

TRANSCRIPT OF PROCEEDINGS

AUSTRALIAN DEFENCE FORCE

AUSTRALIAN ARMY
RANDWICK BARRACKS, RANDWICK, NEW SOUTH WALES

BOARD OF INQUIRY BLACK HAWK 221

PRESIDING:

THE HON. DAVID LEVINE RFD QC, The President
GPCAPT STEPHEN FIELDER AM and
CMDR ANDREW ROURKE RAN, Members of the Board

Counsel assisting:
CMDR JOHN RUSH RANR QC, Senior Counsel Assisting
COL GARY HEVEY RFD and LEUT PATIENCE NEAL RAN,
Junior Counsel Assisting

Counsel representing:
MAJ DOUGLAS CAMPBELL SC with MAJ MARK JOHNSTON
representing the Bingley family
MAJ NIGEL GABBEDY representing MAJ 3
LEUT ROBERT NASH RANR
representing the Porter family

1000 FRIDAY 3 AUGUST 2007
DAY 24

Transcript Verification
I hereby certify that the following transcript was
made from real time recording of the above stated
case and is true and correct

Signed..... Date..... (The President)

Signed..... Date.. 3/08/07... (Reporter)

Signed..... Date.. 3/08/07... (Reporter)

1 <MAJ 3, on former oath: [0950]

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3 <CROSS-EXAMINATION BY CMDR RUSH CONTINUING:

4

5 CMDR RUSH: Q. MAJ 3, if I were to refer to the aviation
6 risk management process at the operational tactical level
7 for this particular serial, would you understand what I
8 mean?

9 A. Sir, I'd have to assume that what you are talking
10 about are probably the specific control measures, perhaps,
11 that would be present or that we would introduce in the
12 conduct of the actual flying portion of the serials. Would
13 I be correct in assuming that that's what you're talking
14 about?

15

16 Q. Let me read from paragraph 189 - I don't think there's
17 any need for you to see it at this stage - of the AAIT
18 report. The heading for that paragraph is "AVRM at the
19 Tactical Level", and it reads as follows:

20

21 A detailed application of the AVRM process,
22 at the tactical level, is designed to
23 address and or mitigate as many of the
24 risks and conditions that the flight crews
25 would encounter during the mission.

26

27 Using that as the basis of my use of the term "tactical
28 level", what, if any, matters do you think should have been
29 raised at that level at the flying brief?

30 A. I believe that the matters that you're referring to
31 are the specific controls which already exist within the
32 mission risk profiles which the unit has.

33

34 Q. What I would put to you is this, that at the tactical
35 level of aviation risk management, it would have been
36 appropriate, for example, to raise ship's drift?

37 A. Yes, perhaps it is.

38

39 Q. Because 221, at the time of approach to this serial,
40 was flying to a GPS point that was in fact 600 metres or so
41 incorrect in relation to where the ship actually was.

42 A. I agree that it was perhaps pointing to a position
43 other than the ship. I don't agree with the 600 metres,
44 and I don't know where that's referenced.

45

46 Q. There is evidence before the Board from the fleet
47 navigation officer that as to the GPS point taken at the

1 time of launch of 221, and allowing for the time to the
2 crash on deck, the ship would have drifted 600 metres over
3 that 15 minutes or so.

4 A. I'll accept that if that's what's in the log.

5

6 Q. I suggest that it would have been appropriate at least
7 to raise the potential for termination of this serial in an
8 out-of-wind condition?

9 A. The issue of whether or not the serial was into or out
10 of wind relies upon, one, the direction of wind being
11 known, which for all intents and purposes it was, and I'm
12 talking about azimuth and strength, but it also relies upon
13 the direction of approach which, for these serials, is
14 based upon the ship's head being known as well.

15

16 Now, at the time of orders, at the time of the
17 planning and effectively right up until the time of launch,
18 the ship's head is not necessarily fixed and it was not
19 necessarily going to remain fixed for the duration of the
20 serial. So when it comes to conducting the planning for
21 that, that is one of the factors which is not present, so
22 determining that there was an out-of-wind condition is
23 something that we can't do. For every particular serial,
24 of course there's a potential that you could have a
25 tailwind, a crosswind or a headwind.

26

27 Q. You were informed by the ship at the ship's brief that
28 the wind was 115 at 10 knots?

29 A. That's correct.

30

31 Q. And, at the time of flying orders, the ship was not
32 making way?

33 A. I believe that's probably the case, yes.

34

35 Q. I suggest to you, then, that there was some degree of
36 certainty in relation to the bearing of the ship?

37 A. I disagree with that, sir.

38

39 Q. If the ship be at 221 and the wind at 115, where does
40 that put the wind as far as the aft deck is concerned?

41 A. Well, clearly, that would have introduced a proportion
42 of a tailwind or downwind condition. But, as I said, there
43 is nothing to indicate that the ship's head would have
44 remained at 221, or whatever it happened to be, for the
45 duration of the serial. Given the fact that the ship's
46 brief took place at around 1400 and the first aircraft
47 launched around about 1530-ish, with the accident occurring

1 around about 1600 or 1610, I think, there is a significant
2 time delay and more than sufficient potential for the
3 ship's head to alter. Many of the flying serials that
4 we've conducted, the ones that were done even under way,
5 had the ships altering course, sometimes several times
6 during a single sortie.

7
8 Q. The ship may well alter course when it's making way,
9 but I suggest that when it's drifting, the ship holds
10 pretty much to the one direction.

11 A. That's very much dependent on the sea current, and I'm
12 not certain that it would actually hold fixed.

13
14 Q. Again, the evidence before the Board is that this
15 ship, the LPA, lies beam on to the wind.

16 A. I believe you introduced that evidence and made that
17 statement. I don't know that to be the fact.

18
19 Q. That was from LCDR Collins.

20 A. I'll take it as read from him that that's probably the
21 case. Of course, had that been advised to me, then I
22 certainly would have taken that into account.

23
24 Q. Was there any inquiry?

25 A. Prior to any serial being conducted, we will go and
26 request some information from the ship's operations room,
27 and that will be roughly where do you expect to be, as in
28 geographic location, heading in what general direction,
29 et cetera, because we need to advise them that we're
30 conducting a serial and we need some information from them.
31 That information is only relevant at the time it's given
32 and is likely to change.

33
34 Q. You would be familiar with, and it has been referred
35 to often enough in the Board of Inquiry, the standards
36 manual and what the standards manual at chapter 15,
37 paragraph 33 - exhibit 100 - says in relation to the
38 quickstop:

39
40 The turn and flare and the flare and turn
41 quickstops are initiated out of wind and
42 terminated into the wind.

43
44 Was any consideration given to that?

45 A. Sir, the considerations are always made - they are
46 always made by the aircrew, and that captain of whichever
47 aircraft will brief his crew. During the brief, he will

1 say, "The wind is" from whatever direction at whatever
2 strength, "We will be conducting a left, right", or
3 whatever "turn. We will expect this to be..." My brief,
4 for example, went along the lines of, "The wind was red 135
5 at 10 knots and, guys, for us, coming down the port side,
6 that puts the wind on our right front. Expect a headwind
7 on final, and we will make a left-hand turn. Expect a
8 slight quartering tailwind after the turn."
9

10 So that sort of a brief will be given by the captain.
11 That's his opportunity to brief the entire crew not only on
12 what the wind is but on the effects that the wind will
13 have, and then clearly he will then introduce whatever
14 control measures are necessary. He may also say, "Because
15 of that" - let's say, for example, it was an incredibly
16 strong right crosswind, which will have an effect on tail
17 rotor authority, he may say, "Listen, I'm going to slow
18 down earlier, later, and I'm going to bias to the left or
19 right as appropriate to compensate." So that's his
20 opportunity to do that.
21

22 Q. Major, at the flying brief or flying orders, was there
23 any deliberative process in relation to identifying
24 aviation risk management matters at the tactical level as
25 defined?

