

COMMISSION OF INQUIRY INTO THE LOSS OF HMAS SYDNEY II

Before The Hon TRH Cole AO RFD QC

Held at level 5, 55 Market Street, Sydney

Counsel Assisting: CMDR JT Rush RFD QC RANR
LEUT MR Tyson RANR

Counsel Representing: CMDR JG Renwick RANR

On Tuesday, 24 March 2009 at 10am
(Day 35)

1 CMDR RENWICK: Good morning, sir. Before the witness is
2 called, is it convenient for me to tender a supplementary
3 submission from CAPT Arundel, which has been put on
4 Summation? It is dated March 2009. CMDR Rush has a copy,
5 I believe. It is SUBM.008.0210. I have a hard copy.
6

7 THE PRESIDENT: Thank you. I shall mark that as
8 exhibit 236.
9

10 **EXHIBIT #236 SUPPLEMENTARY SUBMISSION FROM CAPT ARUNDEL**
11 **DATED MARCH 2009, BARCODED SUBM.008.0210**
12

13 CMDR RUSH: Sir, I call Professor Frame.
14

15 <THOMAS ROBERT FRAME, sworn: [10.05am]
16

17 <EXAMINATION BY CMDR RUSH:
18

19 CMDR RUSH: Q. Professor Frame, would you state your
20 full name, address and occupation to the Commissioner,
21 please?

22 A. Thomas Robert Frame, [REDACTED]
23 former Naval person and Anglican clergyman.
24

25 Q. If we can go back in time, Professor Frame, you joined
26 the RAN in what year and what was the nature of your
27 service in the RAN?

28 A. I joined as a junior entry cadet midshipman on
29 15 January 1979. I served until 23 November 1992. During
30 that period of time, I trained as a seaman officer and then
31 as an instructor officer. I was the speech-writer to the
32 Chief of Naval Staff for a period. My final employment was
33 as a staff officer in Headquarters, Australian Defence
34 Force, after doing my PhD, which was on the loss of
35 *HMAS Voyager*.
36

37 Q. Since that time, you've still had an association with
38 the Navy?

39 A. Yes. It has been on and off. I stayed on in the
40 Reserve for a short period of time before I was ordained an
41 Anglican clergyman in 1993. In 2001, I became the Anglican
42 Bishop to the Defence Force, a position I held for just
43 over five and a half years. I continue to have contact
44 with my Naval colleagues, who, in one sense, are like an
45 extended family. We had our 30th reunion in January, and
46 I tend to keep up with rumours, and things like that, that
47 float around.

1
2 Q. Professor Frame, you published a book, which was
3 I think first published in 1993, entitled "HMAS Sydney -
4 Loss and Controversy". In that book, you set out history
5 in relation to *Sydney* and *Kormoran* and put forward, based
6 on materials that you had gathered, your theory in relation
7 to the engagement. In your book, you theorise that
8 a critical or crucial moment in the engagement between
9 *Sydney* and *Kormoran* occurred at 14,000 yards.

10
11 Perhaps not to take you too much by surprise, if we
12 can go to page 207 of your book. I realise that this has
13 been republished in a later form, but the type is bigger
14 and the page numbering is different and you have added some
15 additional comments, particularly at the conclusion of your
16 book. Apart from the concluding remarks, the text of the
17 book that was published last year is the same as the text
18 from the 1993 edition?

19 A. Yes. The first edition, 1993, had a few errors, which
20 I managed to correct in 1998. A couple more came to my
21 notice, I think, in the ensuing decade and I tried to fix
22 up those. But, as you say, the section with respect to how
23 I believe the collision may have occurred and the crucial
24 points is unchanged in all three editions of the book that
25 have appeared.

26
27 THE PRESIDENT: Shall I adjourn for a minute or two?

28
29 CMDR RUSH: Yes, sir.

