

3RD SUBMISSION DATED 24.3.09

Dear Commissioner Cole,

I wish to draw your attention to the following:

1) As is recorded in the Transcript of the Hearing of November 28th published on p.997 of the Inquiry website, you seriously misrepresented the evidence of Lt Petersen on *Kormoran* having surrendered which I quoted from the submission of Mr A.D. Clark to the JSCFADT (Vol. 11, p.2686) by then stating that the former had gone on to speculate that *Kormoran* survivors had shot those from *Sydney* in the water; a more careful reading of the page in question shows that this speculation was in fact made by the latter and NOT by LT Petersen. You later (see Tr. p.1423) remarked of LT Petersen's evidence that **'Why anybody would rely upon this sort of material I can't imagine'** on the grounds that he had quoted the *Kormoran* survivors as reporting that *Sydney* had been hit by two underwater torpedoes rather than one (whereas most other survivors stated that a second hit was made from one of the above-deck tubes), and that they had struck her under the bridge rather than the more generally agreed point between A and B turrets - a difference of a few yards only. I would therefore suggest to you that it is on the contrary indeed reliable, especially when taken with the corroborating statements of Messrs Evans and Cardaci, together with the strong circumstantial evidence set out by COL Whittaker, myself and others.

2) You have stated (Tr., p. 843) that you **'don't really want to investigate Perth'**, but the fact that over 300 from the crew of *Sydney's* sister ship survived a far more withering assault - by no less than 23 modern warships which finally sank her after four torpedo strikes, compared with the at most two torpedo strikes from *Kormoran* and fire from her WW1 main armament without central control (from which only half a dozen or so shells appear to have penetrated on the evidence of the wreck) - demands detailed comparison. I also invite you to consider the following comments of CMDR Don Kerr made from his experience of 20 years' service in the RAN:

Given the distance between battle site and sinking location (well beyond the effective range of any *KORMORAN* weapon), it appears *SYDNEY* continued to have both the men at their place of duty engine rooms, emergency conning position, emergency radio shack, etc., and the physical means serviceable engines, available fuel supply, shafts, etc. to head for the coast. This means that many fit and capable men must have remained at their posts long after the shooting stopped. Not to mention scores, if not hundreds of men engaged in damage control. It is unreasonable for me to think that all those fit, unwounded surviving sailors could ALL perish without further enemy intervention. The photos show that a cataclysmic explosion did NOT occur (a la Jutland).

I would therefore again submit to you that the official story's contention that *Kormoran* alone accounted for the loss of all *Sydney's* 645 crew is completely untenable.

3) In spite of my bringing to your attention in my letter of 3rd December the evidence of Mrs. Bennett that CAPT Collins was already in receipt of the instruction to investigate rumours of *Sydney* survivors before he left for Tokyo in September 1945, you have continued to repeat the proposition that it was only after his arrival there that he was so (Tr. pp.1484-5)

4) In the same Hearing (Tr. 1497ff.) you allowed CMDR Rush to make play of Mr Karlov's mistake in placing the Memorial to the Fleet Air Arm commemorating LT CMDR J.C. Bacon RN with the Naval memorial at Plymouth in order to discredit the rest of his evidence on that point, whereas, as you surely well know, the Memorial is in fact situated at Nowra. From the attached reproduction, you will see that it does indeed show, as Mr Karlov testified, that LT CMDR Bacon was ***KIA in HMAS Sydney when ship lost and sunk with all hands in an action against***

Japanese forces on 19 November 1941, and that furthermore it dates the accompanying death of FL OFFR R.B. Barrey to **20** (not 19) **November**. This evidence needs, of course, to be taken in conjunction with the letter (also attached) which the Admiralty wrote to my mother on 24 February 1942 likewise amending the date of my father's death to the 20th as a result of 'information received from the Commonwealth of Australia'. It is abundantly clear that all the documentation substantiating this information is absent from official archives, and that you therefore have no option but to conclude that it has been deliberately suppressed or 'covered up' – unless you are going to contend that both the Admiralty and the creators of the Memorial invented it for quixotic reasons of their own.

5) You have also seen fit to question whether CAPT Collins ever saw the Carley float recovered by HMAS *Heros*. Not only was he, as the Commodore-in-Charge at Fremantle at the time, responsible for overseeing its transfer to Canberra, but the suggestion that he would not have personally inspected the only (then) relic from the ship that, as its former Commander, was so close to his heart is frankly preposterous and a slur on the memory of one of the RAN's most distinguished officers.

6) Doubt was also expressed (Tr. p.994) on the Germanic nature of the script of the words 'YOU LAZY BASTARD! FIND OUT FOR YOURSELF' in the anonymous letter which I received in 1979 and which I displayed to you. It occurs to me that this is more apparent in the script of the address on the envelope, and I am accordingly attaching a scan of that.

7) Concerning Exhibit 153, Ms Donlon's subsequent analysis of the skull of the Christmas Is. sailor, to which you referred me in response to my request that the photographs of the skull be released for public examination, I must point out that nothing can detract from the statement of Capt. Parsons, conveyed earlier by Lt. Perryman to Mrs. Barbara Craill and Mr. Edward McGowan, that 'the skull was in perfect condition except for a hole in the back from the bullet of a small-calibre handgun', which was then confirmed in the following extract (Transcript pp.2216-7) from the evidence of Capt. Parsons to the Commission on March 6th, as you yourself will doubtless recall:

(describing a telephone conversation which he had with Ms Donlon on October 16th 2006)

Q. What did she say to you?

A She said 'Are you sitting down?' to which I replied something like 'Do I have to?' She said, I think so. I think our sailor's been shot.'

