

1 <TREVOR JOHN McARTHUR, sworn:

[3.30pm]

2
3 <EXAMINATION BY CMDR RUSH:

4
5 CMDR RUSH: Q. Dr McArthur, could you state your full
6 name to the Commissioner, please?

7 A. Trevor John McArthur.

8
9 Q. And your address?

10 A. [REDACTED]

11
12 Q. And your occupation?

13 A. I am a retired university director.

14
15 Q. Dr McArthur, you have had a very long interest in the
16 issues and matters pertaining to the loss of *HMAS Sydney*
17 and the engagement with *Kormoran*?

18 A. Off and on, sir, since about 1972.

19
20 Q. You obtained your doctorate as a consequence of
21 a thesis through the University of Southern Queensland in
22 2001, which was entitled "A Rush to Judgement: An Analysis
23 of the Loss of *HMAS Sydney* 19 November 1941".

24 A. Correct.

25
26 CMDR RUSH: We have that. I think you're aware of that,
27 sir. I wish to tender the doctrinal thesis of Dr McArthur.

28
29 **EXHIBIT #174 THESIS SUBMITTED FOR THE AWARD OF A DOCTORATE**
30 **OF PHILOSOPHY IN 2001 ENTITLED "A RUSH TO JUDGEMENT: AN**
31 **ANALYSIS OF THE LOSS OF *HMAS SYDNEY* 19 NOVEMBER 1941"**
32 **WITHIN THE UNIVERSITY OF SOUTHERN QUEENSLAND**

33
34 CMDR RUSH: Q. Dr McArthur, in addition to the thesis,
35 you've provided a number of submissions, I think it is fair
36 to say, that are based on your thesis to the Commission of
37 Inquiry?

38 A. Yes. I had a problem there, in that the thesis would
39 have been old hat within three years of it being granted.
40 This is because of the changing nature of history. When
41 I came here, or returned to Western Australia, I was asked
42 by the West Australian Maritime Museum to go through and
43 file the papers they had on *Sydney*. In all, I filed
44 something like 4,800 pages, 46 files, of information - some
45 stupid, some excellent - that I did not know even existed
46 at that time. So if I were to rewrite my thesis, I'd make
47 quite a number of changes, and particularly in view of the

1 recent discoveries.

2

3 Q. Perhaps if we can go through those. Paper 1 was the
4 armaments?

5 A. Yes.

6

7 CMDR RUSH: That is CORR.014.0141. I will tender them as
8 a group, sir, if that is convenient.

9

10 THE PRESIDENT: Yes.

11

12 CMDR RUSH: Q. Dr McArthur, paper 2 was "The Combatants:
13 October to November 1941"?

14 A. Yes, that's right.

15

16 Q. Paper 3 concerned the encounter?

17 A. Yes.

18

19 Q. I think - I hope I'm right - chapter 5, "The Action -
20 A Closer Look"?

21 A. Yes.

22

23 Q. And then another entitled paper 5, but a different
24 subject, "An Overdue *HMAS Sydney* - Reactions"?

25 A. Correct.

26

27 Q. And in addition to that, there was a part of your
28 work, "*Kormoran* and the Mining of Shark Bay"?

29 A. Yes.

30

31 Q. Something in relation to the tug *Uco*?

32 A. Yes, yes.

33

34 CMDR RUSH: I think I have the whole lot, so I will tender
35 those papers, sir, as a group.

36

37 **EXHIBIT #175 DR McARTHUR'S SUBMISSION PAPERS: "THE**
38 **ARMAMENTS"; "THE COMBATANTS: OCTOBER TO NOVEMBER 1941";**
39 **"THE ENCOUNTER"; "THE ACTION - A CLOSER LOOK"; "AN OVERDUE**
40 **HMAS SYDNEY - REACTIONS"; "KORMORAN AND THE MINING OF SHARK**
41 **BAY"; PAPER IN RELATION TO UCO**

42

43 CMDR RUSH: Q. Then, Dr McArthur, there was
44 a supplementary paper that you provided to the Commission
45 of Inquiry entitled "Captain Joseph Burnett, the
46 Culpability of Captain Burnett"?

47 A. Yes, that's right.

1
2 CMDR RUSH: I tender that also, sir.

3
4 **EXHIBIT #176 SUPPLEMENTARY PAPER ENTITLED "CAPTAIN JOSEPH**
5 **BURNETT, THE CULPABILITY OF CAPTAIN BURNETT"**

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7 CMDR RUSH: Q. Some submissions have been put to the
8 Commission of Inquiry that the wrecks of *Sydney* and
9 *Kormoran*, specifically *Sydney*, are in fact not *Sydney* at
10 all.

11 A. Yes. I have certainly been saturated, if you like,
12 with a lot of information from that quarter.

13
14 Q. And is it something that you disagree with?

15 A. I don't have the background, for a start, but I've
16 written sufficient history over a period of time to know
17 that when you go public and say anything, the chances of
18 someone refuting you are extremely high, and they'll do it
19 either by attacking you personally or by attacking what
20 you've written.

21
22 Now, in the case that we're talking about, at first
23 glance to the uninitiated, I feel that they might have
24 a case. But if I had a Naval person talking to me about
25 it, I'm certain that they could deny the allegations that
26 are being made. In short, unless I had more information,
27 I couldn't make a dogmatic statement, but at the moment I'm
28 tending to think, not again.

29
30 THE PRESIDENT: Q. What does all that mean?