30
31 **SHORT ADJOURNMENT**

32
33 CMDR RUSH: Q. Professor Frame, I was putting to you
34 that part of your theory is that a critical point in the
35 engagement was something that you theorise happened at
36 14,000 yards. At page 207 of your book, in the second
37 paragraph, you say:

38
39 *The crucial moment in the encounter*
40 *occurred when Burnett took his ship within*
41 *14,000 yards of Kormoran. At that point,*
42 *the character of the engagement changed*
43 *dramatically. At or beyond 14,000 yards,*
44 *Sydney was definitely safe and Kormoran was*
45 *certainly doomed. The only undetermined*
46 *factor at this range for Burnett was*
47 *whether or not the suspicious ship, which*

1 *might have been a German tanker or supply*
2 *ship, could be prevented from scuttling.*
3 *There was no other need for Burnett to*
4 *close the suspect ship any further than*
5 *14,000 yards. At that range, he could and*
6 *should have undertaken the interrogation,*
7 *principally with the assistance of his*
8 *Walrus aircraft. This would have obviated*
9 *the need for him to close the suspicious*
10 *ship to read her signal flags.*

11
12 At this stage, I am just trying to piece together your
13 theory. On that basis, you are putting forward that
14 14,000 yards was a key distance and matters that may have
15 been taken into account by the Sydney Captain.

16
17 At page 221 of your book, you refer to CAPT Detmers in
18 the last paragraph, and you ask:

19
20 *Was Detmers capable of knowingly violating*
21 *international law and lying to conceal the*
22 *fact if the operational demands were*
23 *necessary? Being mindful of his ruthless*
24 *determination to achieve his objectives and*
25 *the need to avoid ignominious defeat, one*
26 *must conclude that Detmers had the*
27 *capability and probably the willingness to*
28 *violate international law and, later, to*
29 *deceive his captors. He could do this by*
30 *justifying any technically illegal conduct*
31 *in terms of the imperatives of Germany's*
32 *war aims and by rationalising his*
33 *subsequent concealing of the truth in the*
34 *context of his understanding of Naval*
35 *professionalism. By these standards,*
36 *Detmers did not believe he acted wrongly.*

37
38 As I understand what you are putting there - and we will
39 deal with it later - there are various aspects of the
40 German account which you question. You analysed Detmers,
41 I know in more detail, but put that forward as being the
42 manner in which you could expect Detmers to answer
43 questions that would relieve him of any potential breach of
44 international law?

45 A. That is so.

46
47 Q. If we go back to page 209, in the middle of the page,

1 you say:
2

3 *Stopping the unidentified ship would have*
4 *been Burnett's first priority. In addition*
5 *to reducing the time taken to identify the*
6 *ship, he would not want to chase a merchant*
7 *ship for several hours in a westerly*
8 *direction when his destination -*
9 *Fremantle - was to the south-east.*

10
11 I take it that, there, you are saying that from Burnett's
12 point of view, on your theory, his first priority, as you
13 put it, would be to stop the *Kormoran*, stop it in the
14 water?

15 A. What you have said is a fair estimation of my
16 judgment, yes.

17
18 Q. At page 213, you indicate:

19
20 *The evidence that Sydney signalled in plain*
21 *language to 'Straat Malakka' to hoist her*
22 *secret callsign was widely corroborated,*
23 *although the distance between Sydney and*
24 *Kormoran when this occurred was not. If*
25 *the Dutch ship did not hoist the callsign,*
26 *what options were available to Burnett? He*
27 *could not order the ship to stop or fire*
28 *a warning shot because she was already*
29 *practically stopped. Although Burnett*
30 *could fire on the 'Straat Malakka' if she*
31 *failed to hoist the secret callsign, he*
32 *could not rule out the possibility that the*
33 *master of the Dutch ship did not know how*
34 *to reply.*

35
36 *Dutch ships were issued with secret*
37 *callsigns after 1 June 1941. Although some*
38 *had not received them by 19 November, they*
39 *were nonetheless listed in Admiralty*
40 *publications for each Dutch ship. As*
41 *mentioned previously, Burnett had*
42 *complained in September that three merchant*
43 *ships failed to observe Admiralty procedure*
44 *on being challenged.*

45
46 *This presented Burnett with a dilemma.*
47 *Prudence dictated that he should have fired*

1 at 'Straat Malakka' and forced the ship to
2 surrender. However, the fear of killing
3 innocent people and sinking an innocent
4 ship would have weighed heavily on
5 Burnett's mind. Were the suspect vessel
6 a German prison ship, Burnett needed to
7 think of the hundreds of Allied sailors
8 that might be drowned if he fired.