Q I think our sailor's been shot?

A It was very close to that.'

He then repeated this in so many words in a Press Release the following day. The subsequent transmogrification of the bullet and hole in the back of the skull into, respectively, 'shrapnel splinter' and 'entry wound in the forehead' (which, let it be noted, was not observed by any of those involved in the body's recovery and burial in 1942) is based entirely on the opinions of agents of the Government and its various departments who are, of course, bound to conform to the Government's bidding; as an illustration of this, allow me to point to the evidence of Prof. J. Creagh, spokesman of the Australian War Memorial, who in 1998 went so far as to express the opinion to the Senate Committee that location of the grave at Christmas Is.

'should not be attempted under any circumstances. The likelihood of the body and Carley float being associated with HMAS Sydney is extremely small, because none of the meteorological conditions prevailing at that time would lead to an expectation that the float could have drifted towards Christmas Is.'

It is thus hardly surprising that the evidence of such people should incline to be held as of no account by impartial observers of the Hearings and Submissions, and it hardly needs me to point out to you that the first principle of any legal system in a democratic society is that justice should not only be done, but also be seen to be done.

8) The subject of the Inquiry is, of course, the allegation that the official history of the action, based as it is entirely on the account 'cooked up' – in the words of the first NI Officer to interrogate them (Lt. Cmdr. J.L. Rycroft) - by the Kormoran survivors were reunited on land with the express purpose of shielding themselves from the very real prospect of indictment on War Crimes charges, cannot begin to give a logical explanation of

A) the purported decision of Capt. Burnett, an experienced and capable Captain in the full knowledge moreover of the presence of a raider in the area, to set aside all laid-down procedures and hazard his ship by approaching to within 1000 yards of a supposedly unidentified ship

B) the total loss of all Sydney's 645 hands in comparison with the survival of 318 men from Kormoran's much smaller crew.

In such a context, and in the absence by loss or destruction of the great majority of supporting documents, it falls to you as President to find an explanation based on probability deduced from the totality of the evidence presented, and categorically to reject the argument which Counsel has advanced throughout that the official history should be allowed to stand by default.

That said, there are, however, a number of first-hand items of evidence of incontestable authenticity available to you, to wit:

- 1) The excision from the English-language edition of Detmers' book of the sentence - in relation to his practice firing from the concealed torpedo tube – 'Neither of us suspected how bitterly earnest a situation would develop in which the torpedoes would play such a role'; this 'situation' can only, of course, refer to the action with Sydney.
- 2) Detmers' omission of any reference, both under interrogation and subsequently, to Kormoran's change of disguise to that of Straat Malakka on May 1st, 1941, for that reason alone making it extremely unlikely that she was still so disguised on November 19th.
- 3) The entry in the diary of Wilhelm Grun for November 17th 'Ocean-going liner must soon be met', then corroborated by the statement of a survivor rescued by Aquitania on the 23rd that 'We were waiting for you, but the Sydney came first.'
- 4) The location of Sydney's wreck 12.5 nautical miles from that of Kormoran, the separation of her bows and the absence of any evidence of major fire damage amidships corroborates all the survivors' evidence – especially the statement of Detmers that she 'was last seen heading SE with all lights still on' – that she did not sink as a result of damage suffered in the action with Kormoran, but of further, later damage inflicted on her bows.
- 5) The entry in the diary of Admiral Crace for the 24th 'Naval Board are very worried about Sydney... they think there is a possibility that a Vichy submarine escorting a Vichy ship has torpedoed her', and the suppression from the records of all the information leading to it.
- 6) The suppression from the official record of the third page of Cmdr. Ramage's report on his initial interrogation of the survivors postulating that Kormoran had employed an illegal ruse de guerre to persuade Sydney to close to 1000 yards.
- 7) The letter from the Admiralty to my mother of February 24th amending the date of my father's death from November 19th to the 20th 'as a result of information received from the authorities of the Commonwealth of Australia' and the further suppression of this information from the records, which should be taken in conjunction with the similar recording on the Fleet Air Arm's

Memorial at Nowra of the death of Fl.Off. R.B. Barrey as having taken place on the 20th 'in an action against Japanese forces.'

To these may be added the record of signals from Sydney on the 19th both by radio in Morse and by voice received at Applecross, RAAF Corunna Down, Geraldton, Hamelin Pool, HMAS Harman and FECB Singapore, as vouchsafed by this description of events by Dr. E. Strachan, Medical Officer at RAAF Pearce at the time, which has been recently submitted to the Commission: 'There was a general feeling of excitement which gradually built up and also that a certain problem was to be resolved. All this came to a climax approx 4 30 PM, 19th November (41) when the bus – to Perth – was about to leave and the whole place was instantly 'lit up' with the knowledge that the SYDNEY was in action and the matter would be finished with success. The next day the whole feeling of Pearce was changed with the horror that the SYDNEY had been lost and the hope that there would be survivors.'

It goes without saying that each of these items is in direct contradiction of the official history, and that any failure to take full account of them in your Report would constitute nothing less than a dereliction of duty on your part.

Yours sincerely,

A handwritten signature in dark ink, appearing to read "Michael Montgomery". The signature is written in a cursive, flowing style with some loops and flourishes.

Michael Montgomery