31 A. Well, once again, we have someone rushing in to say,
32 "What you've found is not right."

33
34 Q. So you accept that it is the *Sydney*?

35 A. I'm sorry, sir?

36
37 Q. You accept that it's the *Sydney* that has been found?

38 A. I'm going to say yes. I have no reason to think
39 otherwise, unless a gigantic hoax is being played on the
40 public purse.

41
42 CMDR RUSH: Q. Dr McArthur, I'm going to go to a couple
43 of matters that are raised in your thesis, and I want to
44 start, if we can go to USQ.001.0180. They are the numbers
45 that we're using. It will come up on the screen in front
46 of you. It is in fact page 165 of your paper, but that's
47 the number that we are using.

1
2 THE PRESIDENT: It is page 165 of the thesis.

3
4 THE WITNESS: Oh, yes.

5
6 CMDR RUSH: Q. Just so that everyone understands it, it
7 is a part of the paper where you were dealing with the
8 location of the wrecks.

9 A. Yes.

10
11 Q. You stated this:

12
13 *The reason for presenting in some detail*
14 *the field research of Whittaker and Knight*
15 *lies in the fact that as of 26 May 2001*
16 *they have revisited the areas covered in*
17 *their previous survey and confirmed their*
18 *findings.*

19
20 A. Yes.

21
22 Q. You go on:

23
24 *Although the final proof of their work can*
25 *only be revealed by an underwater*
26 *exploration, nevertheless what they have*
27 *found using an even more sophisticated*
28 *version of the KDLS together with improved*
29 *access to global positioning satellites may*
30 *be persuasively argued to be the two*
31 *vessels.*

32
33 Just stopping there - that was the theory that was put up
34 by Whittaker and Knight as to a location of Sydney off the
35 Abrolhos Islands?

36 A. That's correct, yes.

37
38 Q. Relying on a KDLS system, which was proved to be
39 totally incorrect.

40 A. The KDLS system --

41
42 Q. I'm sorry, I should say just the location was proved
43 to be totally incorrect.

44 A. Oh, absolutely.

45
46 Q. You then go on to say this:

47

1 *This poses a huge question not only over*
2 *the German stories (and the willingness of*
3 *the RAN to stand by a version of the battle*
4 *based without any semblance of analysis*
5 *only on the survivors' stories) but also*
6 *over the official history written by George*
7 *Hermon Gill.*

8
9 If I interpret that correctly, you are saying that on the
10 premise that Whittaker and Knight are correct that the
11 location of the *Sydney* is nowhere near where the Germans
12 say it is, then as far as the German stories, the RAN stand
13 and George Gill's history are concerned, then there are
14 huge questions about it?

15 A. My thesis is directed really at analysing what George
16 Hermon Gill had to say, and I believe that I proved that he
17 was wrong in so many instances, that it just wouldn't stand
18 up to close analysis. The statement, "willingness of the
19 RAN to stand by a version ... without any semblance of
20 analysis" is, I think, a reasonable one, given that I have
21 read an awful lot of material from Archives, in the Navy
22 Historical Society and in Sydney and in Melbourne, and
23 I can't find anywhere where there is the sort of analysis
24 that I would expect to find at a level that I would expect.

25
26 I have written further that I can understand why this
27 took place, because at that time Japan was almost ready to
28 enter the War and Long, who was the Director of Naval
29 Intelligence, also wrote that he could tell that something
30 was going to happen very quickly, because the Japanese were
31 recalling all their merchant vessels back to Japan.

32
33 So apparently he never shared this with anyone else at
34 the time. He told Gill that in the letter he wrote to Gill
35 in 1957 when he had examined the story that Gill was
36 writing on the loss of *Sydney*, and particularly what he had
37 to say about CAPT Burnett. That particular letter of
38 Long's was a letter which threw me completely by what he
39 had to say there, and that has caused me a lot of problems
40 since.

41
42 Q. In the context of the position of the ships being in
43 the location where the German survivors said they were, how
44 does that cause you, if it does, to reassess what you've
45 written there?

46 A. Oh, I would reassess it, but I'd also challenge how
47 many German survivors have said that that is the particular

1 location? I've read the 300 interrogations - no,
2 interviews; they weren't interrogations; they were
3 interviews - carried on by the officers and interpreters
4 here and in Victoria.
5

6 What disturbs me most is that I couldn't come to any
7 conclusion from the huge variety of information - I won't
8 say "evidence", I'll call it information - that was
9 presented in those 200 to 300 pieces of - what would you
10 call it? - copies of their statements - I'll just get the
11 right words for you - copies of their responses to the
12 questions put to them.
13

14 Q. When the Navy wrote to Admiralty on 28 November 1941
15 and indicated that the German raider Captain had confirmed
16 previous reports and added that the action took place
17 latitude 26 degrees 31 minutes, longitude 111 degrees, they
18 were right on the mark, weren't they?

19 A. Yes. While they were bleating what Detmers said,
20 Detmers stuck to that, so they wanted to believe that
21 Detmers was an honourable person, and I can give you
22 a quote that will rock you completely, in that when
23 Admiral Crace --
24

25 THE PRESIDENT: Q. The point that is being put to you,
26 Dr McArthur, is that not only was CAPT Detmers right, but
27 so was the Australian Navy in November 1941.