26 A. I think it's important, when you read about the
27 planning for the mission and orders preparation and the
28 delivery of the orders, that you realise that at the
29 delivery of orders that is not the first time that the
30 aircrew are seeing that information. We employ a somewhat
31 collaborative approach in the preparation for a mission.
32 It's in our SOPs, and the flight lead or the lead planner
33 will distribute duties to all of the crews.
34

35 Our opinion is that more heads are better than one,
36 and in this case with all the crews, all 16 of the
37 individuals, 16 heads are definitely better than one. He
38 will come up with the initial concept, distribute the
39 duties and then those individuals will undertake the
40 duties. Some of them might be physically drawing the
41 diagrams. Some of them will be writing out portions of the
42 orders packet. Some of them may be assisting the lead
43 planner in physically writing the written orders.
44

45 Either way, throughout the entire planning and the
46 preparation, every single one of those crew members is
47 actually involved. They have a say. It's done to improve

1 their situational awareness. It's done for, effectively,
2 their training benefit as well. Understand that one of our
3 principal roles is the provision of support for
4 counter-terrorism. There are some very, very strict and
5 finite time windows that we have available, so it's
6 impractical to ask one member to do all of it. That's the
7 reason for the distribution of duties.

8
9 Effectively, by the time the orders are given, they
10 are almost a formality, because every single one of the
11 other individuals is aware of the content, and it is the
12 final stage in saying, "This is definitely what we are
13 doing." So, because you've employed all those other
14 individuals, there is an element of aviation risk
15 management which is clearly part of that.

16
17 Q. At flying orders, allowing for everything that you've
18 said, was there any deliberative process raising aviation
19 risk management at a tactical level?

20 A. All I can say is that there was mention made that the
21 ship was not making way. Clearly, that has an impact on
22 what you expect to see, based on previous training, and
23 everyone was aware of the main reason we were conducting
24 this, i.e., because our mental picture, mental model,
25 wasn't the same. So we were doing this to adjust that.

26
27 Q. You have read now the aviation investigation report?

28 A. I have briefly scanned the report.

29
30 Q. Are you aware of its conclusion in relation to
31 aviation risk management at the tactical level for the
32 conduct of the flying brief here?

33 A. As I said, I've scanned it. I'm sure that you will
34 elaborate for me.

35
36 Q. Could the Major be shown exhibit 5, sir. If I could
37 ask you, Major, to turn to page 61 and paragraph 189. I
38 read the first three lines earlier this morning. The
39 paragraph goes on to say:

40
41 The AAIT believes that a thorough
42 application of the [aviation risk
43 management] process at the tactical level
44 should have identified the risks that the
45 flight crew were likely to encounter during
46 the mission execution, such as:

47 a. 'ship's drift' --

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and I think you've expressed a view in relation to that this morning --

b. termination to the hover with a downwind component --

Do you agree with that?

A. That's certainly what it says, yes.

Q. Do you agree with it, that that should have been raised?

A. Once again, had I known what the ship's head was, we would have been able to determine that there would have been a downwind component.

Q. The "power and control requirements"?

A. Which clearly flow from subparagraph (b).

Q. "Approaches to 'static' objective versus a ship underway"?

A. That was briefed.

Q. "Currency and recency in the conduct of approaches to a 'static' objective"?

A. That was briefed, because that's applicable to subparagraph (d).

Q. "Personal mission equipment requirements"?

A. I'm not certain what they refer to there, but everyone is familiar with their individual equipment.

Q. "Carriage of passengers"?

A. Once again, the carriage of passengers was briefed.

Q. Yesterday, in your evidence, you indicated that at flying orders, approaches to static objective versus ship underway and currency and recency were matters that were raised at the flying brief?

A. It was briefed by CAPT Bingley and it was certainly alluded to by myself at the end that this was not something that we had done in a little while and I intended for us to make this, as I said, an 80 per center, "Let's creep on up on this. Let's do this slowly and we'll build up."

Q. But in relation to static objective and recency of conduct, you said yesterday in your evidence that that was

1 specifically briefed?

2 A. It was. It was briefed by CAPT Bingley. He
3 identified that the ship would not be making way.

4
5 Q. Why didn't you put that in your statement?

6 A. I didn't think to put it in my statement.

7
8 Q. You, I suggest, were written to in March of this year
9 and asked to consider for the purposes of your statement
10 that very issue.

11 A. I'd have to refer back to that document.

12
13 Q. I suggest that's a copy of a letter sent to you in
14 March of this year by counsel assisting containing an annex
15 with suggested topics for the statement for the Board of
16 Inquiry. If you turn to paragraph 13 of the suggested
17 topics, paragraph 13 reads:

18
19 Whether the AvRM briefing addressed in any
20 and if so what way.

21 ...

22 (d) approach as to the "static" objective
23 versus a ship making way;

24 (e) currency and recency in the conduct of
25 approaches to "static" objective.

26
27 A. Well, if my statement is not succinct enough, then
28 that's my omission. My belief was that, in identifying
29 that the training requirement had been brought to my
30 attention, I directed that the individuals go away and plan
31 for it and that everyone was aware that we were conducting
32 this training serial to a static target, that it was
33 sufficiently briefed.

34
35 CMDR RUSH: Sir, I tender that correspondence. It's dated
36 March 2004.

37
38 EXHIBIT #186 CORRESPONDENCE FROM COUNSEL ASSISTING TO MAJ 3
39 DATED MARCH 2004

40
41 CMDR RUSH: Q. Major, I touched on an issue yesterday of
42 the evidence of MAJ 4. His evidence before the Board is
43 that the distance of one and a half rotor lengths lateral
44 approach down the side of the ship was briefed for this
45 serial, and he stated in his statement:

46
47 In hindsight, this was probably too close.

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Do you agree with that?

A. I cannot recall whether the distance for serial 1 was specifically briefed. I do believe that it was briefed for serial 2. So if MAJ 4 has ascertained that one and a half rotors is his recollection and he believes that it was too close, I trust in his judgment, but I cannot recall that it was specifically briefed for serial 1.

Q. Taking as a basis for this question that it was briefed, do you think it was too close?

A. There are many factors that the crew must take into account. You can actually approach closer than one and a half rotors, but you must have all of the other parameters under control beforehand. You can literally approach at one rotor, if you had conducted your deceleration well and truly in advance and were all but in a hover before making that turn. Effectively, then, the turn at the end would have been a simple pedal turn. You could conduct this at 10 rotors or even further. So I don't believe that, in isolation, you could say that that is too close. Certainly, if it is the only factor you're considering, then perhaps yes.

Q. In the SITREP of 28 November, which is exhibit 125, on page 2 at paragraph 12, it is stated:

Analysis of training conducted to date indicates a training deficiency/lack of recency relating to assessment of rate-of-closure on static targets.

With lack of recency, with the training deficiency identified, what can happen? What flying issues are raised as a consequence of those two matters identified?

A. I believe they speak for themselves. If you're not recent on something, then it will take you a little while to get back into it. That's the reason you conduct the training.

Q. For the particular assault profile that was to be flown on 29 November, what particular things would be identified as a consequence of a training deficiency and lack of recency?

A. Well, this particular training serial was put in place to correct the rate of closure issues. You alluded yesterday to the fact that all of our training had been

1 done to ship under way from the stern, effectively
2 approaching a target travelling in the same direction as
3 the target. That leads to the requirement then to conduct
4 training to a target that's not moving, because the rates
5 of closure will be different and certainly the cues you
6 receive will be different.

7
8 So in terms of the recency which is identified here,
9 or the lack of recency, our concern was that individuals
10 had a particular mental model - you look at the numbers on
11 your air speed indicator and you are seeing things
12 happening outside - and it will not be the same when you
13 fly to a static target. That's the reason for this. So,
14 effectively, we had identified that deficiency and we were
15 trying to conduct the training to rectify that, so it was
16 specifically rates of closure.