9
10 You put that forward as a potential thought process in the
11 mind of CAPT Burnett as to why he would not have fired in
12 circumstances in which *Straat Malakka* did not give the
13 secret call sign?

14 A. That's correct.

15
16 Q. Then you go on, at page 214, to put forward the theory
17 that *Sydney* then approached the merchantman, in the next
18 paragraph:

19
20 *By this stage, the Germans stated that*
21 *Sydney was still on Kormoran's starboard*
22 *quarter. In other words, Sydney was still*
23 *in the safest position that was available*
24 *to her given that the need to read*
25 *'Straat Malakka's' flag hoists prevented*
26 *her from being dead astern. As Kormoran*
27 *was unable to reply and the range had*
28 *closed to 5,000 yards, Sydney prepared to*
29 *board the Dutch merchantman from a distance*
30 *of 1,200 yards.*

31
32 As I understand it, you put forward the theory that *Sydney*
33 closed and then likely came in to put down a boat for the
34 potential boarding of *Straat Malakka*?

35 A. I came to the view that that was about the only
36 circumstance I could reasonably imagine that would compel
37 CAPT Burnett to come within 1,200 yards.

38
39 Q. At the bottom of that paragraph, in the last three
40 lines, you say:

41
42 *At the same time, a signal would have been*
43 *sent to 'Straat Malakka' advising that she*
44 *would be boarded. This is probably the*
45 *signal that Detmers tried to suggest was*
46 *the order from Sydney demanding the hoist*
47 *of her secret callsign.*

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A. Yes.

Q. Then you go on to theorise that with *Sydney* that close, there was a potential for *Kormoran* to decamouflage her starboard guns unseen by *Sydney* and then manoeuvre herself in a way that enabled her to take advantage of that decamouflaging of the starboard guns and so, in essence, fire the first shots?

A. I would slightly amend what you have had to say. My view is that *Kormoran* used the prevailing weather conditions and allowed the weather to put the ship in a position in which it was able to fire upon *Sydney* both with its main armament and also bring to bear the underwater torpedo tubes.

Q. You refer to the underwater torpedo tubes at page 215 in the second paragraph, where you say:

Alternatively, if Kormoran were unable to manoeuvre to decamouflage her guns undetected before swinging around to starboard to be parallel with Sydney, she could have waited until she had swung to starboard, possibly with the aid of the port main engines, and then fired one of her underwater torpedoes while the Dutch flag was still flying.

A. Yes. May I say in relation to that point that some of the *Kormoran* survivors, after I put this view, said that this was totally wrong, because the underwater torpedo could not be fired while the ship was moving. I didn't say that the ship was moving. I said that the engine had been used to alter the ship's head, that it didn't mean that it was making way through the water; it was opening up the arc of fire.

So the *Kormoran* survivors who said that this particular view of things was impossible because of the case that I put, I think, misunderstand what I was saying. You simply put enough revs on the port engine in order to get the ship's head to move. That's all I was meaning. I probably should have made that a bit clearer in the book.

Q. Just on that point, in which direction would the underwater torpedo have been fired, then?

1 A. On the starboard side.

2

3 Q. At what angle?

4 A. My recollection is that they were in a fixed position
5 and I think it was 135 degrees from the bow, as I recall.
6 I could be wrong, but that's my recollection.

7

8 Q. If we can go back to the first point, as we have been
9 through, you say that critical to your theory is that at
10 14,000 yards *Sydney* was safe?

11 A. Yes. Can I say that I think a lot of this turns on
12 what you think of the two individuals who are running the
13 engagement, and it's the ships' Captains. They're making
14 the judgments and they're the ones who are deciding on what
15 course of action will be taken. Depending upon how you
16 view both of these individuals - and, in one sense, you
17 need to get to know them as best you can through the
18 evidence that is available - it will then help you to come
19 to a mind on how they might have acted.