28 A. Well, yes, the Australian Navy, but they had to say
29 something.
30

31 Q. What they said turned out to be correct.

32 A. That's exactly what they said. Well, put it this way:
33 they didn't have anything else that measured up to it.
34 Now, the late Reg Hardstaff sent me a copy of all of the
35 places which had been nominated by the Germans and the
36 pilots who flew over the area. He found 38 different
37 positions all put out by people who said that they had an
38 excellent idea of finding Sydney. There were 38 positions,
39 but the Navy selected Detmers', because I think that, under
40 the circumstances, they had no other choice than to go by
41 what the Captain said.
42

43 CMDR RUSH: Q. Why do you criticise them for a failure
44 of analysis?

45 A. The Australian Navy? I don't call that analysis. You
46 have to do a lot more than that before you can call it
47 analysis.

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Q. It's not only what the Navy said. It's what Kirsner said and it's what Mearns said.

A. Kirsner worked on the assumption, by plotting, with sophisticated computer analysis, a southern position to the south of Mearns' position, and both Mearns and he had quite considerable disagreement over what was the position to be searched. But they worked on both of those. They were two gentlemen with whom I had an interesting continuing dialogue of disagreement.

Q. Fundamentally, both of them relied on the German accounts in relation to working out the area where the ship was.

A. Both of them relied on Detmers' account. I'll stick with that, because I think that that is the more important one. I can't see how some of the crew could possibly have known the position.

Q. And the Navy relied on Detmers' account?

A. They had to. They had selected Detmers' account. That's the point I want to make there.

THE PRESIDENT: Q. Selected it from what?

A. They selected it from at least 38 other positions which were given by Australian navigators and also by a number of people who had got involved in hind casting - that is, Whittaker and Co. --

Q. You have conflated about 40 years.

A. Yes.

Q. We're talking about November 1941. You were critical, in the page that was initially put to you, of both the German account and the RAN stand in adopting it.

A. That's right. I'll tell you --

Q. And what was put to you was that in November 1941, not only has the German account now been proven to be right, but the Navy also adopted that position in 1941.

A. All right. Can I reply back to you on that?

Q. Can you tell me what other positions were put to the Navy in November 1941?

A. If one were to read the SWACH records which you have, the different positions that came in from interrogation of the officers, particularly by LCDR Rycroft, who came ashore

1 in Carnarvon, Rycroft's strong letter said, "They are lying
2 their heads off. You can't believe anyone."
3

4 As time went by, 1941 and into 1942, the position
5 which Detmers said became accepted as the position, with no
6 further analysis, just because he said that, and, okay,
7 Kirsner and Mearns have both said that, but we're looking
8 at 40 years later - 40 years later - no, more, 50 years
9 later.

10
11 CMDR RUSH: Q. I will not labour the point, Dr McArthur,
12 but in the passage that we have just gone to, you, relying
13 on what I suggest is a discredited analysis by Knight and
14 Whittaker, then put forward the proposition, in effect,
15 that your accepting Knight and Whittaker, there are huge
16 questions about the German story based on their accounts
17 and the Captain's account of where the ship was.

18 A. Now, hang on, you're jumping ahead to say the
19 discredited KDLS system. Now, that system was not
20 discredited until the last 10 years.

21
22 Q. Let me be specific. It was discredited as far as the
23 finding of *Sydney* is concerned.

24 A. At that time?

25
26 Q. At this time.

27 A. Yes, but we're jumping ahead for that. I see your
28 point but we're jumping ahead.

29
30 Q. Allowing for the adjectives, you said that the
31 persuasive argument as to where Knight-Whittaker said the
32 two vessels were poses huge questions over the German
33 stories, over the RAN accepting the German stories and over
34 Gill. With Detmers' accuracy in relation to the account
35 that he gave his interrogators, what huge questions are
36 taken away as a consequence of that?

37 A. Well, we'll have to look at the battle itself to see
38 the questions that, quite frankly, don't stand up to
39 analysis in that. And, hang on, just let me get my thought
40 on this one for you. You'll notice that I said "poses
41 a huge question not only over the German stories", so I'm
42 using the plural there.

43
44 There are many German stories, and as a matter of fact
45 what made me suspicious at the time about the truthfulness
46 of CAPT Detmers was that he gave different versions of the
47 action to different people at different times, so it was

1 very difficult to track down what was the real story that
2 he was saying. Over a period of time, Naval Intelligence
3 accepted that what he was saying, forgetting all of the
4 earlier interviews, was the position you've said.
5

6 Q. As a consequence of the finding of the wreck in the
7 position of Detmers, did you make any reassessment of the
8 huge question that you say in this sentence hung over the
9 German stories, the RAN and Gill?

10 A. No, not really. I think that the finding was
11 a magnificent effort. There is no doubt about that.
12 Mearns is an extremely capable man. But that didn't change
13 my attitude to the German stories. "The willingness of the
14 RAN to stand up without any semblance of analysis" - you're
15 using "analysis" as a one-way street there. I'm saying
16 that analysis has to depend on a heck of a lot more than
17 just, "Okay, he said it. We believe it."
18

19 THE PRESIDENT: Q. Dr McArthur, if you read what you
20 wrote, it was that because Whittaker and Knight said that
21 the ship is in position A, therefore the German stories are
22 subject to grave doubt because they have given --

23 A. Yes, yes.
24

25 Q. -- a wrong location, namely, position B, and you also
26 said that the RAN's position is also subject to doubt for
27 the same reason. We now know that position B was correct.
28 Didn't that cause you to reflect upon whether or not the
29 doubts you had about the German stories should be reviewed?