17

18 Q. Were you aware that CAPT Bingley had had problems in
19 the previous days in relation to his approaches?

20 A. No, I'm not. I have become aware of it through the
21 course of this inquiry.

22

23 Q. Should you have been aware of that?

24 A. I would like to have been aware of it, yes. Yes,
25 I should have been aware of it.

26

27 Q. The next page goes on to say:

28

29 ...assault training to NEWCASTLE has been
30 approved, however, it is the opinion of
31 XO NEWCASTLE that the vessel must be
32 underway [in order to] provide "safe" winds
33 across the deck. Further avenues are being
34 pursued to dispel this misconception.

35

36 Is that a discussion that you had with the XO of NEWCASTLE?

37 A. No, it's not.

38

39 Q. Do you know who did have that discussion?

40 A. I don't know whether the discussion actually took
41 place. My understanding is that MAJ 4 was the individual
42 who was negotiating with NEWCASTLE for the provision of
43 that vessel as a training aid, and this was, to my belief,
44 a result of their believing that - maybe it was a
45 misunderstanding of what we actually wanted to do and their
46 perception that we required an under way SHOL to conduct
47 this. So the way that reads, to me, and certainly my

1 understanding at the time was that NEWCASTLE felt that to
2 conduct any aviation work in or around NEWCASTLE would
3 require them to be under way in order to achieve a SHOL.
4 So the last sentence there I believe was an attempt by
5 MAJ 4 to say, "Listen, we need to go and talk with them, to
6 identify to them that we don't require a SHOL for what we
7 intend to do."

8
9 THE PRESIDENT: Q. Can I just interrupt. This has
10 troubled me every time the sentence has arisen. What was
11 the misconception that you understand was being referred to
12 there?

13 A. Sir, for any launch and recovery from a naval vessel,
14 there is a SHOL, and it's identified to provide the best
15 possible conditions. For a ship that is not making way,
16 there are no SHOLs that involve wind. There are some
17 SHOLs, but they are normally just pitch and roll limits.
18 The training that we were conducting was not a launch and
19 recovery, nor was it a VERTREP. It's effectively a utility
20 operation, which does not require a SHOL. My understanding
21 was that NEWCASTLE thought we were doing something - now,
22 perhaps they considered that our operations fell under the
23 VERTREP parameters, and so they thought we needed a SHOL.
24 My belief is that what they thought we needed is not
25 necessarily what we thought we required.

26
27 CMDR RUSH: Q. As to the use of the word "safe", your
28 reading of that is safe in relation to "it requires a
29 SHOL"? You need "safe" winds, the person put in quotation
30 marks. "Safe" relates to "SHOL"?

31 A. I believe that XO NEWCASTLE had used the words "safe
32 winds". I believe that that is in reference to the winds
33 present when you have the applicable SHOL in place.

34
35 Q. Major, in paragraph 22 of your statement, you say that
36 there was no confusion as to the role of troops being taken
37 as passengers. I want to put to you that there was in fact
38 some confusion. Those passengers were due to go on a
39 Gold flight, were they not?

40 A. Yes, they were due to be distributed across all the
41 aircraft.

42
43 Q. And they were due to fly with MAJ 4, but MAJ 4 took
44 off or launched prior to those troops presenting to go in
45 his aircraft?

46 A. That's correct.
47

1 Q. The next aircraft to launch was 221; is that correct?
2 A. No, 221 was the third aircraft to launch.
3
4 Q. Why didn't they go with Gold 2?
5 A. Because the time differential between Gold 1 and
6 Gold 2 launching - I'm not certain which launched first,
7 Gold 1 or Gold 2, but we're not talking about a 30-minute
8 difference; it's a couple of minutes.
9
10 Q. CAPT Bingley was made aware of the training that they
11 wished to conduct?
12 A. Yes.
13
14 Q. And was made aware of that training in your presence?
15 A. As the lead planner, he is effectively the individual
16 that they go to to initiate that training.
17
18 Q. They were, at least in part, involved in a sniper
19 serial for their own purposes?
20 A. Yes.
21
22 Q. For the flying pilot, that would be a consideration in
23 relation to the way he may fly in an effort to accommodate
24 his passengers?
25 A. Of course. If it's going to be a support by fire task
26 that he is conducting, he will fly appropriately for that.
27
28 Q. And that provides, does it not, one reason why 221 may
29 have been flying at a distance of one and a half rotor
30 lengths from the ship?
31 A. I don't know how you draw that conclusion.
32
33 Q. Why couldn't I draw that conclusion?
34 A. No, I don't know how you've drawn that conclusion.
35
36 Q. Why is it not a reasonable conclusion?
37 A. Serial 1 was not a support by fire serial. Serial 1
38 was principally a roping serial. So in terms of the
39 benefit that the troops who were on board would get, they
40 would get their best training benefit every second serial,
41 so every time we did serial 2, because that would be a
42 support by fire task for them. They would get residual
43 benefit from serial 1, but not as much as they would get
44 from serial 2, clearly.
45
46 Q. What distance from the ship would you anticipate 221
47 would be if it was for a support by fire serial?

1 A. As was mentioned in, I think, the orders there, they
2 would have been three rotors out. They would have been on
3 the other side of SBF 2.

4
5 Q. Major, did you have an opportunity of reading the
6 statement tendered to the Board yesterday of Warrant
7 Officer King?

8 A. I briefly scanned Mr King's statement.

9
10 Q. You were present in the Board when he gave his
11 evidence?

12 A. Yes.

13
14 Q. You would be, then, familiar, I suggest, with his
15 evidence that a training flight often becomes a no-fail
16 mission when special operations troops are added to the
17 equation?

18 A. I can understand why he said that, and certainly there
19 are some other factors - there are clearly other factors
20 when they are involved. I believe that we are resilient
21 enough not to fold to the pressure involved when additional
22 personnel are added.

23
24 Q. Do you agree with the proposition that carrying
25 special operations forces that rely on pilots can create,
26 at least implicitly, pressure on the pilot to perform
27 beyond what is required for a training serial?

28 A. No. I believe having highly trained individuals on
29 board as passengers certainly will encourage an individual
30 to perform to his best. I don't necessarily believe that
31 it exceeds what is required.

32
33 Q. You have indicated that you stated at the flying brief
34 that it was to be flown as an 80 per center.

35 A. That's correct.

36
37 Q. For 221, it wasn't flown as an 80 per center, was it?

38 A. In hindsight, no, it wasn't.

39
40 Q. At least one potential explanation goes back to the
41 evidence that was given by the warrant officer yesterday?

42 A. Potentially, yes.

43
44 Q. I appreciate the benefit of hindsight, but, with
45 hindsight, would you agree with the approach outlined by
46 Warrant Officer King and, for that matter, SQNLDR Morris,
47 that an incremental approach to training as outlined

1 yesterday would be a better option than going straight into
2 the serial?

3 A. Certainly, on 29 November, I at that stage did not
4 believe that the jump, shall we say, in training was more
5 than incremental. In hindsight, given what has occurred,
6 the comments made by both Mr King and SQNLDR Morris do seem
7 to be appropriate.

8
9 Q. Major, you have sat through much of the evidence and
10 you have seen the video footage of the crash, and I take it
11 you're reasonably familiar with the simulation?

12 A. Yes, I am, sir.

13
14 Q. What factors do you believe contributed to this crash?

15 A. This is clearly just my opinion and, I guess,
16 conjecture on my part, which I'm not comfortable doing.
17 It's clear that far too much speed was carried into the
18 final portion of the termination phase and that energy was
19 not able to be arrested or dissipated in any other form.
20 That amount of energy should not have been taken into that
21 last critical phase.

22
23 Q. I have just a couple of general questions. Was
24 fatigue at any stage an issue during OP QUICKSTEP for
25 aircrew?