20

21 I took the view that CAPT Burnett must have proceeded
22 beyond 14,000 yards because he thought that it was safe to
23 do so. His character is that of a prudent man. It seems
24 to me that you would have to find a reason that compels him
25 to move in at 14,000 yards, because at that particular
26 point - and I'm making a judgment here about *Sydney's*
27 gunnery and *Kormoran's* gunnery - the odds are very much in
28 *Sydney's* favour and against those of *Kormoran*.

29

30 Other people may say that it's 12,000 yards or it's
31 16,000 yards or it's 18,000 yards or it's some other range.
32 I came to the view that 14,000 yards was the best judgment
33 as to when critically the balance turned in favour or began
34 to turn in favour of the other ship, so I do put great
35 store on what happened at 14,000 yards, because it was at
36 that point that Burnett must have believed that it was safe
37 to proceed, where previously it wasn't.

38

39 Q. What were the factors in your judgment that said that
40 Burnett would have been making these decisions at
41 14,000 yards?

42 A. *Sydney's* gunnery - and I mean this with no disrespect
43 to those who served on board the ship in 1941 - was
44 probably better in 1940. The ship was working up and was
45 getting ready to go overseas. I think that Burnett,
46 though, given that it was in a wartime situation, was
47 justified in believing that at 14,000 yards his main

1 armament would be able to sink a reasonably large target,
2 like *Kormoran*. So I think that he made the judgment in his
3 mind at 14,000 yards, "My boys can sink this ship if we
4 need to."
5

6 Conversely, he would have had some idea that if the
7 suspect ship was a German raider and it had 5.9-inch guns,
8 the accuracy of those guns would begin to deteriorate and
9 that at 14,000 yards he was probably pretty safe.
10

11 Q. Professor Frame, are you aware, in the research that
12 you have undertaken, of the Australian Squadron Tactical
13 Notes?

14 A. I need to say that I researched this book 17 years ago
15 and that it was 18 books ago in terms of the ones I've
16 published, so you might need to remind me a little bit.
17

18 Q. I think I can fairly say that you don't refer to the
19 Australian Squadron Tactical Notes in any of the editions
20 of your book. Perhaps if we can have a look at them at
21 NAA.074.0051. I should say that these are the amendments
22 to the Tactical Notes of 21 September 1941.
23

24 If we go to the top of the page first, you will see
25 the date at the top of the page, Professor Frame, which is
26 amendment No. 2 of 21 September 1941 from the Rear-Admiral
27 Commanding His Majesty's Australian Squadron to the
28 officers of cruisers and other ships.
29

30 If we can go down to Tactical Note No. 9, the
31 amendment to paragraph 4, which reads:
32

33 *Add, "If however, he does decide to fight,*
34 *he may be expected to develop rapidly, an*
35 *accurate fire up to 16,000 yards.*
36

37 That's talking about a raider. I wonder in that context
38 why you would pick 14,000 yards or 16,000 yards? What is
39 it about 14,000 yards?

40 A. I would have come to the view that 14,000 yards was
41 critical on the basis of other engagements and what
42 I perceive to be the confidence of cruiser commanders at
43 that time as to the accuracy of their gunnery. I'm
44 interested in this document here: it may have said
45 16,000 yards there, and it's always a good thing to note
46 what policy is. I suspect - and I'm struggling to recall
47 all of the reasons why I said 14,000, but I'm happy to

1 accept 16,000 - I don't think it makes a great deal of
2 difference between 14,000 and 16,000; I would accept that.

3
4 The other side of it is that this is going to be
5 statistical. When a ship does a work-up and when it's
6 starting to fire, people will get a sense of where they're
7 accurate and where they're not. I may have been working on
8 what the general thought was, that it might have been
9 14,000, whereas the policy here is, "You need to stay
10 beyond 16,000." I wouldn't quibble with anyone who said,
11 "Look, 14,000 is probably a bit short; you probably need to
12 have said 16,000."