30 A. I have reflected long and hard about that, and I have
31 come to the conclusion that the one thing that is right is
32 Detmers' position; I grant that, given the other
33 restrictions I put on it a moment ago. But at the time of
34 writing this work, KDLS was trumpeted in the news and
35 elsewhere, particularly by LTCOL Whittaker and Lindsay
36 Knight, as the answer to every underwater surveyor's wish
37 in the world. This KDLS system was pointed out to me quite
38 clearly to be superior to anything else that was around.
39

40 At that stage, I didn't have the background to be able
41 to question it. I raised it with two engineers at the
42 University of Southern Queensland, and they said, "Well, it
43 could be done, but it would be darned hard to do it", and
44 they wanted more information. I went back to Knight and
45 said, "Hey, more information, please", and he refused it;
46 he refused anyone to look at his system.
47

1 About eight years ago, the system called the Travis
2 system, which was supposed to be exactly the same as KDLS,
3 was tried at the University of Southern Queensland and was
4 tried on 20 samples of a certain chemical. Some were
5 there; some weren't there. It proved that the answers it
6 gave could be clearly by chance, so it was a system that,
7 even in such close proximity to the chemicals, could not
8 show any significant statistical difference.

9
10 So I look at KDLS now and I look at Knight and
11 I think, well, that was something that was really pulled
12 over our eyes. At the time, we thought it was great, and
13 so did a number of people I spoke to, because Whittaker was
14 extremely persuasive. You've probably already met him.
15 Lindsay Knight was, again, very persuasive and, for reasons
16 I don't understand, was highly appreciated in the halls of
17 politics.

18
19 Q. I'm sorry, I don't regard that as an answer to my
20 question, but I'm not going to ask it again.

21 A. All right.

22
23 CMDR RUSH: Q. Dr McArthur, I want to discuss some
24 elements of merchant ship recognition procedure back in
25 1941. Perhaps first of all if we could look at
26 NAA.011.0351, which is a copy of the instruction from
27 Admiralty of 25 December 1940 that sets out the merchant
28 ship recognition procedure that was in existence as of
29 19 November 1941.

30
31 If I go through the first paragraph with you, which is
32 the relevant paragraph, it states:

33
34 *In order that the identity of HM ships and*
35 *British merchant vessels may be more*
36 *readily established the one to other NCS*
37 *[Naval Control Shipping] officers are*
38 *instructed to explain to masters the*
39 *following system of challenge and reply*
40 *which is to be brought into force*
41 *forthwith. (ii) warship identifying*
42 *merchant vessels. Warship challenges -*
43 *what are your signal letters.*

44
45 Do you understand that signal to be NNJ? That is the
46 challenge of the warship?

47 A. Oh, that one? Yes, yes, okay, I see what you're

1 saying. "What are your signal letters?" "NNJ". Yes.

2

3 Q. Stopping there, but leaving it on the screen, the
4 first challenge for a warship identifying a merchant ship
5 is the challenge, "What are your signal letters?"

6 A. Yes.

7

8 Q. The signal letters that would be given in reply by the
9 merchant ship are the signal letters that are to be found
10 in Lloyd's of London, in Talbot-Booth, in all the various
11 logbooks that are known to ships around the world?

12 A. Correct.

13

14 Q. If a merchant ship is answering by flag, it
15 automatically creates a problem for the warship, does it
16 not?

17 A. It does.

18

19 Q. And that problem is that the warship, to identify
20 flag, has to approach the merchant ship to see what the
21 signal letters of the merchant ship are?

22 A. Correct, yes.

23

24 Q. At best, I want to put to you that the warship is
25 going to have to approach within a position of 5 nautical
26 miles to be able to read flags from a merchant ship in
27 daylight?

28 A. I'd have to accept that, because I don't know.

29

30 Q. It's a very important consideration, is it not, in
31 relation to assessing the action between *Sydney* and
32 *Kormoran*?

33 A. Yes, but I'll come back to this. This is not quite as
34 simple as it sounds. Go on.

35

36 Q. Maybe. I can promise we will come back to anything
37 you want, but at the moment if we can take it in sequence.

38 A. Okay.

39

40 Q. For a warship to identify the flags of a merchant ship
41 in a normal situation is going to require that warship to
42 come to a range which is, at a maximum, about 5 nautical
43 miles?

44 A. All right, I'll accept that. You know it better than
45 I do.

46

47 Q. Just looking at this aspect, if we take the specific

1 conditions that were extant as far as we know them on
2 19 November 1941, that problem of identification would have
3 been made more difficult as a consequence of the course
4 that *Kormoran* was taking?

5 A. Yes.

6

7 Q. *Kormoran* was steaming 260 degrees straight into the
8 sun?

9 A. Right.

10

11 Q. You accept that? If we accept Detmers' account of the
12 battle, he did a turn and steamed off into the sun.

13 A. Well, if the sun was setting at that latitude, then
14 fine.

15

16 Q. For *Sydney* in this situation approaching *Kormoran*,
17 that would have been an additional factor to be taken into
18 account as to the difficulty of reading the signal flags of
19 *Kormoran*?

