DETECTIVE SENIOR CONSTABLE GRAY

Q1 This is an electronically recorded interview between Detective Senior Constable Stuart Gray and Mr Robert Kothe at the Hobart Police Station on Saturday, the 2nd of January, 1999. Also present and seated to my left is Senior Constable Dave Upston from New South Wales Police Water Police. Do you agree that the time on my watch is 3.32?

A Yep.

Q2 O.K. As I've explained to you, Senior Constable Upston and myself are making inquiries in relation to the recent Sydney to Hobart Yacht Race in which there was a major storm and, in the case of your boat, there was a man overboard.

A Yes.

Q3 So what I'm going to do is ask you questions about that, but if I could just first start with getting some details, your full name?

A Robert Maxwell Kothe.

Q4 Your date of birth?

A 16th of the 3rd, 1946.

Q5 And your current address?

A 44 Sloan Street, Summer Hill, Sydney.

Q6 And your occupation?

A Company director, we make marine safety equipment.

Q7 O.K. Now, if I could just, if you could just supply me some details insofar as the boat that you were involved in.

A The boat, Sword of Orion, was a 1993 IMS boat, the relevance of that is related to its stability. It was, it was built in Melbourne by Mal Hart of Hart Marine, it won the first Melbourne to Hobart race. It then was campaigned as Brighton Star and last year it was one of the three boats in the Australian Southern Cross team. It had been to Hobart, my recollection is, four times, this would have been its fifth trip down. Last year it came, it came fifth or sixth, I think. I bought it earlier in 1998, I suppose it must have been in May. We won, we went to Hamilton and Hayman, we won Hayman race with a day to spare. It's a, a good racing yacht, a very sound boat, a slightly older style boat, so it tended to be in, modern terms, over engineered. It had a very heavy section mast. It was much heavier than the modern boats tend to have, which tend to have carbon, and, so it just tended to be a bit heavier than modern boats which, I mean, it was starting to cause some disadvantage in racing terms because nowadays they tend to build them lighter.

Q8 Right.

A Anyway, it was a very sound boat. I had had another boat which just was in the Hobart this last year, a boat called Aurora, which was the same as Business Post Naiad in design. Those sorts of boats are less stable. When they, when they talk about stability it's related to what happens when they roll over. Modern boats such as mine when they roll won't stay naturally with their

keel in the air, they want to right themselves, they're much more self righting. So they're more difficult to roll over and they won't stay the wrong way up, which is obviously a very deadly thing, they tend to snap back up to the upright position. I had a, the crew on the boat had about 100 Hobarts in total. I think I did an addition the other day, about 100 Hobarts between them. I, that was only my second Hobart. I've only been five years in the sport. Before that I was sail planing, which is gliding, which is basically a very similar sport, it's a solo version of the same thing. You're doing it in 3D instead of 2D, but there's a lot of similarities and a lot of things that, that I learnt in sail planing were very relevant to the sail boating, particularly the meteorology, the navigation, the tactics, a lot of it's very similar. So while I'd only been a few years in the sport, I understood it, you know, pretty well.

Q9 Right.

A So I'd assembled a crew of very experienced people. You know, we had one of the more experienced, I mean, you can get to the stage where they're just old - - -

Q10 Yeah.

A - - - you know, and, and they tend to go on old boats and, and, you know, have baked dinners, but we had a racing boat with a very experienced racing crew. So much so that Glyn Charles was, you know, was the sort of people, you know, Olympic silver medallists were the

sorts of people you had on the boat, people who'd done lots of, you know, five, six and seven fastnet races or Admiral's Cup races and, you know, I, I think there was one guy with 16 Hobarts, another one with 14. There's a 28 year old on the boat, who you will need to talk to, who's done 10 Hobarts. So, you know, we had a very experienced crew. My particular role was navigation and, and meteorology and so I was the one who was following the storm and most, most involved in the storm and that's what it's, you know, the whole thing centres around, to be honest, as far as we're concerned, where the storm was, why we made the decisions that relate to the storm.

Q11 O.K. Now, could you give me the length of that boat?

A Boat is 44 feet.

Q12 And what type of rigging?

A Rod rigging, so that's, it's more rigid than wire rigging, lighter. When it fails it, it fails totally, but it had been, it had been dye tested just before the Hobart and, you know, it had survived. During that, during that storm we had very strong winds and it was not showing any signs of any problems.

Q13 O.K. Now, when you say it was checked prior to the race, where was that done?

A At the CYC in Sydney.

Q14 O.K.

A You're required to have for your insurance certificate - - -

Q15 Yeah.

A - - - or for my insurance certificate I was required to have a rig check done - - -

Q16 Right.

A - - - and we had one of the riggers who'd been racing on the boat so they knew it very well and my own bowman, Darren Senogles, every time we raced he would go up the rig, straight after the race, the first thing he'd do is go up the rig and check the rig. So the boat was checked to death, that's sort of, that's a bad expression, but, you know, constantly being checked.

Q17 O.K.

A So, it's that class of boat.

Q18 Now, so far as the rig check, there's also a, a check done with the rest of the boat prior to - - -

A Yeah, the boat had been out of the water on three or four occasions in the previous month, yeah, probably three occasions, because it had been remeasured for its IMS certificates. It's a very competitive area and you're trying to, they're comparing the whole file, of, the, the computer generated file of the boat versus its performance capacity. So the boat had been out of the water at Noakes, it had been out of the water on three, three different places and looked at, you know, from, from top to toe. It had been faired and polished and so on. They had to go over every inch of it, but, but my bowman, Darren Senogles, who was on deck with Glyn Charles, he's a, you know, fanatical young fellow, a

boatbuilder. He built the boat with his father and they did the Melbourne Osaka when he was 18 years old. So he knew that, every inch of that boat and, and we were very happy with, you know, the structural of it at the time, there was no, there was no problem.

Q19 So you satisfied the requirements of the CYCA - - -

A Definitely, yes.

Q19 - - - prior to the race?

A Yes, yes. They actually, on the morning of the race the young, young Mark, I've forgotten his surname, but the, the young fellow from the CY came along and he was, he was, he did a spot check on the boat on safety and he came along and he was hurrying and trying to do a number of boats and I said you'll need that, to do it quickly, you know, Darren here. And so I called Darren on the phone, we got him very quickly. So he was able to do a very thorough check of the boat, you know, to make sure it met all the requirements, it was cat one and, and all those things.

Q20 Right.

A That's the category one safety.

Q21 And in that spot check did he ask to see certain items on the boat?

A Yes, he asked to see flares, he asked to see various bits and pieces. We, because it's a high profile boat, in the week before, during the Telstra Cup they'd done a spot inspection ..... The, the way we ran that boat was that it, it cost a lot of money to run

and there was no possibility of, of us not getting the test and so we were determined down to the last absolute thing. For instance, in the medical kit there's an item which is out of stock at the moment, but I didn't want to have a medical kit which wasn't absolutely perfect, so I managed to find some, they're seasick patches, because I knew that sooner or later we would be checked and because it's a high profile boat people can get knocked out of, you know, well, you know, you haven't got your, dotted your Is and crossed your Ts, so it, it had everything it needed to have on the boat so it was in perfect shape .....

Q22 And as a, as a result of the incident which occurred on the 26th, 27th, you've suffered some injuries?

A Yes.

Q23 Some obvious injuries and you've got a bruising to your left eye, a black eye, so to speak.