26 A. I need to be very careful in use of the term
27 "fatigue". The organisation had had a very long year. It
28 had conducted many activities throughout the year, often at
29 incredibly short notice. There were some 600 personnel on
30 that ship, and the fact that we all got along is probably a
31 testament to the individuals involved. You cannot fit
32 600 people onto an LPA without there being some element of
33 tension that arises. Some of that was sleeping
34 accommodation arrangements; some of it is access to the
35 galley for meals; some of it is just access to recreational
36 or physical training activities and opportunities.

37
38 There were occasions, certainly in the early days,
39 when accommodation was a concern of mine, and I approached
40 XO KANIMBLA on a number of occasions. They principally
41 revolved around the female aircrew that I had, because they
42 clearly were accommodated in a separate area. All of the
43 male aircrew were accommodated in one particular area, one
44 of the LDUs.

45
46 Because the females were accommodated in a separate
47 LDU, they were accommodated with other females on the ship

1 who were not on the same time schedule, clearly, as us. So
2 in certainly probably the first week, that was a concern of
3 mine. I approached XO KANIMBLA a number of times and, to
4 his credit, I believe we resolved the issue.

5
6 Separate to that, you will be aware, and I think it's
7 before the Board, that the unit was involved in a complete
8 relocation from Townsville to Sydney. So of the detachment
9 that I had, I believe - the figures are not quite
10 accurate - all bar around about four of those individuals
11 were personally moving themselves and their families from
12 Townsville to Sydney, and much of this was occurring whilst
13 they were embarked.

14
15 It's normally an emotional time for individuals to
16 completely uproot their family, uproot their children from
17 schools and move a couple of states. I believe that every
18 single person undertook that to the best of their ability.
19 There was an incredible amount of support from the unit
20 back home. But, inevitably, that caused some tension,
21 mostly because of the communication difficulty that the
22 individuals had. I do not necessarily believe that fatigue
23 in the sense that you may be referring to in aviation terms
24 was a factor.

25
26 Q. Major, I asked you about the distance of one and a
27 half rotor lengths from the side of the ship and the fact
28 that special forces troops are on board as being a
29 potential reason for that distance. I just want to put to
30 you from page 1693 of the transcript evidence of SGT AB, a
31 troop commander with the SAS who was embarked:

32
33 Q. It has been calculated that
34 CAPT Bingley was flying on 29 November at
35 about two rotor distances from the ship as
36 he passed down the port side of the ship.

37 A. Yes, sir.

38 Q. Are you able to comment on whether that
39 is an appropriate distance for the type of
40 task that he was carrying out on that day?

41 A. Sir, I believe it was appropriate,
42 particularly for the people in the back
43 getting the situational awareness of what
44 to expect on that sort of approach. Again,
45 every time we get an asset, we use it to
46 the best of our ability, and if we can
47 achieve numerous objectives from the one

1 task, then that's what we'll do. I would
2 be surprised if he was in any other
3 position.
4

5 Having regard to that evidence from a person who knew
6 CAPT Bingley, would that not tend, firstly, to support the
7 proposition that the training and the particular flying on
8 this occasion was taking into account the troops that were
9 in the back?

10 A. As I said, sir, those troops would have gained the
11 most benefit from serial 2. They would also have gained
12 benefit from serial 1. I don't know what was going through
13 CAPT Bingley's mind at the time. He may very well have
14 chosen the lateral separation to assist them, and that may
15 very well have been something that he and they discussed on
16 the day.
17

18 Q. Just finally, what seat were you seated in in Black 2?
19 A. In the right seat.
20

21 Q. When did you decide to sit in the right seat?
22 A. That was, clearly, prior to - after orders.
23

24 Q. Did you have any discussion with CAPT Bingley as to
25 who was going to sit in the left or right seat of Black 1?
26 A. No, I did not.
27

28 Q. So was your co-pilot the flying pilot in Black 2 for
29 this first serial?
30 A. He was going to be the flying pilot, yes.
31

32 Q. And he would have terminated in a tailwind?
33 A. Given the conditions of the day, yes, he would have.
34

35 Q. Was that discussed with your co-pilot?
36 A. Yes, it was part of my brief.
37

38 Q. What was said to him?
39 A. Well, I went through the brief in accordance with
40 orders and I was obviously far more comfortable with our
41 approach than had we been in Black 1, and the main reason
42 is that, for Black 2, we separated into stream; in other
43 words, we were 80 knots, so our commencement speed was
44 80 knots, not 100 knots. That gives us significantly more
45 potential to make adjustments.
46

47 Secondly, whenever we conduct a stream approach, you

1 are effectively going to the same point as the aircraft in
2 front of you. You can't occupy that space at the same time
3 as them, so one of the fundamentals is observation of that
4 particular aircraft and making adjustments in the lead-up
5 to your own termination to ensure that you are not going to
6 arrive before they have departed.

7

8 Normally, we find that the second, third and fourth,
9 or however many aircraft we have that are conducting stream
10 approaches, end up at significantly lower speed than we
11 even planned for. Hence, it was a lot easier for me to -
12 certainly it was my belief that we would not have been
13 going fast at all by the time we got to our termination.
14 In actual fact, by the time we came to do our turn, we
15 would probably have been only marginally above ETL.

16

17 CMDR RUSH: That is the cross-examination, sir.

18

19 GPCAPT FIELDER: Q. Major, I would just like to explore
20 the sequence of briefing leading up to flight
21 authorisation. Can you just run past me the briefing
22 sequence from when CAPT Bingley briefed this mission to
23 signing the authorisation book?

24 A. Yes, sir. The mission orders were conducted by
25 himself and attended by all crew. Normally, at the
26 completion of those orders, the crews are gathered by the
27 aircraft captain. We do this by use of a PowerPoint
28 presentation. We will take the mission packet and make
29 sure that that's cross-referenced with the orders that were
30 given, and we normally have the PowerPoint picture up on a
31 slide. The crews under the aircraft captain will quickly
32 walk through and discuss any points that they feel are
33 pertinent immediately to their crew.

34

35 From the completion of those orders, ordinarily we
36 would walk then down to the hangar to confirm that the
37 aircraft are ready and to start, effectively, our launch
38 sequence. At that point in time, so immediately after
39 orders, is normally when the authorisation sheets are
40 finally signed off by the aircraft captain and the
41 authorising officer.

42

43 Q. When would the authorisation sheets actually be filled
44 out?

45 A. They will probably be filled out at about the same
46 time as the orders are prepared. Once the majority of the
47 orders are prepared and they are fairly certain, one of the

1 other individuals will be tasked to physically pen the
2 authorisation sheets.

3

4 Q. So that's at the planning stage?

5 A. It's at the completion of the planning stage, once the
6 orders are effectively written.

7

8 Q. You would only then authorise as authorising officer
9 once the briefing sequence had been completed?

10 A. Once the briefing had been completed, once it had been
11 confirmed and after all the questions - that seems to be
12 the appropriate time to me, because if you want to make a
13 change, I want to have made the change before I sign the
14 authorisation sheets.

15

16 Q. When was the planned briefing for the follow-on night
17 flying sequence?

18 A. It would have been, clearly, after we've landed, after
19 the aircraft had been refuelled. We normally would have
20 taken the opportunity to get some dinner and we would have
21 had a confirmatory brief.

22

23 Q. Can I get you to have a quick look at exhibit 129, the
24 flight authorisation brief. I would like to take you
25 through a couple of bits there for further explanation. In
26 the "Duty" there, you have a whole bunch of MRPs listed
27 there. You have number 5, which is, I believe, training,
28 crossed out. Why would that be the case?

29 A. I'm not certain what - I can't remember what MRP 5 is,
30 sir.

31

32 Q. It's exhibit 127. I think you might have it in front
33 of you. It relates to training and single-engine
34 approaches and emergency actions, et cetera. Would that
35 have been crossed out because you weren't anticipating
36 doing any emergency training?