20 A. Yes, particularly if they were being deliberately
21 messed up.

22

23 Q. Another matter that would have to be taken into
24 account is the wind over the deck of *Kormoran*?

25 A. Yes.

26

27 Q. And the effect that the wind over the deck of *Kormoran*
28 would have had on the flight of the flags?

29 A. Wouldn't that depend upon the flag hoist? What part
30 of the ship was the flag actually hoisted on? Would it be
31 on the port or the starboard side? I don't know.

32

33 Q. That's one aspect, but also the prevailing wind could
34 be an aspect. If we can work out and make an allowance for
35 the prevailing wind over the deck, the flags might not be
36 straight on; they might be blowing at an angle.

37 A. The wind was coming from the south-east and the swell
38 was from the south-west, so it was coming from the
39 south-east, so I think if we can argue that, yes, it could
40 be seen, no, it couldn't be seen, particularly if the flags
41 were deliberately wound in such a way as to make them
42 difficult to see. Yes, that's the German story.

43

44 Q. Other aspects on the evidence that the Commission has
45 before it include the heat haze that may be created as
46 a consequence of the engines, from the funnels, and the
47 effect that that can have on visibility of flags?

1 A. The heat haze is an interesting situation, because
2 heat haze disappears.

3

4 Q. I'm talking about heat haze from the engines of the
5 ship, from the funnels, as a consequence of the generation
6 of the --

7 A. I'm not an expert. I can't comment on that.

8

9 Q. What I want to put to you is that until the first
10 signal that the warship gives, "What are your signal
11 letters?", is answered, the warship is, in effect, in
12 a state of limbo before it can go on with any other
13 identification process, on the 25 December 1940 Admiralty
14 instruction. Is that a fair analysis?

15 A. Okay. That's fine in one sense, but it's not fine in
16 another, because jump ahead just a few hours, and you'll
17 find that the German CAPT Detmers - and this is where you
18 say, "Will I believe him or not?" - if you go to his diary,
19 which many people have used in an effort to understand what
20 was happening at the time, immediately he got that call
21 from *Sydney*, he says that he identified himself
22 immediately, and he doesn't make any more comment about
23 *Sydney* saying, "We can't see your letters. Fly them more
24 clearly." None of that appears in this document.

25

26 Q. We'll come to that.

27 A. Okay.

28

29 Q. Just prima facie looking at the Admiralty instruction,
30 before a warship can do anything in relation to challenge
31 procedure, it has to be able to identify the merchant ship
32 that it is attempting to engage with?

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

34

35 Q. What I'm suggesting to you is that, of necessity, the
36 warship is going to have to approach, depending on the
37 circumstances, often close to the merchant ship?

38 A. Wouldn't it depend upon the angle, too, at which it is
39 coming in?

40

41 Q. There could be many and varied situations, but by flag
42 it often meant that the warship was going to have to
43 approach close to the merchant ship?

44 A. It would have to approach, yes. Your use of the word
45 "close" --

46

47 THE PRESIDENT: Q. Within flag -reading distance?

1 A. Is that 8 kilometres? What did you say?

2

3 CMDR RUSH: Q. I'll adopt the Commissioner's words. The
4 merchant ship is going to have to approach within
5 flag-reading distance?

6 A. Okay. I don't know what that is, but whatever it is -
7 you used the word "close". His Honour has used the words
8 "flag-reading", so let's find out exactly what that means.

9

10 Q. Is 5 nautical miles close?

11 A. Oh, that's pretty good.

12

13 Q. What do you mean by "pretty good"?

14 A. Well, what I mean is that 5 miles seems to be
15 reasonable. You have the background. I haven't.

16

17 THE PRESIDENT: Q. So do I understand your position: do
18 you accept that the warship has to come, in accordance with
19 the Admiralty instruction, within flag-reading distance,
20 whatever that distance may be?

21 A. Yes, exactly.

22

23 Q. It was previously put to you that such a distance was
24 at least 5 miles, and you said that you were not qualified
25 to answer it.

26 A. That's correct. But I've been given information, so,
27 fine, you've elucidated that.

28

29 CMDR RUSH: Q. It will depend on all the circumstances?

30 A. Yes, that's right.

31

32 Q. Some of the evidence that the Commission has is to the
33 effect, having regard to the prevailing conditions on
34 19 November, that it may have meant that the flags could
35 not be read until 2.5 nautical miles. That's something
36 that you accept, depending on the necessity of reading
37 flags?

38 A. Yes, you'd have to give me more information than that
39 to get me to accept that without qualification.

40

41 Q. Whether it be 2.5 nautical miles or whether it be
42 5 nautical miles, that is a distance that was well within
43 the range of a raider's guns.

44 A. Yes. They could get up to about 9 to 10 miles.

45

46 Q. Do you say that it was proper for a ship to come
47 within 2.5 or 5 nautical miles to read a flag hoist for

1 identification of a merchant ship?

2 A. In view of the direction in which it was coming,
3 I would say yes, because this particular type of approach
4 was also used by warships such as *Perth* in the West Indies
5 when it saw the *e1 Liberatore*, which couldn't answer its
6 signals, because it was a Spanish ship, and the *Perth* came
7 up very, very close to her.

8

9 Q. But that was before 25 December 1940, wasn't it?

10 A. It was still War, yes.

11

12 Q. But it was before this instruction in relation to
13 ships identification.

14 A. Unless there was a preceding instruction.

15

16 Q. *Perth* was operating under a different procedure when
17 it encountered the Spanish ship off the West Indies, was it
18 not?