A Yep.

Q24 And your left, left leg - - -

A Yep.

Q24 - - - is currently in a, in a brace.

A Yep.

Q25 O.K. So what injuries did you suffer, I mean how did you suffer the injury to the eye?

A I was on nav station during the rollover and most everybody on the boat was either in a bunk or down quite low and I was in the nav station, I was harnessed in, but when the boat rolled, I fell up out of the nav

station and became entangled in the harness and ended up headfirst in with a lot of sails on top of me.

Q26 O.K.

A And that's when I twisted my knee.

Q27 Right. Did anybody else receive any injuries on board?

A Yes. With the injuries that occurred at that particular time. Lots of people had injuries by the time they got in the helicopters. I'm just trying to think who actually got injured at that particular time. I'm not sure that anybody suffered anything major. They did certainly getting into helicopters, they wrecked shoulders, they, I think actually Adam Brown, who was one of the steerers, he got, he suffered a broken shoulderblade, but when that happened I can't be sure. It was quite, it was a very violent roll.

Q28 Yeah. O.K. Now, so far as navigation goes, is that a self taught art, is it, or -?

A No. I've done, I did an original course with one of the sailing schools and then I wasn't entirely happy with the standard of the course I'd done, so I went to the opposing sailing school and did a course with them. I navigated the boat, the Aurora, the boat Aurora to Hobart last year. I had navigated the boat, boats to, from Sydney to Hamilton and back and, and, yeah, but when you're flying you have to do it much more so because when you're in an aircraft and you're flying you've got the chart on your knees and you don't have a lot of time and you have to know exactly where you

are. So you, you get a pretty good sense of, of, you know, spatially where you are and where you are in relation to the whole environment. So I guess I'm, you know, reasonably good .....

Q29 Now, so far as insurance is concerned in relation to the boat, who were you actually insured with?

A Gibson Marine Insurance are the brokers. I can't tell you the name of the insurance company 'cause it just changed.

Q30 O.K.

A It was, but, but, yeah, one of the, it's, it's one of the majors, it's, it's MMI or, or someone, but, but I paid the insurance to the, to the broker.

Q31 Right.

A Yeah, O.K. It was one of the major ones, and certainly the underwriter, not the underwriter, the, what's the guy's name, the, Mike Fallon - - -

Q32 The assessor?

A The assessor. He was acting for a number of the companies. It was one, one of the major regular insurance companies with a marine division.

Q33 Right. Now, so far as we're, well we, we know that your boat was abandoned, but as it stands now we don't know where your boat is, that's correct?

A That's correct.

Q34 O.K.

A Yes.

Q35 Now, could you take us from the 1300 on the 26th and to

the time of the .....?

A Yeah. I'd actually like to go further back than that.

Q36 Certainly, certainly.

A The, the original crew I had assembled for the boat included an oceanographer who, in conjunction with the meteorologist - - -

Q37 Right.

A - - - was doing the, had done for many years the briefings for the pre-Hobart briefings.

Q38 Yep.

A And I had some three days before the race decided that we could get the meteorology briefing before we left and, and we ..... on the way, but particularly the oceanography briefing, they, they traditionally didn't take photos for, for two or three days and so we weren't going to get any more oceanography information while we were on the track. I decided to leave him off the boat even though he'd been, he was the chief instructor of, of one of the major sailing schools and a professional in that area. I put him off the boat and replaced him with Glyn Charles because Glyn had more steering experience and was considered an extremely good sailor, whereas the other guy had oceanography experience which was vital, but wasn't necessary during the race. But we had briefings prior to the race from, from, via a guy called Roger Badham as well as the, the Ken Batt, who's the, the regular guy and we looked at the weather at

which there were two different models of what was going to happen. There was the Australian model which was what the CYC used which indicated that the system would slide away and dissipate and we'd get a softer weather conditions and there was the Manchester University model, which I was following on, on the Internet every day, just, you know, I'd been doing so for a month, which indicated we might get heavier conditions to the, to the 40 to 50 knot range, whereas the other, the, the model that was used in fact in the, in setting up the scoring for the event which was predetermined, they, they, they did a prediction on what the weather would be and they set up a, the scoring for the, for the race boats based on that, was for winds of not much more than 30 knots, average winds, actually, of 18 knots they told me this morning. And so, but we determined there was about a 15 to 20 per cent chance of heavier, of heavier weather and some of the decisions we made during the race were specifically affected by our belief that there was a chance the system would get worse. As we came down the coast they, they issued a storm warning which was only one short of a hurricane warning and so I was aware that we were expecting 40 to 50 knot winds. So we were coming down, we came down the coast in that, we came down very fast running ahead of, of, you know, quite some strong winds. Glyn Charles did a lot of helming at that particular time. So he did a lot of helming down wind, which is perhaps

relevant during, you know, the first evening, you know, in the evening we had, during the evening of the race. When we got further down the coast we were very conservatively set up in terms of sails on the boat. We had reefed ahead of the weather, there was good visibility, we'd, you know, reduced our sail, the amount of sail we had on the boat ahead of the, the weather and I'd, in fact, had a, a disagreement with some of the people, some of the people, well, one guy on the boat who'd done 17 Hobarts, who wanted to have more sail up and I literally stamped my foot and said, "I don't give a fuck, we're going to second reef", and half an hour later, you know, we had a half an hour where we, we were too conservative, but half an hour later there was no way we could have put that second reef, we didn't, wouldn't have had the ability to deal with the storm. So my role on the boat tended to be, as the owner, tended to be to, to basically ride shotgun on any, any decision made on the boat and as the owner tended to be fairly conservative, well, no, tended to be conservative because I've got the responsibility of the lives and, and, and the individuals who were, you know, there to race didn't and they would sometimes say, well, let's do this 'cause it's the fastest, whereas I would say, no, we're going to do that because it's the safest. So we were, we were quite conservatively placed. There was a 2 o'clock sked that afternoon. The conditions had been

getting stronger, we had, the wind was gusting up and I was on the nav station and on the nav station you've got the radios, but you've also got an output on a race boat of every meter of every instrument on the boat. Now, they're not up on deck, there's the output, the, the, the data that I was sitting looking at, wasn't available to anybody on deck necessarily, though they had bits of it, but I had all the data so I knew the angle of heel, I knew the, the wind speed, I had a trace of the wind speed for the last, you know, half hour, of the boat speed of the wind angle, I had all that stuff, so during the sked while I'm waiting for our boat to come up and writing down our position, or writing down the positions of other boats, I was watching all those things. People on deck very often didn't have that information, couldn't see it because of the driving wind or the rain or whatever, so I had all that information. We had in a lull dropped the main completely, so we didn't have a, a mainsail. Now, that's the, what we had done is we had a second reef in, in the main and then we had dropped the main completely, we had lashed it on the port side, it was lashed to a strong point and to the staunch on the, on the port side. So the, the boom ran pretty much the length of the, of the cockpit of the boat, it went back about probably six feet back behind the driver, or, we call the driver, the helmsman, O.K. And so, you know, it, it ran the full length of the boat. It obviously