37 A. Yes, sir, because MRP 5 specifically relates to
38 training, including instruction, test and remedials by day
39 and night.

40

41 Q. Was hot refuelling briefed?

42 A. Depending on the crews that were available from the
43 ship, they may or may not have actually conducted hot
44 refuelling. Hot refuelling is a standard for us and it
45 should have been included. Whether we actually got to
46 conduct a hot refuel or whether it was done cold is very
47 much dependent on the ship's crews on the day.

1
2 Q. Was flight on night-vision devices planned for this
3 sortie?
4 A. Not for that sortie; for the sortie that night.
5
6 Q. Because I note that it has MRP 3 in there as well.
7 Why would that be included when it wasn't planned to fly
8 with night-vision devices?
9 A. That may well just be an oversight, sir.
10
11 Q. Moving on to the top line, you have "KAN", which I
12 understand to be KANIMBLA, and under that is "NEW", with
13 "NEW" crossed out. Would that be for NEWCASTLE?
14 A. I assume it would have been, sir. Once NEWCASTLE was
15 finally ruled out of the picture, it would have been
16 cancelled.
17
18 Q. The final question relating to this particular sheet
19 is that in the crew passengers area, there was no mention
20 of a passenger manifest. Would it normally be the case
21 that you would have pax as manifest or PAXMAN?
22 A. Yes, it was, sir. It should have been, and they
23 should have had "PAM" there. The passenger manifest is
24 kept. We normally have that completed immediately prior to
25 launch, and it's left with the HCO.
26
27 Q. That may well indicate to someone looking at this that
28 pax weren't intended to be carried?
29 A. I can see how that would be observed, sir.
30
31 Q. Just on 171 Squadron's authorisation policy, is
32 self-authorisation approved?
33 A. Self-authorisation is approved under certain
34 circumstances. Clearly, the detachment is a certain size
35 and, whilst I was the detachment commander, I was also an
36 active aircrew participant.
37
38 Q. I understand that. But the policy would be,
39 presumably, that when another officer is available that can
40 authorise, they should?
41 A. Another officer who is permitted to authorise that
42 flight, yes.
43
44 Q. As to authorisation of formation trips, would it be
45 normal for the one authorising officer to authorise all
46 elements within the formation?
47 A. Yes.

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Q. Can I ask you to go back to 21 November on that exhibit. You have Black 1 and Black 2. I can't remember the serial numbers, 70, 71, or something like that.

A. Yes, sir.

Q. With CAPT Bingley in one and MAJ 4, I believe, in the other. Can you make out the authorising officer in both of those?

A. Yes, the authorising officers were those aircraft captains.

Q. Can you explain to me, then, why not only are they self-authorising on a detachment like this, but two aircraft in the same formation are authorised by different people?

A. They are not necessarily in the same formation. They are just using those call signs, sir.

Q. However, they were self-authorising?

A. Yes.

Q. When you conducted your special operations training course, who were your QFIs?

A. I have done it three times, sir.

Q. The most recent one?

A. The most recent one was - I know MAJ 2, and I know that CAPT Bingley was one. I'm not certain whether MAJ 5 was also one of the instructors.

Q. Can you explain to me your appreciation of the comfort zone and where you sit in that, how comfortable are you?

A. Maybe the term "comfort" is not necessarily the appropriate one to be used. In my understanding of what the comfort zone is, it normally relates to a profile, a phase, an area where the aircraft should be, and I think in my mind it's more related to parameters such as altitude and the ground speed/distance to run comparison more than an individual feeling of comfort, because, clearly, those three parameters come together to give you an indication of whether you will or will not make that target. My understanding of the comfort zone is that it's an area, if you like, it's a zone where you have those factors under control in such a manner that you can comfortably say that you will make that particular target.

1 Q. So it remains an area of personal judgment on the
2 execution of the manoeuvre. With respect to the rate at
3 which you may apply pitch, using that term for an
4 aggressive approach, would you be as comfortable, say, as
5 MAJ 2 in flying this type of approach?

6 A. MAJ 2 has significantly more experience than I do.
7 I am a conservative pilot and, as such, I will build in
8 buffers for myself. Would I conduct something as
9 aggressively as he would? Probably not.

10
11 Q. In relation to CAPT Bingley, would the same apply?

12 A. My relationship with him?

13
14 Q. No, would the same apply to CAPT Bingley as you
15 applied to MAJ 2? Would he fly more aggressively than you
16 would?

17 A. I have not seen CAPT Bingley fly overly aggressively,
18 but as he was a more experienced individual, I expect that
19 he would be far more comfortable in conducting that flight
20 than I would.

21
22 Q. Did you ever feel the need to rein in any unit pilots
23 with respect to aggressive flying habits?

24 A. I have had occasion - and I have normally done it
25 through the individuals' troop commanders and the QFIs - to
26 identify to one or two individuals that perhaps what they
27 were doing is erring on the wrong side of the line and that
28 they needed to have that line readjusted, to be
29 rebaselined.

30
31 Q. Would either of those be MAJ 2 or CAPT Bingley?

32 A. No.

33
34 Q. It's a difficult question probably for you to answer,
35 but if you are supervising someone whose skill sets and
36 experience are greater than yours, how do you find that
37 line to define, when you're supervising people who have
38 greater experience?

39 A. It is a difficult question, sir. I do not profess to
40 have the same skill sets as CAPT Bingley or MAJ 2, but if I
41 am their commander, then I am bearing the command
42 responsibility for whatever they do and it is incumbent
43 upon me, and I assure you I would take steps that if they
44 were doing something that I was not comfortable with, they
45 would be told by myself, regardless of who they are and
46 regardless of the experience that they have over and above
47 mine.

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Q. But how would you know if they're flying more aggressively than you and they are more comfortable with it, as you've said?

A. It's very subjective.

Q. By your own words, you have said that the approach flown by CAPT Bingley was not a conservative approach. Given that you actually briefed "conservative" at the briefing, would it be possible for CAPT Bingley to have misinterpreted your directions?

A. Would it be possible? I guess anything is possible.

Q. Would it be likely?

A. No, I don't believe it's likely. Every time I've had occasion to speak to him and provide him guidance and direction, he has always followed my lead.

Q. So you are reasonably confident, then, that in briefings and orders, as detachment commander, you would be listened to?

A. Yes. Otherwise I would not authorise a flight.

Q. Why, then, would CAPT Bingley choose to ignore those directions?

A. Sir, only CAPT Bingley can answer that question.

Q. But I understand you to say that you have control over your pilots and they follow your advice and directions. Why wouldn't he fly an 80 per cent approach?

MAJ GABBEDY: Sir, I don't interrupt lightly, but the question has been properly answered, I would contend, and the Group Captain is asking MAJ 3 to speculate as to what went through CAPT Bingley's mind, which is just not possible.

THE PRESIDENT: I agree, in relation to the first question, that the answer will never be known and can never be known. I'll disallow the second question.

MAJ GABBEDY: Thank you, sir.

GPCAPT FIELDER: Q. I have just a final question for you: prior to 29 November, what was your view on the Black Hawk's ability to approach to the hover in a tailwind?