19 A. I suppose so, under that circumstance, if it did not
20 receive any instruction like this.

21

22 Q. My question, Dr McArthur, is this: having regard to
23 your analysis of the engagement, do you have any view as to
24 a warship approaching within 2.5 or 5 nautical miles for
25 the purposes of identification of a merchant ship?

26 A. We'll have to elaborate on that one, but I accept what
27 you're saying at the moment.

28

29 Q. From your analysis of all the material that you
30 identified, do you accept or criticise a warship that comes
31 in 2.5 to 5 nautical miles for the purposes of
32 identification of a merchant ship?

33 A. No, I have no problem with that.

34

35 Q. Just to continue on, I'll start at the fourth line
36 with (ii):

37

38 *Warship identifying merchant vessels.*
39 *Warship challenges - what are your signal*
40 *letters. Merchant vessel turns away*
41 *increases to full speed and makes her*
42 *signal letters. Warship signals centre two*
43 *letters of (?) merchant vessel secret call*
44 *sign. Merchant vessel replies with first*
45 *and last letters of her secret call sign.*

46

47 A. Yes, secret call sign.

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Q. So that's the full procedure.

A. Yes, yes.

Q. Tell me, would you expect a ship's Captain to adopt that procedure as it is set out, step by step?

A. I see no reason why not.

Q. Would you see it as a breach of the Admiralty instruction if a Captain did not do it in accordance precisely with those steps?

A. It would cause considerable concern on the warship.

Q. Have you examined the logs of *Sydney*, of *Perth* and of *Canberra* to see if Australian Captains were conducting themselves in accordance with the Admiralty instruction of 25 December 1940?

A. I have to say to you on that one, no, I haven't looked at the logs of the ships concerned.

Q. You've looked at the log of *Sydney*?

A. As much as I can get of *Sydney*, yes, and spoken to sailors who were there at the time, but there's a problem there, too.

Q. You've looked at the log of *Sydney*, have you not?

A. I've looked at the proceedings of *Sydney*, which are made available each time she comes back from a convoy. Is that what you call the log? I haven't seen anything else.

THE PRESIDENT: Q. They're quite different things.

A. Are they?

Q. The report of proceedings are monthly reports. The log is a daily entry of events which occur on the ship.

A. All right, so I must put this one to your Honour: if a ship is going on escort, like *Sydney* was, is her log then a series of entries of times and actions that have taken place at various places on its return, such as stopping to put cutter down, an exercise for boarding an unknown ship, and then the pick up of the cutter at the time? Is that what is called the log?

Q. Yes.

A. Okay. In that case, I have read two or three, that's all.

1 Q. Two or three what?

2 A. Logs. If that's what you call the log of *Sydney*, then
3 I have read two or three of them as sent to me by
4 Reg Hardstaff.

5

6 CMDR RUSH: Q. The logs are available for inspection in
7 Archives.

8 A. Which archives?

9

10 THE PRESIDENT: Q. The National Archives.

11 A. I have not read that exactly myself. I didn't look at
12 the log, for a very good reason. When you're doing
13 research, time is critical, so you have to try to get the
14 documents you want when you want them, and you have to give
15 the War Memorial and anyone else at least 24 hours' notice.
16 I couldn't read everything.

17

18 CMDR RUSH: Q. Dr McArthur, I suggest that for an
19 historian who has been looking at *Sydney*, as I understand
20 it with you for 30 years, the logs are a pretty essential
21 tool to understanding the workings of *HMAS Sydney* and the
22 Bridge and when the ship came to Action Stations and when
23 it didn't come to Action Stations.

24 A. All right. I have, in that instance, looked at the
25 most recent logs and recent to the action here of *Sydney*,
26 particularly when it came upon a target which they found on
27 their return, and I looked closely at that, because it
28 showed very clearly the caution that Burnett would take in
29 approaching something he didn't know what it was.

30

31 THE PRESIDENT: Q. How did you come to find that piece
32 of information? Did someone send it to you?

33 A. Yes. Reg Hardstaff, sir.

34

35 Q. So you didn't do any original research --

36 A. As far as looking at that, no.

37

38 Q. -- on *Sydney's* logs?

39 A. Pardon?

40

41 Q. You did not do any original research on *Sydney's* logs
42 yourself?

43 A. No. That's the answer to that.

44

45 Q. And you looked at only those portions of logs that
46 somebody sent to you?

47 A. That's correct - someone whose background is

1 unassailable, I would think.

2

3 CMDR RUSH: Q. That's your opinion, Dr McArthur.

4 A. Yes.

5

6 Q. In your thesis, in the material that you have provided
7 to the Commission of Inquiry, you have spoken about *Sydney*
8 and its Captain and how careful that Captain was.

9 A. Yes.

10

11 Q. You used the example of the approach to the target.
12 How do you know how careful he was or wasn't in relation to
13 his approach to recognition of other merchant ships?

14 A. Well, I can't answer that one, can I? I don't know.

15

16 Q. In making an assessment of *Sydney's* procedure on
17 19 November, did you not think it a good idea to go back
18 and examine the procedure of its Captain in relation to
19 similar circumstances of ships identification?

20 A. Well, as it's seen to be a hanging offence, no,
21 I didn't go back and look at it at the time, because I was
22 hard pressed.

23

24 Q. This isn't a hanging offence. I'm looking at
25 methodology. Did you attempt to see if there was any
26 methodology of approach in the Captain of *Sydney* in
27 relation to ships recognition procedure?