then went up to the mast so when you got to the cockpit you were under the angle of it, O.K, so if someone sitting at, well, even, you know, standing in the cockpit would be not in any danger of being wiped out by the boom, but in a rollover they'd be safe, but someone back at the driving position, at the wheel if the boom came across and took the wheel out it would take them out. Anyway, so we, we had the boom lashed down. We had a stormsail which is the smallest sail out of about nine headsails, I suppose, so it was the most conservative sail we could have up and we were going, we were going south into a, into an area which looked, visually looked bad, just, just sticking, you know, using the old stick your head out and look at it rule, looked bad. It was clear that, and I've since looked at the, at the charts of the, of the way the, the weather system was, the weather, the low was coming up from, from the Flinders Island type area and we were going down, and we were going down in that direction. During the sked, so it's now 2 o'clock the boats, at this stage we've only got two people on deck, everybody else is in their racks, in their bunks, or doing housekeeping on the boat and I'm on the nav station and we're going south. We're not slamming in the seas because you're, you're, you know, the, the, you've got a, we had an apparent wind angle of about 120 degrees or so, so, we're going along reasonably comfortably, but with minimum number of people on the deck. We'd

had one fellow on the, on the wheel for about three hours and he'd just come off. He wanted just continuity, just in the very, in the very strong conditions. During the sked nobody was, was, at the beginning of the sked they, they gave a weather forecast and the weather forecast was winds strengthening to 40 to 50 knots. Now, we're letter S in the alphabetical list, not a single soul said anything about the weather conditions and we got down to S and at this stage I'd been watching the wind go from 50 to 65 back down to 50, I was watching the band of it 50 to 65 'cause I'd just had the last half hour's trace, all, all ..... sitting in front of me, it was 50 to 65, it went up into the 70s with the 73s, it went up to 78 and it was back down by the time we came to the letter S, this is all within an hour. It was back down to about 65, but I broke the rules and said this is our position, blah, blah, blah, in the usual way, but then I said, "I think I ought to tell you", this is to Telstra control with a relay vessel at the back of the fleet, "I think I ought to tell you that we're experiencing winds much greater than the forecast that we were given at the beginning of the sked", and I said that we'd had wind from 50 to 65 and that it had reached 78. Now, what Telstra control has since told us, a lot of boats pulled the pin at that point. So you could be, there could be many more in here doing this, but we, so we, we announced that. They stopped

the sked, Lou the guy who does it, one of the three guys who went up and got an award this morning, anyway, a very experienced guy. He stopped the sked and broadcast to everybody that we had those wind conditions and people, and said people ought to consider their position. The sked then continued and Yendys, which is just a little bit further down the alphabet and happened to be about seven or eight miles behind us, said, "He's not lying, we're getting the same wind conditions". ..... thanks, that's really nice of him. But anyway, but they said they had the same wind conditions. At the end of the sked the wind started to drop and we were going through plainly what was an eye in the, in the storm, I'm not saying it was the only eye, but - - -

Q39 No.

A - - - but we went through an eye. The wind dropped right away, it went down to 15 knots which when you've been in winds of 75 and 80 was an absolute cake walk. I mean, people wanted to put more sail up and on some of the other boats they did and I said, no way, and I assembled, I stayed, I was on the nav station, it was late in the sked, people were wanting to put more sail up but I was still finishing the sked and I said, no, we're going to maintain our, our, you know, situation because I think we're going to go further into it. Various of the senior crew came down or, you know, came out of their bunks and I explained where I thought the

weather system was, where we were and explained the whole thing to them. But I said if the wind goes back above 65 we're going to, we're going to go home, because I was concerned that we were going to go further into it. There was a, a report that it was 100 knots at Flinders Island. Now whether there was or wasn't, I, I've no idea, but that was a, a report. As soon as the sked finished we heard Team Jaguar trying to get to the relay vessel and couldn't, they couldn't be heard and I started, you know, I could hear them so I said, hey, you know, Team Jag's calling in and I gave their position and Team Jag hadn't been able to be found on the sked. So I gave its position and I worked along with Team Jag. Then there was a Mayday and because we were at the front of the fleet and the Telstra boat was at the back of the fleet, the, and the boats that were in trouble plainly, retrospectively, were all in quite a small radius and we were near them. We could hear, we'd come through this really bad bit so we were just past the, the top part of it, so we were for about probably 45 minutes, I was talking to the, the other boats in the fleet, the, and to Telstra. What happened then, the wind started to come back up, the wind came back up to 65 knots, I said, "We're going home". O.K. Glyn Charles had been on the helm for probably about 15 minutes, so he'd been on the helm previously on the way down the coast in heavy running seas, when you're running ahead of the seas. At this

stage we were in, you know, basically seas coming across the boat and he was, he was on the helm, he was fresh, he'd had a lot, had quite a lot of sleep and he was fresh, he was on the helm. It wasn't nice up on deck or hadn't been nice up on deck and so we turned the boat round, that was no problem, and we started to go back. Having been, coming down the coast the nav station was on the high side and all of a sudden everything in the boat, you know, when you turned around and went the other way, the nav station is on the low side and all the water that was in the boat that had been up on the other side suddenly ended up in the nav station and we started bailing the nav station out because there was so much water that we were hurled over, so much so that we were about to get water up onto the nav station table and up onto the instrumentation. So we'd started bailing that and there was a young fellow, I was sort of bucketing bits, well, sitting in the nav station and there's a young fellow standing down or kneeling next to me taking buckets and we're throwing water out, so we were just bailing the boat at that particular time. Then, then, sort of, we were heeled well over and then we just rolled, it just, the angle just got higher and higher and higher and we just rolled over and we snap rolled, we went over very quickly. There was mayhem inside the boat. Racing boats have the sails not stowed, you know, up the front of the boat or in lockers, they lay

them in the middle of the boat because that's the, the most, the lowest point of the boat and you're trying to get the weight down, you're trying to keep it in the centre of the boat. So there were sails everywhere and sail bags and there was, we'd been for a long time on one tack so things that just sit there fine, when you go the other way come out. There was nothing inside the boat terribly that, that came out, except me and I, two things happened, when the boat rolled the mast, you know, when the, when the, when the mast hit the water it obviously broke. The foot of the mast is wandering around inside the boat and had broken, broken away from its, its footing and was moving around and I had gone flying across the boat. So it broke up into a number of different locations. When the boat uprighted itself and there was a tremendous amount of noise, it did it very quickly, my estimation was five or six seconds. I was holding my breath because I expected the boat to be upside down and full of water and so I was expecting, God help me, to, to have to swim out of there. Now, as it turned out I couldn't have because I was all tangled and they had to cut me out. So the first thing is that they've got me upside down on the boat and they're cutting me out of this stuff. On deck, the, the cabin top, the companionway hatch had, had come off and the, the, when the, when the mast had gone down the, all the lines, control lines in the boat had come, had been locked, everything was locked, but

we had the, what's it called, what's the name of that bloody thing at the back of the boat, the washboard was in. So normally we would have rolled and had very little water inside the boat. But what actually happened, the control lines were coming down, they came through, you know, around in the, the companionway cover, when the mast went all the control lines had to come out, so it ripped the companionway cover off which was, you know, pretty exciting, we had that below and that was sort of all over the place, and we had, we'd had two people on deck, one of them was crouching just near the top of the companionway because we'd just changed direction and what I do with people in that circumstance, I don't give them a course and say we're steering that, because you can be committing suicide doing that. I said, "This is the course I want to steer, now tell me what you're comfortable with". We were just in that period of figuring out what was the right angle to the sea, so Carl had come down to talk to me about it, Darren Senogles was at the top of the companionway listening and, and giving, you know, making comment and Glyn Charles was back on the wheel. O.K. When we rolled, the boom came across the deck, I think it would have been in the second part of the, of the cycle, you know, when we were coming back up, the boom went across the deck and wiped the wheel out. Now, the wheel is made of aluminium tubing about that thick and, you know, to, to take that out, and the guy,

I imagine continued to hold onto the wheel just as you would, I, do people do that in cars? I don't know, but you probably just hang on to what you're hanging onto, you don't sort of suddenly grab for something else, I don't imagine, maybe you do. But anyway, certainly the, the wheel was, disappeared. When, when I, when they disentangled me I stood up, adrenalin kicking in, I didn't know I had anything wrong with my leg. I, I stood up and I could see out the, the, the back and I could see the wheel was mostly gone, the rig was over the side and so there's, there's, and the boom had come across, so the boom had come across the boat. Now, we do have, not here, but back in Sydney, we do have the harness which was, you know, we got it off the boat specifically to give to you guys - - -

Q40 Excellent.