1 A. Sir, I have always believed that the Black Hawk is a
2 very capable aircraft. Regardless of its current age,
3 I believe that it can conduct an approach with a tailwind
4 provided you have all of the other parameters under
5 control. I believe that the testimony of SQNLDR Morris
6 reaffirmed that. It is not something that we do lightly,
7 and it's something that should take into account all of the
8 other factors. Provided that your speed and your rotor RPM
9 are all under control and provided that you have the
10 necessary power, I believe it is an approach that is able
11 to be conducted safely, provided that those other factors
12 or those other parameters are under control.
13

14 Q. This was your view before the accident as well as
15 after?

16 A. Yes, sir.
17

18 Q. One final question: what did you think had happened
19 when you spoke to BRIG Bartels?

20 A. After the accident?
21

22 Q. Yes.

23 A. Sir, my discussion with BRIG Bartels really was
24 providing him an initial assessment of whether I felt there
25 was a problem with the aircraft from a mechanical
26 standpoint. My initial look at the 1 spot and 3 spot
27 cameras - or the video that was shown gave me no reason to
28 necessarily doubt the mechanical abilities of the aircraft,
29 and that's what I told BRIG Bartels.
30

31 GPCAPT FIELDER: Thank you, Major.
32

33 CMDR ROURKE: Q. Good morning, Major. I have a number
34 of questions. My first one is really just to satisfy my
35 professional curiosity. If 221, when it crashed, had
36 actually landed on the deck and stayed there and not gone
37 over the side, what was your contingency plan for a fouled
38 deck?

39 A. For a fouled deck?
40

41 Q. Having three aircraft left airborne.

42 A. That's a very good question, sir. I was happy that my
43 aircraft had sufficient fuel to perhaps loiter. The only
44 other option I would have had, if clearing of the fouled
45 deck was going to take some time, would have been to ask
46 NEWCASTLE to accept. NEWCASTLE was, I believe, about
47 45 miles away.

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Q. That's one aircraft. You still have two more.

A. I understand that, but that aircraft can refuel and then go back airborne, which provides sufficient time, perhaps, to clear the fouled deck.

Q. Fair enough, thank you. Even if you're unaware that an LPA lies beam on to the wind, and they do, as do most ships, in all likelihood, if you're making an approach from both port and starboard sides, at least one of those approaches is probably going to have a tailwind component; is that fair?

A. Not necessarily, sir. I see that certainly, under many circumstances, that would be the case.

Q. I would say 99 per cent of cases. Even taking your viewpoint, if it's unknown that you are going to have a downwind final component for the termination phase, should you not then brief the worst case, as we military men often do, and presume that you may have one and brief for that worst case?

A. Sir, with the benefit of hindsight, I will do from now on.

Q. The standard risk mission profiles we have discussed many times. You mentioned that they are kept alongside the flight authorisation book, and you said that the pilots use them to browse through before they authorise flights and they use them in their planning for the missions. Realistically, how often do these very experienced pilots actually dig out those mission risk profiles and go through them in detail? If you can't answer that, how often do you do it?

A. How often do I do it, sir? Certainly, for those flights where I authorise the flights and there is something which is a little different in that flight. I want to make sure that there's actually a current mission risk profile which covers what we're doing. Do I do it every day? No, I don't do it every day.

Q. Do you think it's possible that having these standard mission risk profiles which were drafted a number of years ago, a certain level of complacency and formality comes into it where we know they're there, they're on the bookshelf and, over time, the dust starts to gather on that bookshelf and it becomes in some way a box-ticking exercise for this type of activity?

1 A. Firstly, yes, I do. I am also aware that, completely
2 separate to this Board, a reasonably recent safety audit
3 conducted by 16 Brigade came to a similar conclusion,
4 I believe. I could be incorrect, but I believe that they
5 are taking steps to try to rectify that, in terms of either
6 additional training or enforcing perhaps a more regular and
7 routine reassessment of those MRPs so that people are, by
8 virtue of that reassessment, forced to actually continually
9 look at them. It has been raised. It is something that
10 we, as an organisation - any aviation organisation - need
11 continually to address.

12
13 Q. Because it would appear - and this is from
14 evidence-in-chief with CMDR Rush - that a lot of the
15 tactical level briefings regarding safety of the mission,
16 not the mission itself but the safety aspects, were just
17 glossed over?

18 A. I can see, as an independent third party, how that
19 would be observed.

20
21 Q. My final question is, given the benefit of hindsight
22 and the evidence that you have heard at this Board, what
23 would you do differently if you could reverse time and go
24 back to the morning of 29 November?

25 A. I personally would have chased more certainty on the
26 ship and the ship's position, the ship's head. I would
27 have incorporated that into the brief to a greater degree.
28 I would have made myself more aware of the emergency plans.
29 I'm reasonably aware of all of them, but it's different to
30 say that knowing that you're expecting an accident, as
31 opposed to potentially expecting one. I now know that we
32 had a fatal accident. I think if I knew then what I know
33 now, I would extrapolate every single possible finding from
34 that AAIT report and the BOI recommendations and
35 incorporate them, clearly. We lost two very valuable
36 individuals on that day.

37
38 CMDR ROURKE: Thank you, Major.

39
40 THE PRESIDENT: The Group Captain has one other question.

41
42 GPCAPT FIELDER: Q. Reflecting on your answers in
43 response to my questions, another point has just come to
44 mind with respect to the authorisation process. Given that
45 you have said that you authorise after the briefing and
46 that the night sortie that was to follow would have been
47 briefed after the day sortie, can you explain why you have

1 already authorised Black 1 to do the night sortie?
2 A. Sir, all I can say is that the confirmatory briefing
3 for the night serial, clearly, would have been conducted
4 after the day serial. We do that, clearly, to learn the
5 lessons for the night from the day. At that particular
6 confirmatory briefing, I would either reinforce that
7 authorisation or withdraw it.
8
9 GPCAPT FIELDER: Thank you.
10
11 THE PRESIDENT: LEUT Nash, MAJ Campbell, CMDR Rush, are
12 there any questions arising out of the Board's questions?
13
14 MAJ CAMPBELL: No, thank you, sir.
15
16 CMDR RUSH: I have no questions, sir.
17
18 MAJ GABBEDY: I have no questions, but I do have one point
19 of clarification. It was put to MAJ 3 by CMDR Rush that
20 the ship had drifted 600 yards and that that was a
21 calculation done by LCDR Collins. From page 617 of the
22 transcript, the calculation done by LCDR Collins is
23 420 yards. That's the only matter, sir.
24
25 CMDR RUSH: Sir, there was a later calculation that
26 appears in the transcript, based on a different rate of
27 drift.
28
29 THE PRESIDENT: Right. We shall consider both. Thank
30 you. You may step down.
31
32 <THE WITNESS WITHDREW
33
34 CMDR RUSH: Sir, that concludes the oral evidence before
35 the Board. There is quite a lot of material that we wish
36 to tender as exhibits. LEUT Neal will handle that aspect,
37 sir. Then we have agreed upon some dates that we wish to
38 put to the Board in relation to preparation and then
39 presentation to the Board of submissions.
40
41 THE PRESIDENT: Right.
42
43 CMDR RUSH: I will pass to LEUT Neal, sir.
44
45 LT NEAL: Sir, as CMDR Rush said, there are a number of
46 documents to hand up. Would you like them to be handed up
47 as a bundle or one by one?

1
2 THE PRESIDENT: I have been provided with a very useful
3 list of, first, documents and, second, statements for
4 tender. We will set aside the statements for the moment.
5 I presume that everyone else has the list.
6
7 LT NEAL: No, sir. Sir, it has been the subject of
8 amendment. A final copy can be printed.
9
10 THE PRESIDENT: We will take a short adjournment and get
11 it organised.
12
13 ADJOURNED [1108]
14
15 RESUMED [1140]
16
17 LT NEAL: Sir, a copy of the items that we desire to
18 tender has now been distributed to counsel representing,
19 the Board and the Secretary. Do you have it before you?
20
21 THE PRESIDENT: Does that list commence with Sikorsky
22 letter of 29 January 1998 and end with AAP 7210, et cetera,
23 Aircraft Standardisation Manual?
24
25 LT NEAL: And there should be a third page, sir.
26 I apologise for the lack of staples, sir.
27
28 THE PRESIDENT: Can I interrupt the tender. Can I just
29 check to see that we are all working from the same list.
30 I have a list that is made up of three pages.
31
32 LT NEAL: Yes, sir.
33
34 THE PRESIDENT: The last page is a list of statements for
35 tender.
36
37 LT NEAL: Yes, sir.
38
39 THE PRESIDENT: On the other two pages, the first item is
40 a Sikorsky letter, and on the second page, the last item is
41 Aircraft Standardisation Manual.
42
43 LT NEAL: Yes, sir.
44
45 THE PRESIDENT: I got it right the first time, then.
46
47 LT NEAL: Yes, sir.