28 A. As far as that's concerned, I spoke as ably as I could
29 to ex-*Sydney* men here to get from them exactly what
30 *Sydney's* actions would have been, in particular, someone
31 you may have already seen - Templeton, in particular,
32 Templeton - to find out more about *Sydney's* procedures.
33 But for methodology, that part of it - no, I didn't use
34 that bit of methodology.

35

36 Q. Doctor, just to complete the section that we've been
37 examining in relation to the difficulty of looking at
38 flags, I wonder if we could look at NAA.074.0065.

39

40 THE PRESIDENT: Is my memory at fault? We have heard from
41 Mr Templeton?

42

43 CMDR RUSH: Yes, sir.

44

45 THE PRESIDENT: He gave evidence about the time that he
46 was on *Sydney*, did he not?

47

1 CMDR RUSH: He gave evidence about the time that he was on
2 Sydney, with its recognition of the ship *Islander*, on
3 I think Sydney going to the Sunda Strait in October. To
4 summarise his evidence, he said that he was in a 4-inch gun
5 position, aft position, that the identification took place
6 at night, and, in his view, it took place in circumstances
7 that were unsatisfactory because of the --

8
9 THE PRESIDENT: Mr Templeton at the time was an able
10 seaman aged 19, I think. Is my recollection right that he
11 was on board Sydney for something less than one month?

12
13 CMDR RUSH: Yes, sir.

14
15 THE PRESIDENT: Q. And that's the source of your
16 information - an able seaman aged 19, who was on Sydney for
17 something less than one month?

18 A. This is what I have read about what he had to say in
19 that instance. What caused me to read further into that
20 was that he deserted his gun position. He was on the
21 quadruple fires, not the 4-inch gun. He made this very
22 clear, that he thought the Captain was hazarding the ship.

23
24 Q. Did you appreciate that your thesis was in major part
25 reliant upon what a 19-year-old person, who had something
26 less than a month's experience on this ship, was saying to
27 you?

28 A. No. You're taking too much out of that.

29
30 Q. I don't know that I am. I have to say, I'm absolutely
31 staggered that you didn't do any original research.

32 A. Well, I have to question that, your Honour. I did as
33 much original research as could possibly have been done,
34 because you have a look at my lists at the back of the
35 thesis of who I read, who I talked to and what I could do
36 at the time. Then I say to you that I did as much as could
37 be reasonably expected, and that doesn't make for
38 a staggering concern.

39
40 CMDR RUSH: Q. Dr McArthur, this is a minute by
41 CAPT Dechaineaux of 30 December 1941. Do you see that he
42 is referencing an earlier letter, which I'll take you to
43 immediately we finish this:

44
45 *Reference DSC's paragraph 3 at "X", I do*
46 *not agree. It is sometimes very difficult*
47 *to read a flag hoist at as little as*

1 *a mile. The whole purpose of suggesting*
2 *a daylight lamp is that warships can*
3 *identify ships from a range at which they*
4 *are not tactically in a disadvantageous*
5 *position, ie outside 5 miles at least.*

6
7 *2. With reference to DSC's paragraph 1 at*
8 *"Y", the majority of British merchant ships*
9 *are in convoy, and thus do not require*
10 *identification, and hence do not require*
11 *a daylight flashing lamp.*

12
13 That is distinguishing the convoys from merchant ships
14 around Australia. You understand that that correspondence
15 was generated as a consequence of the concern that was had,
16 upon interrogating the Germans, as to the use of flags and
17 the need for merchant ships to come in close for the
18 identification of flags, and Dechaineaux was recommending
19 that merchant ships be equipped with lamps so that that
20 wouldn't occur?

21 A. Yes, I've never seen this one before. Which lot did
22 that one come from?

23
24 Q. That's out of Archives.

25 A. Yes, I know. Whereabouts in Archives? They are all
26 located in different places.

27
28 Q. I'm sorry, I'm not aware of the file number, but
29 counsel assisting, with a little bit of assistance, have
30 spent a very, very long time in Melbourne going through all
31 the relevant material.

32 A. I'll bet they have. I know what it's like. What's
33 the question after all that?

34
35 Q. I'm not being critical that you haven't seen that, but
36 do you accept the concern that Navy had about the necessity
37 for warships to come within 5 miles, even to a mile, as
38 Dechaineaux says, to actually identify signal flags?

39 A. Yes, yes, that's what that's saying.

40
41 Q. Did your research at any stage alert you to how
42 merchant ships were going with this procedure, how they
43 were performing in complying with it?

44 A. I would say not well.

45
46 Q. And is that based on research?

47 A. That is on research.

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Q. What's the research?

A. I believe there are a couple of other documents like this one where they add very strong words about what should be the procedure following this, following *Atlantis*, following the *Penguin's* loss. They then put that together and said, "This is the procedure." But that didn't come out until the beginning of 1942, and that's strongly worded.

Q. The position, I suggest, Dr McArthur, is that merchant ships on Australia Station in 1941 were routinely failing to comply with merchant ships recognition procedure.

A. I would say "did not". I wouldn't use the word "routinely", because that gives a different impression altogether.

THE PRESIDENT: Q. Frequently?

A. Frequently. Often.

CMDR RUSH: Q. Failing to comply?

A. Failed to comply with that. But they also - go on.

Q. And the position is that the Captains of Australian warships during 1941 were faced with a great difficulty because of that failure to comply.