A - - - because we knew that there would be, we were, we were 12 hours on the boat and so, you know, we had plenty of time to think about it and we thought one of the things that's going to be required is that bit of harness.

Q41 Good.

A So, anyway, Darren was screaming there's a man overboard, man overboard and he said, "Give me rope, give me rope", so someone grabbed the anchor line, the anchor had stayed beautifully in its position, grabbed the anchor line, we had a spanner to undo it and God knows how long it takes, everything takes time, but it

probably didn't take very long, because everything was where it's supposed to be in terms of kits. They undid that, they, he got, you know, we sent him a line. And I wasn't on deck, I was down below and so I can tell you parts of the story and other people, and I think the person you, one of the people you will, or the third person you will definitely need to speak to is Darren Senogles because he knows what happened on there, and he was about to jump in the water. Now, he's a bowman and bowman do all sorts of crazy things. He'll go to the top of the mast with no, with no harness on, you know, in the harbour not off there, but, you know, very athletic, very fit young man, you know, they know no fear. Now he was about to jump in the water and swim to, to Glyn, who wasn't, and this is hearsay, but Glyn can, but Darren can tell you, he wasn't overarming at all. Now, this is a young man of 33, Glyn Charles, who swam some kilometres every day obviously overarm and he was in the water, Darren has told me that he, he certainly, one arm wasn't moving and he was doing this, you know, on which arm he was doing it, I don't know, but Darren can you tell that. He was, he was plainly not in, not able to swim back to the boat, whereas we've had lots of situations with people off the boat in the harbour and, you know, you swim like the bejesus to get back to the boat. Whether you'd succeed in these conditions or not, I don't know, but he certainly wasn't making the normal life

preservation efforts that we all made when we got into the, you know, when we were trying to get to the helicopter. I mean, you just walk across the water if you have to and he was in no condition to do that. You know, he had one arm that plainly was doing nothing and they could see with the other arm that he was, was swimming. So about, there was about four people had gone, who were up on deck, there was one guy spotting him, you know, just, just, you know, watching him and doing nothing but watching him. He was giving us a commentary but he was just watching him. Darren was getting rope and getting ready to, to get up on deck, to, to swim off the boat and there were two other people cutting rigging, trying to get the rigging. The people below were bailing, 'cause we had water everywhere. I was just sitting on the nav station doing Mayday calls and there were people just cleaning stuff, stuff up. But some time elapsed, I didn't even know who had gone overboard. We were, nobody was rubbernecking, we were all doing specific things and so no-one was saying ..... give us an overall of what's happening. We just knew we had a man overboard, we had a sinking boat, we had a mast that was going to cause us to roll again because that's what we were all very worried about and because we had no steerage, we had no wheel so we had no steerage. They were wanting to put the emergency tiller on and, ... So there was a lot happening at once, so, but nobody was just, just

rubbernecking, everyone was doing things. So it was probably some, probably seven or eight minutes before I even knew who was overboard. I could have done it by deduction, but everyone was doing things, you know. So that's, so that was that. Darren Senogles was about to jump off the boat and swim to this guy, who was at that stage about 50 or so feet away and then one more wave went through and all of a sudden he was 150 foot away and the rope wasn't that long and the, you know, the seas would have been, my estimation is at that stage 15 to, 15 metres at least and in that sort of sea, and if you get, there's a mathematical relationship between the wind strength and the, the speed a wave moves through in the open sea, O.K, that's after it's been established for quite some hours which this had, and if you just assume that the wind speed was 60, now it had been going between 50 and, and 80, so if you just assume it was 60, the, the speed of the wave cycle was at least 50 miles an hour, or 50 knots. So the wave was moving through quite quickly, the cycle would have been something like about, well, you can mathematically work it out, but probably something like 10 or 14 seconds. So the, the up and down cycle was, was, of, of going up and down something like 15 metres, was about every 20 seconds. So what that meant is that you couldn't see somebody continuously, you could only see them on the cycle of the wave, because no way you could see over the wave. So you, they couldn't continuously

see a guy in the water and the problem was that if Darren went in the water he wouldn't be able to see, he could only see on the cycle of the wave and we knew, and he, he knows, that if you're in the water, unless you've got someone who can spot for you and say, swim left, you're in deep shit, you know. And so, so it was pretty horrendous out there. If I can just divert, when they were helicopter lifting us out I, I'd been below immobilised on a bunk for a couple of hours, and it had been dark, it came dawn and I looked out and the helicopter was, I thought what, ... why can't a helicopter hold station, this helicopter's going up and down and up and down, it's going up and down 50 or 60 feet, you know, like anything. The helicopter was dead still, we were just going up and down ..... So in reality we had a sinking boat, we had nine people on it, we were in imminent danger of a second rollover and at that stage we had no companionway cover and we had cracks all along the side of the boat and we wouldn't have survived in a rollover, you know, we would have lost another four or five people because at this stage we had people on deck, harnessed on, but on deck. Everybody had, you know, at this stage everybody had life jackets on, Glyn Charles did not have a life jacket on. We don't normally have life jackets on when we race, we have harnesses on. There was a media report that he was between, you know, clipping and unclipping the harness, he was not, he was harnessed on

properly and he was sitting, you know, braced. You know, he didn't get hit by a wave or anything like that, you know, prior to the, prior to the event. So the boat's rolled, we, Glyn was away from the boat, no-one, we couldn't get to it. The violence of the rollover was such even the, the handles had disappeared off the, off the battery switches. The switches to start the, the motor were gone, so we couldn't start the motor. The, the engine we thought had moved in its mountings, anyway, there was a God almighty bang from that and we just couldn't, we, and we couldn't steer the boat anyway in terms of, of any meaningful direction and we had rigs lying in water, so the last thing you do in those circumstances is start the motor and try and motor anywhere because there was lines everywhere, we would have just guaranteed to have no motor at any stage. So they were just cutting the rigging away. I was calling Mayday, the HF was full of water. What had happened is that all that water was under me, as we rolled had just gone straight up to the, to the radios which were sort of mounted up there. The water had just gone right up the back of it. The HF, so, the HF went first, the VHF which was further forward and consequently higher out of the water, you don't expect water down there, but it had lost its aerial and we couldn't get a signal out initially. There was no mobile phones working on the boat. We had, the VHF was working and we could hear helicopters,

this was not immediately, but within the next 15 minutes we could hear helicopters. We eventually got a helicopter probably in 45 minutes, we got a helicopter who recognised that we were calling and it was a Mayday and these were helicopters that had come to other boats. At that stage we established contact and we got going. There was a boat that we sighted and we fired a mass of flares at it. I'm sure Carl's told you about this, we identified the boat. One of the things you get very good at on the race course is you can just look at a boat and know it, you know it by the profile, you know it by the shape, you know it by its colour. We had crossed Margaret Rintoul II in racing at night in all sorts of places, in driving rain, in all sorts of conditions, they knew the boat. There was about four people on the deck, they fired off eight flares. In, this is now, I don't know the exact time either, but there was, you know, there's still two hours of daylight. It was raining, the cloud bust was probably, you know, 300 feet or something like that, but we saw the boat, we identified the boat, there was, there's four guys standing on the deck doing this, they fired a flare, they fired eight different flares, an assortment of incandescent flares, of smoke flares, they, they had everything. They told, the guys said, "Yes, it's seen us", it was close enough, they were sure it had seen us. It went past. Had that boat stopped then they would have got a signal, an HF or a

