and then still not comply with those. Purely hypothetical, but is it possible?

A Yes, anything's possible, yeah. But I, as I said, I, I think, and I'm, I'm pretty sure that, that they're, they're a very old, they're an old conventional design boat, very old, and I think that the mast, the, there would be great difficulty, you'd have, you'd have to remove the whole keel and all sorts of things like that to, to take any, to take any weight out of it. I mean, it's all, it's all, as I understand with them there, it's at, the keel's the integral, it's the integral

part of the boat, not like some of the boats where they, you know, you could put, where they have, they have added lead ballast in the bottom. I think these are sort of, the keel is just part of the fabric of the boat.

Q83 But, but not knowing that, the structure or the general arrangements of the ballast, taking away from that and let's look at then perhaps a new mast, or perhaps top sail spinnakers and any other alteration, a lighter mast, a heavier mast, all these things can happen to a boat. They might put something inside the vessel, new stove for example, or perhaps other weights that could happen over a period of time.

A Mm.

Q84 And it's not necessary to inform any race committee on those changes or alterations, thus having a difference in the, in the same boat - - -

A Mm.

Q84 - - - but different stability indexes. And it looks as though there's, within those two vessels alone, there's a, there's a vast difference between 120 degrees and 117 degrees as it stands.

A Mm.

Q85 So it would be wrong for us to assume that because those boats have those stabilities, Liquid Asset has the same, based on what those boats say they have?

A Well, I think with a Dunkerson 34 you could assume, you could assume - - -

Q86           You could assume.

A             Yeah.

Q87           Yeah, but without knowing anything of the modifications  
              that had been done, you couldn't say - - -

A             I mean - - -

Q87           - - - .....

A             A lot of things with these, I mean, a lot of these  
              things with the, with the, you'd expect it to, to, when  
              you fill out an entry form, you put information in  
              there, you, you know, you, you declare that it's - - -

Q88           That's right.

A             You know, I mean, it's, you, there's really not much to  
              be achieved in yachting by cheating.

Q89           Yeah.

A             You get caught. So, you know, I mean, you, you would  
              assume that what the, what the owner's put in his, in  
              his entry form is, is, is correct, I mean.

Q90           Do you, do you, on a personal note, do you agree with  
              the PHS rating and grandfathering effect on, on, on the  
              category - - -

A             Well - - -

Q90           - - - ..... race - - -

A             - - - I think - - -

Q90           - - - category 1 race?

A             I think you've got to have, you've got to have these  
              grandfathering clauses in because otherwise, you know,  
              it limits the, limits the number of, a number of boats  
              that you can only get and it sort of, you know, I just

think you've got to have some provision like that  
.....

Q91 Mm.

A 'Cause that's the trouble with the, you know, the trouble with yacht designs, they've sort of radically changed so much year after year.

Q92 Mm. Do you think, though, that in some instances, the stability of vessels can be radically altered to try and make the vessel a little bit more competitive, and, and affect the safety and seaworthiness of the boat, just to fit into a PHS clause?

A Well, I suppose, I suppose they, some try and do it, some that are, some that are, you know, mad keen to sort of, to do really well, I suppose, but you know, I, I think that if you start fiddling with things like that, you're better off buying a new, buying another boat.

Q93 But what I'm saying, there's really no way of checking the seaworthiness of the vessel apart from what the owner's saying how well it does, all on past history.

A Well, that's basically it, because I think if you, if you had to go, if you entered, remeasured every boat, you've got 115 of them this year, and there's a, there's a, a fee that the owners have to pay to get their boats measured and, you know, that's, and it's, and it, it takes, to do, John Honeyset does, does the IMS measuring down here and it takes him, it takes him virtually a full day to measure the boat. Then you've

got to go and do all the calculations and it's a fairly expensive sort of little operation for an owner to pay for his time. I mean, that, so.

Q94 Yeah. Is John Honeyset the only measurer down here in, in Tasmania?

A I'm not sure on that. But I know certainly he does most IMS measurements down here.

Q95 That's in Hobart?

A Yeah. I don't know whether there's on in Launceston.

Q96 Has this matter in relation to the Business Post Naiad been raised with you since the race? Has any question of instability?

A No. Only, only sort of rumours.

Q97 Right.

A And, no, nothing, no.

Q98 There's been no mention of the committee up in Sydney about it to you?

A No. Today's the first I knew anything about it.

Q99 When you say "rumours", what sort of rumours, I mean?

A Just stories that, you know, that, that, just, you know, I really don't think I ought to comment. I think, you know, it's, it's, it'd be scurrilous I think if I - - -

Q100 O.K. Is there anything else you'd like to say?

A No, that's fine, no, I, no that's, you know, I've just answered -

Q101 Anything else?

SENIOR CONSTABLE UPSTON

No, nothing else.

DETECTIVE SENIOR CONSTABLE GRAY

Q102 O.K. The time is now 2.25pm. This interview is now  
concluded.

INTERVIEW CONCLUDED