A. Yes, and they were told clearly what they were to do, too, in an instance like that.

Q. And what was that?

A. That was that they were to tell the ship to stop and then to board the ship and inspect its papers. That's a CAFO instruction towards the end of 1941.

Q. That's in a failure to comply with merchant ships recognition procedure.

A. Yes. They were to be stopped.

Q. But until you identify the flag, you don't have a failure to comply with merchant ships recognition procedure.

A. Maybe, yes.

Q. Well, that's correct, is it not?

A. Yes, okay, I'll go along with that.

Q. Just to conclude on this matter, if we could have

1 NAA.074.0074, which is a minute from Rear Admiral
2 Commanding His Majesty's Australian Squadron - Rear Admiral
3 Crace - of 16 December 1941 to the Secretary of the Naval
4 Board. I know it is difficult having regard to what you
5 have seen, but have you seen this before, Dr McArthur? It
6 doesn't matter.

7 A. Okay, go on.

8
9 Q. It reads:

10
11 *With reference to Navy Office letter ... of*
12 *28th November, 1941, be pleased to inform*
13 *the Naval Board that a memorandum on the*
14 *efficiency of Merchant Ships will be issued*
15 *to HMA Squadron: the contents of this*
16 *memorandum will be included in Australian*
17 *Squadron War Instructions in due course.*

18
19 *In this respect, however, the following*
20 *remarks are considered to be of particular*
21 *importance:*

22
23 *(a) I regard the procedure of speaking to*
24 *merchant vessels at night to be*
25 *particularly hazardous, unless drastic*
26 *action is taken immediately against ships*
27 *which show any inclination to disregard*
28 *instructions. War Instructions Order 20 is*
29 *relevant and at night it is only prudent to*
30 *regard all merchant ships sighted as*
31 *possible raiders.*

32
33 *(b) In the past, the standard of signalling*
34 *by Merchant Vessels has left much to be*
35 *desired, and I feel it most important that*
36 *it should be impressed on Merchant ships*
37 *that any failure on their part either in*
38 *signalling or in complying immediately with*
39 *orders given by HMA Ships may result in*
40 *very unpleasant consequences.*

41
42 A. Yes.

43
44 Q. Then:

45
46 *(c) with regard to the challenge and reply*
47 *procedure ... the remarks in (b) above*

1 *still apply but to a lesser extent, as it*
2 *will usually be possible to recognise*
3 *friendly ships by day. In cases where this*
4 *cannot be done with certainty, however, the*
5 *challenge and reply procedure would*
6 *normally be carried out at a range of about*
7 *8-10 miles. This points to the necessity*
8 *for all merchant ships to carry daylight*
9 *signalling lamps ...*

10
11 A. Right.

12
13 Q. Then it sets out the two criteria. Routinely, or
14 often, I suggest to you that it was clear that Captains of
15 Australian warships were encountering merchant ships on
16 a reasonably regular basis that were failing to comply with
17 merchant ships recognition procedure.

18 A. That had occurred on *Sydney's* previous return, when it
19 looked like it came up against the *Salland* and it didn't
20 give the proper signal. All guns were pointing on *Salland*,
21 and at the last moment it just gave the correct signal to
22 *Sydney*. So you had ships which were tardy in the way in
23 which they gave responses, as opposed to ships which simply
24 didn't give a response.

25
26 Q. Just in relation to that instance, before *Salland* was
27 recognised, *Sydney*, in the words I think of her Captain,
28 came close to *Salland*?

29 A. Yes, came close, because, don't forget, it had asked
30 it who it was and then asked for its four signal letters,
31 secret letters.

32
33 CMDR RUSH: Sir, I tender those two pieces of
34 correspondence: NAA.074.0074, which is the minute of
35 Rear Admiral Commanding HM Australian Squadron of
36 16 December 1941 to the Naval Board; and the minute of
37 CMDR Dechaineaux of 30 December 1941 to DCNS.

38
39 **EXHIBIT #177 MINUTES OF REAR ADMIRAL COMMANDING**
40 **HM AUSTRALIAN SQUADRON OF 16 DECEMBER 1941 TO THE NAVAL**
41 **BOARD, BARCODED NAA.074.0074; AND LETTER FROM**
42 **CMDR DECHINEAUX OF 30 DECEMBER 1941 TO DCNS**

43
44 CMDR RUSH: Q. The next thing in ships challenge
45 procedure after the NNJ was, as we have discussed, to get
46 the signal letters back from the merchant ship and then use
47 those signal letters to make an identification of the ship?

1 A. Yes, go on. Sorry, I was trying to think - would you
2 go through the part again, please?
3

4 THE PRESIDENT: CMDR Rush, is that a convenient time to
5 adjourn or not?
6

7 CMDR RUSH: Yes, it is, sir. May I say, sir, that
8 Mr Ean McDonald is a witness who is due to be called first
9 thing tomorrow morning. Because of issues relating to his
10 health, he has desired that he be called in the morning.
11 I have spoken to Dr McArthur. If it is convenient, sir, we
12 will put Dr McArthur over to 11 o'clock and call
13 Mr McDonald at 9.30.
14

15 THE PRESIDENT: Q. Is that convenient?

16 A. Yes.
17

18 THE PRESIDENT: All right, we'll adjourn until 9.30.
19

20 **AT 4.30PM THE COMMISSION WAS ADJOURNED**
21 **TO WEDNESDAY, 4 FEBRUARY 2008 AT 9.30AM**
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