VHF signal. They remained on the skeds and they had a radio, so that was a very close thing, if they'd actually seen us, and one of the problems is that you tend to have, you know, it's driving rain and in 50, 60, 70 knots, it hurts, you've got your wet weather gear so you've effectively got a visor like that. Now, if you were just looking forward scared as shit, worrying about keeping your angle to the wave right you may very well not look around, you know. If you had six people on the rail as you would if the sun was shining, everybody would have seen the damn thing, but if you've got two people on deck and they were concentrating hard they may not have seen you. But, you know, had they stopped it would have, it would have meant that a search could have been instituted for Glyn Charles. The belief among the crew is that he was last seen probably eight minutes after the capsize when in the cycle, the 20 second cycle of being able to be seen and not being able to be seen, he wasn't able to be seen. No-one actually saw him suddenly sink below the seas. He wasn't out of visual range, he just ceased in the cycle to be there and, you know, I'm convinced, looking at the harness, that the guy was massively injured from the boom whacking across and hitting him, that the, and that he certainly wasn't able to swim, I mean that was clear, he wasn't able to swim and he may very well on dry land have died, you know, you, you don't know. But after that where helicopters and, you

know, the rest of it I don't think is terribly, terribly relevant, I mean, you know, the rest of it all happened, we got out of there. But the sea certainly, well, I suppose one thing that's relevant is that when the guys were getting off the boat who were able to swim and who were, you know, had had quite a long period of rest on the boat they all, everybody had quite a lot of trouble getting off the boat up into helicopters. We didn't, they weren't dropping people down to us, we were doing our own thing, but you were swallowing water, you were going up and down on waves that, with, this is only in 50 knots, it wasn't nice being in the water. Numbers of our guys didn't want to get off the boat, you know, some of the most experienced people just didn't want to get off the boat. You know, they really had to be persuaded very hard to, to, to jump in the water, and it was, you know, I, they had to push me. I mean I said, you know, line me up here, because I had, I had, we just had sail, sail battens to my leg and just sail ties round it, it was straight, it wasn't the way it was supposed to be, but I didn't know that, and they had to line me up and I, you know, and just, click, I was hooked onto the helicopter line and it was just one, two, three, push, 'cause I couldn't even get myself off. So, I couldn't stand up, so they pushed me off and I was quite calm about it, but the guys in the dark, you know, initially in a, in a bigger sea would have been,

you know, easily swamped and it just wasn't a nice place to be.

Q42 O.K. You said earlier on that there was a storm warning issued, who issued that as you were heading down the coast?

A That was issued by the Bureau of Meteorology. I was scanning channels as well as listening to the race channel - - -

Q43 Right.

A - - - and I heard it before it was announced by the, by the Telstra control boat, so we were well aware, this is two and a half hours into the race, we were aware that the following day or, sorry, yes, that, that's right, the following day we were going to strike, south of Eden we were going to strike heavy conditions, so we set the boat up expecting that .....

Q44 O.K. And what do you mean by a reef, you mentioned this word "reef" before?

A O.K.

Q45 Ref or reef.

A A sail, imagine a triangular sail, and what you do you have across it a series of dotted lines or holes so that you can just, you can reduce the size of the sail, you can pull it down so that you, instead of having a big triangle you have a smaller triangular, you cut the bottom of it off.

Q46 O.K.

A So on our sails we, a double reef, a second reef gives

you about 30 per cent of the total sail area that you would have otherwise had, and then we went further beyond that to a fully, you know, we dropped the sail. The relevance of me talking about reefing is the fact that the, the boom had a lot of sail material wrapped around it which meant that when it, I mean under water it would have been a significant obstacle which meant it would have gone across. Had it had nothing on it, had the, the boom been just a piece of aluminium with no sail material on it, had we actually taken that off, and there's no reason why you would, had we actually taken it off and stowed it below then you could imagine the boom may, may possibly have even stayed in its original position. But it just had probably in height at least a metre of wrapped around material which would have been an obstacle to the water.

Q47 Right.

A So that's, that's the relevance of the, of the reef .....

Q48 O.K. Now, you've said that you made a decision to, let's pack it up, let's go home, boys.

A Yep.

Q49 Where were you going to go, what was your intention?

A We were, intention was going back to Eden.

Q50 To Eden?

A Yes.

Q51 O.K.

A But our course back to Eden wasn't immediately

relevant. The first thing we were trying to do was establish what was the right angle across the sea to get to Eden. We had, we knew that within a couple of hours we could have changed direction, so I wasn't, I didn't set a course that says that's Eden, we're going there, ignoring the seas and that's what we were involved in with Darren Senogles just at the top of the companionway, with Carl below, me on the nav station and Glyn Charles on the wheel establishing which was the best angle to the sea.

Q52 Right.

A Now, frankly, I guess we hadn't figured it out, I'd have to say that, 10 minutes isn't long enough. Very often if you change your, you know, you, you, when you're tacking, you know, you'll be on one tack and you think, this is all right, and then you go on the other tack and wow it's so much better, but you can't really be sure. But we were still at that stage where we couldn't have said, I couldn't say with certainty that we had the optimum angle to the sea, that's what we were involved in doing.

Q53 O.K. Now, you said that you heard a Mayday as well as sending your own Mayday?

A Yes, yes, yes, yes.

Q54 Did you hear that Mayday after your first, after your rollover?

A No, no - - -

Q55 Prior.

A - - - no, we, there were Maydays, there were people in trouble behind us, you know, who were coming to the stuff that we'd gone through and, and they were Maydaying. There were numbers, while we were still sailing along, and I looked at this list this morning, there was about five or six boats that were rolled and dismasted behind us that hadn't, you know, hadn't survived what we'd survived, you know, some boats bigger, some boats smaller and so, yeah, we were very busy in that regard.

Q56 Did you hear from which boats those Maydays came from at all?

A There was a call for assistance from Team Jaguar, there was a Mayday from Business Post Naiad.

Q57 You heard that?

A Yes.

Q58 O.K.

A Yes. Or I'll, I'll rephrase that, I believe I heard it.

Q59 O.K.

A The, the log record of the, or I think they may even have tapes, from the Telstra boat would establish which boat it was, but most of my time I spent actually with Team Jaguar and then there was other stuff happening.

Q60 The situation with Team Jaguar, was there a Mayday sent from Team Jaguar?