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THE PRESIDENT: If the Sikorsky letter to LTCOL O'Reilly dated 29 January 1998 is admitted as exhibit 187 and then one follows numerically and sequentially down to the Aircraft Standardisation Manual, what number exhibit would that be?

LT NEAL: Exhibit 214, sir.

THE PRESIDENT: Thank you. They will be admitted in that order with that numeration.

EXHIBIT #187 SIKORSKY LETTER TO LTCOL LEO O'REILLY, SHIPBOARD COMPATIBILITY REPORT - BLACK HAWK, DATED 29/1/1998

EXHIBIT #188 SIKORSKY LETTER TO LTCOL BARTON, REQUEST FOR INFORMATION - BLACK HAWK FLOTATION EQUIPMENT, DATED 27/7/2007

EXHIBIT #189 HQ 16 BDE (AVN) MINUTE 1500-25-36(1) 2005/1037176, SUPPLEMENTAL ROLE APPROVAL FOR SUBSTANTIATION OF S-70A-9 FOR EMBARKED OPERATIONS, DATED 13/7/2007

EXHIBIT #190 DMO AASPO MINUTE AASPO/4102/ALS BLUEFIN PT 2 (15), BH221 BOI - AASPO RESPONSE TO REQUEST FOR INFORMATION - HELICOPTER AIRCREW BREATHING DEVICE SRU-40B/P, DATED 28/6/2007

EXHIBIT #191 DMO AASPO MINUTE AASPO/4925/A25GEN/119 PT 2 (20), BH221 BOI - AASPO RESPONSE TO REQUEST FOR INFORMATION - HEELS, DATED 12/7/2007

EXHIBIT #192 DMO MINUTE JLFA TECH 647/1/13, QUALITY OF AVIATION FUEL SUPPLIED TO BLACK HAWK 221 FROM HMAS KANIMBLA, DATED 6/6/2007

EXHIBIT #193 HHSD MINUTE HHSD/OUT/2007/BOI/7, SUPERVISION AND WORKLOAD - CO 171 AVN SQN, DATED 2/8/2007

EXHIBIT #194 STATEMENT OF REQUIREMENT - S-70A FAST ROPE INGRESS AND EGRESS SYSTEM (FRIES), UNDATED 2007

EXHIBIT #195 EMAIL GPCAPT NORFORD/LEUT NEAL DATED 20/6/2007, 1406H, BH221 BOI - REQUEST FOR INFORMATION

EXHIBIT #196 HQ 16 BDE (AVN) MINUTE 841-11-8, AUDIT REPORT

1 171 AVN SQN 13-16/11/2006, DATED 29/11/2006
2
3 EXHIBIT #197 OUT-BRIEF POINTS, COMPLIANCE AUDIT 171 AVN SQN
4 16 TO 20/4/2007 OF MAJ R SMITH
5
6 EXHIBIT #198 CJTF 635 SIGNAL TO 5 AVN REGT, AIR SAFETY
7 OCCURRENCE REPORT 28/00, 272248Z NOV 2000
8
9 EXHIBIT #199 SFI 12/2003, USE OF AIRCREW SAFETY SURVIVAL
10 EQUIPMENT ENSEMBLE, DATED 19/6/2003
11
12 EXHIBIT #200 SFI 12/2003 AL1, USE OF AIRCREW SAFETY
13 SURVIVAL EQUIPMENT ENSEMBLE, DATED 7/10/2004
14
15 EXHIBIT #201 SFI 12/2003 AL2, USE OF AIRCREW SAFETY
16 SURVIVAL EQUIPMENT ENSEMBLE, DATED 12/12/2005
17
18 EXHIBIT #202 PERSONAL FILE FOR 8223861
19 CAPTAIN MA BINGLEY (DECEASED) FROM DOCM AND SCMA
20
21 EXHIBIT #203 PERSONAL FILE FOR 8240331
22 TROOPER JNN PORTER (DECEASED) FROM SCMA
23
24 EXHIBIT #204 FLYING AND OFFICER PERFORMANCE REPORTS -
25 8223861 CAPTAIN MA BINGLEY
26
27 EXHIBIT #205 FOLDER OF DEFENCE DOCUMENTS
28
29 EXHIBIT #206 CRASH PLAN FIJI 2006
30
31 EXHIBIT #207 SAME TIME CHAT TRANSCRIPT
32
33 EXHIBIT #208 BLACK HAWK BELT
34
35 EXHIBIT #209 HELICOPTER RESTRAINT STROP
36
37 EXHIBIT #210 SPECIAL OPERATIONS TECHNIQUES LECTURES WITH
38 ACCOMPANYING TALKING POINTS
39
40 EXHIBIT #211 BUNDLE OF EMAILS REGARDING HELICOPTER
41 ASSAULT STROP
42
43 EXHIBIT #212 ABR 5419 - SHIPS HELO OPERATIONS MANUAL
44
45 EXHIBIT #213 AAP 7210-015-1 FLIGHT MANUAL
46
47

1 EXHIBIT #214 AAP 7210-015-16 AIRCRAFT STANDARDISATION
2 MANUAL
3

4 LT NEAL: Sir, I seek leave with regard to one matter. In
5 relation to the statements for tender in relation to
6 personnel from 171 Aviation Squadron, we originally
7 tendered exhibit 24, which was a list of 171 personnel with
8 pseudonyms. With your leave, sir, I would like to either
9 replace this document with a new document incorporating
10 five new names or amend exhibit 24 with the five new names.
11

12 THE PRESIDENT: I would be content if you were to
13 substitute a new exhibit 24 that is in complete form.
14

15 LT NEAL: Thank you, sir. I will do so.
16

17 THE PRESIDENT: And if that could be then distributed.
18 I'll just have it noted that exhibit 24 as originally
19 tendered has now been replaced today with an expanded
20 document, still to be numbered exhibit 24.
21

22 CMDR RUSH: Sir, there will, I think, be some more
23 documents coming into possession of counsel assisting over
24 the course of the next couple of weeks. What we would seek
25 leave to do, sir, if that be the position, is to distribute
26 them upon receipt and, when the Board reconvenes for the
27 hearing of submissions, that those documents be tendered
28 and added to this list.
29

30 THE PRESIDENT: Very well. Can I just check one thing.
31 Of the statements for tender, the statement of Barklem will
32 become exhibit 215 and the statement of Clapperton will be
33 exhibit 250.
34

35 EXHIBIT #215 STATEMENT OF ABCIS LACI BARKLEM
36

37 EXHIBIT #216 STATEMENT OF ABMED TIM CHERRY
38

39 EXHIBIT #217 STATEMENT OF ABBM DANIEL CHUN
40

41 EXHIBIT #218 STATEMENT OF LSWTR KYLIE EMERY
42

43 EXHIBIT #219 STATEMENT OF ABMT MATTHEW FARINA
44

45 EXHIBIT #220 STATEMENT OF ABATA LUKE HEALEY
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47 EXHIBIT #221 STATEMENT OF SMNCIS ELLISE HOLL