A No, they didn't Mayday, they, they sent a distress call, they had rolled over and they had started their

motor after their mast had come down and then they had lines around the prop and so they were disabled and dismasted, which is one of the reasons why you tend not to start your motor after you've lost your rig.

Q61 Did you at any stage hear in relation to Team Jaguar of any life threatening situation on board that vessel?

A No, I was establishing, via Telstra control, we were, what, what Telstra control had ..... established was they weren't in a life threatening situation. They did need help, but at that stage Telstra control were just trying to sort out, they were doing triage, you know, they were just trying to figure out who really needed the help most at that point in time.

Q62 Right. Did you, from that moment on, after hearing the, or being involved and listening to the Team Jaguar in some difficulty, did you pick up any conversations between, lengthy conversations, radio talk between the relay, radio relay ship and Team Jaguar?

A No, we were doing it. What was happening was that what Telstra control did is they pissed everybody else off the frequency except for us because we were at the front of the fleet, themselves and whichever boat they wanted to talk to. And so, I mean, it took me by surprise because I was trying to get on with stuff and a couple of times they said to me, "Sword of Orion, did you hear that?" you know, and I had, I'd stopped following the conversation 'cause I was talking to my own people about the stuff we were doing and they were

obviously relying on us 'cause we, 'cause we could hear, 'cause we were at the front of the fleet. So there was, we had good radio and it was good radio. You know, there was no shortage of, of information to the fleet. Once we actually broke the ice and said, "Hey, it's 78 knots", everyone started talking about the weather. Up to that they were being a bit, sort of thingy, but after that they all started talking about the conditions, et cetera, et cetera.

Q63 Right. Now, are you able to give me a water temperature during this incident?

A I, no, I can't tell you a water temperature. What I can tell you was that we were still in 4 knots of current which was running south. The water temperature would have been, I mean, you could, you could actually compute it from the, well, you can, on the, on the chart of the, the east Australian current chart is such that the actual visual of it shows you the temperatures. It would have been probably only a degree less than off Sydney, I suspect about 20 degrees, quite warm, you know. So anybody in the water, because we were in a strong south moving east, you know, eastern Australian current, was in no immediate danger of, you know, freezing to death. And that current stayed in for quite a long while, from, all the boats in that, in that area had the same current so there was quite a high chance of survival if people had had EPIRBs or, you know, inflated devices,

as they did.

Q64 Yeah. What was Glyn Charles' build?

A He was slight. He was 70, he originally told me his weight was 73 kilo. Weights were irrelevant for racing boats, and he told me that he was 71 kilos on the morning of the race, but he was very fit. If you saw his sister ..... - - -

Q65 .....

A - - - anyway, no, no, O.K, but, but quite slight in build, but obviously very strong, you know, he's just an athlete, just a, not a, no fat on him, you know, just a, just a very, and so if anyone was going to survive in the water you'd have to say a kid like that would have, very fit, training every day, training for the next Olympics for God sake.

Q66 Now, can you describe the harness that he had on, how does it work?

A Yes, he had one of Sword of Orion's standard harnesses which comes over the shoulder, around here and there's a ring buckle.

Q67 Around the waist, yep.

A Yep. I don't, I can't remember the colour, but we will deliver to you guys the actual, the, you know, the bits. There's no reason why we can't deliver you a full harness, which won't be that harness, but so you can say that it was the same as one of these.

SENIOR CONSTABLE UPSTON

Q68 It's identical to the one that the - - -

A Yeah, that's right.

Q68 - - - Glyn Charles .....?

A Yes, yes. Now those harnesses have under the, under the category one certificate, they have to be of a certain date, they have to be manufactured post a particular year. I can't remember what the year was, but, you know, every year, you know, they're only supposed to be so many years old. So they weren't new harnesses, but they weren't original harnesses from the boat or anything like that, they would have been, you know, I imagine two or three years old, but that's only a guess. We can give you one of the harnesses and you can be sure of that.

DETECTIVE SENIOR CONSTABLE GRAY

Q69 O.K. Now, were there lights on the life jackets at all, are you aware?

A No.

Q70 O.K. And the material for the harness was of what sort of material?

A It's, it's the same sort of material as seatbelts are made of.

Q71 Right.

A ..... it's the proper stuff.

Q72 And when you said earlier that the boat was, you've described the situation as sinking - - -

A We thought it was.

Q73 Right, O.K, that's what you thought.

A Yeah.

Q74 In fact that wasn't the case?

A No, no, it turned out that we had holes in it which they stuffed full of things. We were taking a lot of water in where the wheel well had been and by, you know, by taking bedding and God knows what they managed to stop that.

Q75 We just might suspend that before it stops. The time is 4.31, we'll just suspend this interview.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

DETECTIVE SENIOR CONSTABLE GRAY

Q76 Interview between Detective Senior Constable Gray and Mr Kothe is recommenced at 4.34pm. I think we were discussing lights on jackets and I think we finished that, harnesses. Now, so far as your experience in safety equipment, can you give us a bit of a detail on ..... that?

A Yeah, I, I, we developed some years ago marine line throwing guns. We're the biggest supplier to the North American market of marine line throwing devices. They're specifically, the one that we're selling to North America, which we're selling to the Canadian Navy, for instance, is a firearms based device. It's not actually under New South Wales law a firearm, which was only just changed when they changed the firearms regs 18 months ago, but it will fire a line, you know, a thousand feet.

Q77 Yeah?

A Yes, and it has been our intention, and in fact we've applied for a research and development grant, to develop one specifically for marine use. You can't have a, you know, a firearms based thing, it would rust up no matter if its made of stainless steel or whatever, so it has to be a gas operated one with a trigger like a fire extinguisher. But we've started preliminary work on that and one of the problems in these situations is that, as you know, all the conventional throwing devices in 60 or 80 knots of breeze, if you throw a life ring, it goes back over your head and those silly balls and heaving lines, et cetera. We had on the boat a, and didn't use on the deck, a throwing device, but we didn't use it very simply because it wouldn't possibly have gone any distance. It would have just gone back among the rigging. It just wouldn't have gone any more than 10 feet, it would have been an instant boomerang .....

SENIOR CONSTABLE UPSTON

Q78 Can you describe that throwing device?

A It's a life sling which is a combination of a life ring, a life ring and a sling, such that if you, the biggest problem in getting someone out of the water is that they get very heavy, as I'm sure you know, and so as well as being a life ring it then enables you to lift them back out of the water. But the whole thing probably wouldn't weigh more than four or five kilos and as such with a size of, sort of, what are we

talking, 15 inches across, quite light and in that sort of breeze just not worthy of throwing.

Q79 So it had quite a large wind surface area .....

- - -

A Yes, as they all do.

Q79 - - - throwing it into the breeze as you wanted to it certainly would have had no effect.

A Yes, yes, that's right, yeah. Now, they may, now, I'll stand corrected on this, because I, from, from the time of the rollover, I was not on deck until they took me off in the helicopter, so I can't give you that information. The person, to get the other part of the combination is Darren Senogles because he actually was, spent most of his time on deck. He was actually first off in the helicopter, but he can, he can tell you anything there, and anything I've said that relates to above deck at that point, from the time of the rollover on, is secondhand information or what I could see just by, you know, standing and looking out. Whatever he tells you there will be spot on.

DETECTIVE SENIOR CONSTABLE GRAY

Q80 O.K. Now, is there anything that you'd like to tell us, any opinions you have or any, any concerns?

A No, not, not that I can think of. The, the inquiry, you know, the, the CY is going to do and this one between, you know, every yachty out there, is all they're talking about is how to make it safer and better. There are some of my crew are talking about

never going back, but, you know, and consequently some of their opinions on it are really not terribly helpful because they've, they've taken a stand against it anyway. But, no, plainly, there'll be any amount of willingness to do anything to, to prevent it happening again. It's the, it's the, the chaos on the deck that I think is the bit that people probably don't understand or can't visualise. You know, all the stanchions are down, the lifelines are, are tangled, which is why on Business Post Naiad, you know, you get people being trapped. The race boats, I mean there was various comments made about weekend sailors. My boat was not weekend sailors. I had three guys who, who sail for a living. Now, Glyn Charles was paid to be on that boat, O.K, professional sailor and, you know, with 100 Hobarts they're not weekend sailors. The boat was a very strong boat. It, it had an overspecced mast and there was a penalty and, you know, an overspecced mast that was very strong. We had all the right gear on the boat, we didn't have EPIRBs and I wish we had, but it was in the best possible condition. The general reputation of my boat or my boats around the, around the CY is that we go right over the top in terms of professionally preparing them. Darren Senogles is a full-time employee who does nothing but look after the boat, you know, that's what he does for a, as, as he said, "Boss, when are we getting a new office?" And so he and I would work through the checklist to make

sure that everything was right. We had spares to Africa and he would, as, you know, a professional would go over that boat and over that boat and over that boat. He was sailing on it, so it wasn't as if he could sort of, well, off it'll go and they'll be right. You know, it was a matter of personal pride. So, no, the boat was prepared as far as we could do it - - -

Q81 Yeah.

A - - - and I'm, you know, comfortable with that. I'm glad, you know, in terms of having to live with yourself, I'm glad that I got the information out to the rest of the fleet about the conditions. I've thought about it and if I'd not done it I would be having a real problem, you know, so I was just glad I did that. The shock actually, as far as I'm concerned, was the chaos on the deck, the chaos below and the fact that things like radios went out so easily and I'm sure you guys see it, you know, that they went out so easily and we've got to do something about that because, you know, having, if, there were, there were helicopters all around, they were only, you know, five or six clicks away, had we been able to get radio, had we, had that other boat stopped that they, there was plenty of light to do a search for Glyn Charles. By the time the helicopters arrived it was way too late, but, you know, quite possibly they, they could have been there in 10 minutes and, you know, had he not been massively injured, which is what I'm assuming he was, but had he

just been in the water, they plainly could have, they plainly could have got him. But, you know, the fact that the radios went out was a shock and they say carry a hand held and, you know, and had we had it in a, had we had a hand held inside the, the, what are they called those, the plastic devices that - - -

Q82 Waterproof devices.

A Yeah, yeah, waterproof, what we call a grab bag, you know, we have a grab bag which has normally got wallets and mobile phones and things, but had there been a hand held VHF in it we would have been able to at least talk to the other boats coming along and certainly I'll never go to sea without it, but, I'm buying a new boat, I'm buying a new boat, I'm going back out there, but we will, you know, have learnt as I'm, I'm sure everyone will. ..... But that was the problem. If we'd had a radio the guy, and, and assuming he hadn't been injured, the guy could swim well enough that he'd be, you know, he, he would have been very scared, but alive. Now, that was pretty, and that's actually, the reason we went back was more about staying near, not getting too far away from Eden. For us to continue, our estimation to continue down the track we were just, we were 100 miles south, we were just moving away from any possible help. If we had had problems, we were right on the edge of, of helicopter range as it turned out from Merimbula. Had we been further away, had we, had we struck a problem another 60 miles down the

track, you know, God help everybody, you know, so, so that was the rationale for going back. The seas didn't improve. We knew, well, it was the devil that we knew rather than the devil we didn't. We knew that we, we were going to possibly on the way back strike 80 knot winds, but we knew the boat would survive that, it just had, but we knew we were going back towards, you know, civilisation rather than away from it. We were concerned there was a possibility that we would strike heavier winds going, going south, but the angle of the sea didn't change, the comfort, there was no more comfort on that angle of the sea, it didn't improve and it wasn't going to improve, so that they knew they were going to have hell for another X hours anyway, but it was a matter of my, as much as I wanted to keep racing, you know, they've got, everyone's got families and wives and children and my priority was let's have everybody there, sadly it didn't, didn't work, but we gave it a shot and -

Q83 Now you just mentioned that, you talk about weekend yachties, is that a sort of a critical analysis of yours or, or just - - -

A No, no, no, no, that's, somebody in the media made the comment about the fact that, you know, all these weekend, I know who it was, it was the guy off Sayonara, Larry Ellison, talked about, you know, God help, you know, all those boats out there with weekend yachties, and the people who were, were lost or the

boats, I mean, Winston Churchill, I mean they said, you know, you've got these boats, they won't survive it, how many Hobarts has it done, you know, 10, and this one had done, you know, a mass of them, and certainly, you know, we didn't have any, any weekend yachties. I mean, we'd just sailed, we'd just done the Telstra Cup so we'd just done, you know, four straight days, everyone was very sharp, everyone knew exactly what they were doing on the boat, which was, I guess, shown by the fact that when, and I'm sure Carl would have told you, when the thing happened there wasn't a lot of rubbernecking and conversation, people were just doing their shit. One of the interesting things is, that we found is that a, a bilge pump is just, forget about bilge pump, ... buckets do it a lost faster and a lot more efficient. You know, you've got, still got a person doing this with the bilge pump 'cause you can't assume you've got an automatic one 'cause you've lost stuff, and you can't get nearly as much water out doing that as you can with a bucket. Yes, in the middle of it they threw, we threw sails, everything, we threw everything we could in the water as soon as it happened, they threw sails, they threw everything, just to increase the amount of flotsam there, to increase the opportunity for Glyn to grab on to anything, I mean, the classic thing when they say throw out cushions, we didn't throw out cushions, we threw out just everything, you know, sails, you know, obviously

cushions, you know, everything we could throw overboard. It also meant that there was less chaos below, we could see, 'cause the first thing we were trying to see is where were we leaking from because the boat, the boat broke when it fell. I mean it fell a long way down the wave obviously and there was this tremendous roar, but it did fall quite a long way, you know, in, in free fall type stuff at, at some point and it just physically broke open and that's one of the problems is that, there was a whole lot of different priorities all had to happen at once, but, but a great worry was that the boat would take one more wave and being open would actually just be swamped and that's why, not that the, the structure of the boat, the boat wouldn't sink as such, if it's out there still it'll be floating, you know, on the water line. It might be full of water, but that material it's kevlar and stuff and it won't sink. So we wouldn't have ever left the boat. Unlike Winston Churchill, we would have stayed with the boat, we might have had life rafts attached to it, but we wouldn't have, we wouldn't have left the boat as such. But we will, with the rig waving everywhere and, you know, likely to puncture a hole in the boat, we just weren't in the position to just, you know, start the motor and, and motor up to the guy, you know, which was, made everyone feel very helpless. But the people were just kept doing things, so ....., that's enough.

Q84 O.K. All right.

SENIOR CONSTABLE UPSTON

Q85 Just a couple of quick questions. You said earlier that you heard, you were listening to other weather reports from an external agency?