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2 EXHIBIT #222 STATEMENT OF ABET ANGELA INWOOD
3
4 EXHIBIT #223 STATEMENT OF LSCIS LUKE KASEHAGEN
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6 EXHIBIT #224 STATEMENT OF ABSN JAYDEE LEONARD
7
8 EXHIBIT #225 STATEMENT OF POWTR KERRY McCLINTOCK
9
10 EXHIBIT #226 STATEMENT OF SMNBM ASHLEY SHIRLEY
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12 EXHIBIT #227 STATEMENT OF MAJ IAN LANGFORD
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14 EXHIBIT #228 STATEMENT OF WO2 DEAN RULE
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16 EXHIBIT #229 STATEMENT OF CAPT DAVID JOHNSON, RAN
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18 EXHIBIT #230 STATEMENT OF CMDR ANDREW DAVIS, RAN
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20 EXHIBIT #231 STATEMENT OF LCDR KATE MANDERSON, RANR
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22 EXHIBIT #232 STATEMENT OF LCDR STEWART MULLER, RAN
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24 EXHIBIT #233 STATEMENT OF CPL 16
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26 EXHIBIT #234 STATEMENT OF CPL 17
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28 EXHIBIT #235 STATEMENT OF CPL 18
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30 EXHIBIT #236 STATEMENT OF CPL 19
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32 EXHIBIT #237 STATEMENT OF CPL A
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34 EXHIBIT #238 STATEMENT OF TPR D
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36 EXHIBIT #239 STATEMENT OF CPL H
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38 EXHIBIT #240 STATEMENT OF CPL J
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40 EXHIBIT #241 STATEMENT OF CPL K
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42 EXHIBIT #242 STATEMENT OF TPR P
43
44 EXHIBIT #243 STATEMENT OF TPR Q
45
46 EXHIBIT #244 STATEMENT OF TPR R
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1 EXHIBIT #245 STATEMENT OF SGT S

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3 EXHIBIT #246 STATEMENT OF CAPT T

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5 EXHIBIT #247 STATEMENT OF SGT W

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7 EXHIBIT #248 STATEMENT OF LTCOL 15

8

9 EXHIBIT #249 STATEMENT OF MS ELIZABETH ALLSOPP

10

11 EXHIBIT #250 STATEMENT OF MR CHRIS CLAPPERTON

12

13 CMDR RUSH: Thank you, sir. Can I deal with some dates,
14 sir. It is proposed, subject to the consent of the Board,
15 that by 24 August written submissions of counsel assisting
16 and counsel representing be provided to each other and to
17 the Board; that by 28 August, submissions in reply of
18 counsel assisting and counsel representing be served upon
19 each other and also provided to the Board; and that the
20 Board reconvene here on 29 August for the purpose of oral
21 submissions speaking to those written submissions and for
22 questions from the Board. Three days have been allotted,
23 sir, from Wednesday, the 29th to the Friday, if that be
24 necessary.

25

26 THE PRESIDENT: I give directions accordingly. The
27 submissions, as far as the Board is concerned, should be
28 both electronic and hard copy.

29

30 CMDR RUSH: Yes, sir.

31

32 THE PRESIDENT: I imagine that that will apply to the
33 parties as well. Is there any other order that you want in
34 the meantime? By that, I mean in a normal forensic
35 environment, in a situation like this, I would be inclined
36 to grant liberty to apply. I think that a cognate order
37 should be made in the event that someone wants to urgently
38 and for good reason raise something on no less than
39 48 hours' notice and by contact with the Board's Secretary,
40 and then whatever it is, we'll see what we can do with it.
41 So I grant liberty to apply on that basis, with 48 hours'
42 notice.

43

44 MAJ CAMPBELL: I have one matter that might be able to be
45 dealt with now. I have a statement of Mrs Bingley. It's
46 an unsigned copy. I'm not sure if it is convenient for
47 that to be tendered in its present state and replaced by a

1 signed copy when it's made available. That can be done now
2 as one administrative step.

3

4 THE PRESIDENT: Yes.

5

6 MAJ CAMPBELL: I tender that statement.

7

8 THE PRESIDENT: I presume that it goes to the issue of
9 character, repute and conduct.

10

11 MAJ CAMPBELL: It goes to three things, character being
12 one; secondly, sufficiency of Defence actions taken in the
13 aftermath of the accident as it affected the parties, which
14 is one of the Terms of Reference. Really, those two are
15 the only ones. She does deal with the process of the Board
16 of Inquiry but in a generally nice way - I hope in an
17 unobjectionable way, sir.

18

19 THE PRESIDENT: I'm sure.

20

21 CMDR RUSH: We would say that the tender is appropriate,
22 sir.

23

24 THE PRESIDENT: I have the unique opportunity to announce
25 that the Group Captain has confessed to making an error in
26 mathematics. The tendered statement of Mr Chris Clapperton
27 will be exhibit 250, not exhibit 241. Thus the statement
28 of Mrs Bingley will be exhibit 251.

29

30 EXHIBIT #251 STATEMENT OF MRS BINGLEY

31

32 THE PRESIDENT: Is there any other formal matter?

33

34 MAJ GABBEDY: Yes, sir. Just to assist me in terms of
35 putting before the Board areas that you are most interested
36 in in respect of MAJ 3, I am aware of the communication
37 between counsel assisting and the Board prior to the Board
38 taking place. I have spoken with counsel assisting in
39 respect of the areas that they would like me to address.
40 Could a direction be made that I be provided with those
41 areas that you are most interested in within, say,
42 seven days?

43

44 THE PRESIDENT: Directed against?

45

46 MAJ GABBEDY: Counsel assisting, perhaps, sir. I am
47 seeking to limit the extraneous information, or the

1 information that you are not concerned with that I provide
2 in submissions, and just direct you to those things that
3 you are most interested in.

4
5 THE PRESIDENT: You are, in effect, asking us to say what
6 we are interested in or not interested in?

7
8 MAJ GABBEDY: To an extent, sir. I'm looking for an
9 indication of those areas that you would like me to cover.
10 Over the past several weeks, we have covered a
11 broad-ranging number of areas, some of which may no longer
12 concern you and some of which may directly concern you.

13
14 THE PRESIDENT: I would like to think that, first,
15 informally, not compulsorily, counsel assisting might
16 indicate what areas have washed away; second, more
17 formally, in the submissions that you will receive from
18 counsel assisting, the issues will have been refined and
19 outlined; and, third, the Board formally declines, for
20 obvious reasons at this stage, to indicate any view as to
21 what issues it will be concentrating on. That's all I have
22 to say.

23
24 CMDR RUSH: We will follow that course, sir.

25
26 THE PRESIDENT: Thank you.

27
28 LEUT NASH: Sir, just very briefly, I understand that the
29 Board has indicated to counsel assisting, CMDR Rush, that
30 it is possible that there will be further evidence in the
31 form of exhibits that may be tendered over the next few
32 weeks, as I perceive it. There is a statement that I was
33 hopeful of having today from Mrs Porter. It does go only
34 to character and repute, and there are some uncontentious
35 statements of gratitude in relation to both this process
36 some people who have supported her. I am sorry I don't
37 have it, because it hasn't arrived from Perth yet, but I
38 propose to seek to tender it and probably convey it by post
39 to counsel assisting for tender to the Board.

40
41 THE PRESIDENT: As soon as you receive them, give them to
42 the Board's Secretary and they will become part of the
43 record on an appropriate occasion. By all means.

44
45 LEUT NASH: Thank you.

46
47 THE PRESIDENT: Is there anything else?

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CMDR RUSH: No, sir. That concludes the oral evidence. I perhaps can place on the record our gratitude to the shorthand writers, sir, for the work that has been done and also to the administrative staff that have supported counsel assisting and the Board's processes.

THE PRESIDENT: Thank you. I think it appropriate to remark, to use a phrase that we've heard often, within the parameters merely of the conduct of the oral hearing of this Board of Inquiry, I think it appropriate for me to remark as President, and for my colleagues as well, upon what we have perceived to be the high level of efficiency in the conduct of the oral hearing by all those involved. We are grateful for it and we join you in acknowledging the superb service of the reporting service as well.

We will adjourn until 29 August.

MATTER ADJOURNED AT 1155
TO 29 AUGUST 2007 AT 1000

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