A Yes, I had a long conversation with, with, on VHF, with the Eden Coastguard who I had been to visit on the way up and down the coast numbers of times, and when you take your whole crew in and introduce them, they like that 'cause what they're doing, they're, they like to be appreciated. So I actually, I didn't, I knew the woman and so I had probably a 15 minute conversation where I got all the oil rig information, this was about probably an hour and a half before the storm hit. I had the oil rig information, I had the barometric pressures, I had the wind temperatures, everywhere, you know, I had the whole thing plotted, so I did have a pretty good idea. They were getting 71 knots at Wilsons Promontory, you know, an hour and a half before and basically we, when we came round the corner, if you look at the, if you look at the weather charts at the Royal, at the yacht club, you'll see there's, there's, there's isobars just wind streaming across there, just straight across from the west. And so we, the weather we got didn't surprise us, it might have surprised other people, but we were expecting it and we were prepared for it. So there was adequate, there was no, no shortage of available weather information.

Q86 O.K.

A But we got it just by having a, I think I got it, God knows what channel I got onto, but I was, you know, I was on the, the, the Eden Coastguard channel, I just went off there and had a long conversation and she read me all the weather she had which was only an hour old or so.

Q87 And as the, as the COMS officer as well as navigator, you said earlier that you think you heard the Business Post Naiad - - -

A Yes.

Q87 - - - call a Mayday?

A Yes, yes. I, I, there was certainly a Mayday and my recollection is that it was Business Post Naiad. I'm sure that could be substantiated or whatever. I don't know whether they keep tapes, tapes or transcripts or whatever, but Lou from, you know, they can tell you exactly what it was. There was certainly a Mayday.

Q88 And you were also in close proximity to the Team Jaguar.

A It, no, it was about eight miles back, but, you know, that's relatively close proximity.

Q89 And you heard them also call a distress - - -

A Yes, they were, they called for assistance, yeah.

Q90 And what was that distress message basically, how did that flow?

A I had probably 20 or so conversations, you know, just little, you know, and I, they, I asked, I, I told

Telstra control that I'd established contact with them, I was able to give them their position, 'cause they hadn't come up on the sked, so they were looking for any boats that weren't in the sked, Team Jag came up, I got its position, I gave its position, so they had found a boat because they sort of, so they've found the boat and they, and they said, O.K, stay in contact with them, ask them a whole bunch of other questions. So I went back and asked them a whole lot of other questions, you know, down to did they have a mobile phone, what was the phone number and what the weather conditions were they were experiencing and blah, blah, blah, all that sort of stuff.

Q91 Did Team Jaguar actually call a Mayday or what - - -

A No, no, no.

Q91 - - - type of message did they call?

A They didn't call, call a Pan Pan, they didn't really call, you know, they just, they were just, "Telstra control, Telstra control, this is Team Jag, we've been dismasted, we have no motor, we need assistance". So it wasn't, it certainly was not a Mayday and they had nobody, you know, I mean, by definition, you only do Mayday when there's somebody's life is in danger and there was no-one's life in danger.

Q92 Right. And that, and that's what I was going to ask you next, is that, just briefly can you describe the difference, for the purposes of the interview, between a Mayday and a Pan Pan and just a general call for

assistance?

A O.K. My, and I'm sure it's not the textbook version, but, but I'm taught that you use a Mayday when there is imminent danger of, of life being lost, whether that's the vessel going to sink or a man overboard. As far as I'm concerned if I have got a man overboard and I plainly can't get to them and we're about to lose a life and so we call Mayday on two counts, one we were about to sink, we felt, and we had a man overboard. A Pan Pan could be, or there's a Securite which could be just about, there's a container in the water, we've just sailed past and it's a hazard to shipping. A Pan Pan could be a medical emergency, you could have somebody with a broken leg on the boat and you, you need, you know, you need medical assistance or you could actually have lost your mast and be, and have no motor in which case that's, as far as I'm concerned, you know, I'm sure you can tell me more exactly, but as far as I'm concerned that's appropriate for a Pan Pan.

Q93 And when you believe you heard the Mayday call from the Business Post Naiad - - -

A Yes.

Q93 - - - what communications did you hear after you heard the Mayday call from Business Post Naiad, from any other, any other vessel?

A I, my recollection is that it was responded to by, by Telstra control. What certainly was happening is I could, I heard a Mayday and then I heard other people

just not hearing it, calling in their position, calling in the fact that they were retiring. Now whether, whether that was Business Post Naiad, Business Post Naiad wasn't that far away from us. I can't give you our lat and long, but, or of the other boats, all of those other boats 'cause all my records are lost at sea, but certainly Telstra control could give you it.

Q94 What was your indications that what Telstra control was trying to do in regards to the Mayday call that you believe you heard from Business Post Naiad?

A They were trying to hear who it was.

Q95 Right.

A I think that was the main thing that, that I heard. I was expecting when we turned around, well, basically, what I was doing was I knew I was at the front of the fleet, that there was trouble behind us, we were sailing back into it. I said to Telstra control, "We're turning around, we may be able to be of help to you", because previous to that we were just going opposite direction and we were too far away to help anybody. But I said, you know, maybe on the way back we can help you with somebody, you know, 'cause we were going reasonably quickly and so we did have that expectation that we may, we may, you know, come back near someone, so that's all.

Q96 O.K. And why did you elect not to carry an EPIRB?

A We had an EPIRB on the boat, yes, ... - - -

Q97 Earlier I think you said you didn't have an EPIRB.

A No, no, no, no, sorry, we had an EPIRB, yes, that's required, and we, I'm sorry, yeah, O.K. No, no, we had an EPIRB on the boat and we used the EPIRB on the boat and that's how we were found, because it turned out that our VHF signal would only go out in a, in a, you know, through a helicopter, it was nothing on the ground, or nothing in the water, so we put our EPIRB out. The interesting thing about the EPIRB, which is that the actual string, the, the pink string that an EPIRB, have you ever seen butchers who can snap string with their fingers - - -

Q98 Yes.

A - - - from when, well, when I was a kid, maybe not you guys, but certainly when you looked at it the string on the EPIRB wasn't at all strong. Our EPIRB broke away from the boat about probably two or three hours after we set it off, so it was, which then made it, would have made it more confusing, but, yes, but they found us by EPIRB not by our, I didn't clarify that, didn't make that clear, not by our VHF.

Q99 O.K.

A Yeah, no.

Q100 Yeah, no, well that's what I - - -

A It's, it's one of the things that they actually did, did establish during the pre-inspections, where's your EPIRB.

Q101 Yes. Yes, well, I would have thought that too, but when you first mentioned about - - -

A ..... my God no, no.

Q101 - - - talking to the, the aircraft by HF or VHF - - -

A No, no.

Q101 - - - and then you mentioned that you didn't ..... EPIRB?

A No, no, that, that's about the first thing in the, in the cat one.

Q102 Yeah, well, I would have thought so too.

A Yeah, that's right.

Q103 And just briefly, what's the insurance value of your boat, offhand, do you know?

A I don't know.

Q104 Right.

A It must be with sails, 340, 350,000, but I don't honestly know.

Q105 O.K. I have nothing further.

DETECTIVE SENIOR CONSTABLE GRAY

Q106 O.K. Anything further?

A No, thanks, mate.

Q107 The time on my watch now is 4.56, do you agree with that?

A Yes, 4.56.

Q108 This interview is now concluded.

INTERVIEW CONCLUDED