13
14 Q. At page 207 of the book, in the paragraph at the
15 bottom of the page, you said this:

16
17 *Sydney's previous encounters with merchant*
18 *ships after Burnett took command in May*
19 *1941 also show that Burnett regarded*
20 *14,000 yards as a 'satisfactory distance'*
21 *from which to identify suspicious ships.*

22
23 The footnote you give for that is the ROPs from May to
24 October, I think, of 1941. On checking the ROPs, there is
25 no reference to CAPT Burnett referring to a satisfactory
26 distance at all and certainly not 14,000 yards.

27 A. I accept that. I've obviously come to the view
28 somewhere along the way that 14,000 was what I opted for.
29 In terms of what the letters of proceedings say for that
30 period - I think they were called "letters of proceedings"
31 up until a little bit later on; I could be wrong - I had
32 probably I looked at all the engagements and all the things
33 that he had done and had come to the view not that he maybe
34 had said that, but I may have put "a 'satisfactory
35 distance'" in quotation marks because that's my phrase,
36 "a 'satisfactory distance'". I certainly wouldn't want to
37 put any words into his mouth nor imply --

38
39 THE PRESIDENT: Q. That's not what you've written
40 though. It says:

41
42 *... also show that Burnett regarded*
43 *14,000 yards as a 'satisfactory*
44 *distance' ...*

45
46 CMDR Rush is putting to you that Burnett made no such
47 assessment.

1 A. Probably I ought to say that I was inferring it.

2
3 CMDR RUSH: Q. You go on, Professor Frame, in the third
4 line:

5
6 *In addition to the observations he made*
7 *during the board of inquiry into the*
8 *alleged sighting of Salland by Yandra in*
9 *early October 1941, Burnett submitted*
10 *a report to [Rear-Admiral Commanding*
11 *Australian Squadron] regarding merchant*
12 *ship identification on 7 September which*
13 *explained his approach to the task. During*
14 *a short convoy escort passage in early*
15 *September, Burnett reported that three*
16 *merchant ships had failed to observe the*
17 *Admiralty procedure for challenge and*
18 *reply. 'On two occasions, owing to good*
19 *visibility, it was possible to establish*
20 *the friendly nature of the ship with*
21 *reasonable confidence at a satisfactory*
22 *range [ie, approximately 14,000 yards], but*
23 *on one occasion it was considered prudent*
24 *to alter the course of the convoy away*
25 *until the identified ship was at a safe*
26 *range'.*

27
28 I want quickly to look at each of those matters that you
29 have referred to. The Board of Inquiry report in relation
30 to the suspicious sighting of *Yandra* is at NAA.010.0225.

31
32 While that is coming up - CAPT Burnett was asked to
33 undertake an inquiry in relation to the circumstances of
34 a sighting of an unidentified ship by *Yandra* that was might
35 be *Salland*. He was asked to perform an investigation into
36 the circumstances of just what went on on *Yandra* in
37 relation to that sighting.

38
39 In the course of his report, which we're looking at,
40 if we can go to 0227, at paragraph 17, he referred to
41 *Sydney* having made a sighting of *Salland* I think prior to
42 the circumstances that he was asked to investigate. He
43 stated:

44
45 *Late in the afternoon, the signal [which is*
46 *referred to] was sent by SWACH to*
47 *HMAS "SYDNEY", to which "SYDNEY"*

1 *replied ... saying that the real "SALLAND"*
2 *had been identified at 1220 on Saturday,*
3 *4th October, in position 14 degrees*
4 *23 minutes South. 107 degrees 06 minutes*
5 *East; this identification had been, in*
6 *fact, carried out in daylight by exchange*
7 *of signal letters followed by correct*
8 *procedure exchanging secret call sign and by*
9 *fairly close inspection of "SALLAND" by*
10 *"SYDNEY".*

11

12 I suggest that a close inspection of *Salland* by *Sydney*
13 could not occur at 14,000 yards?

14 A. Yes, I would not have used those words to describe
15 14,000 yards. It would be difficult at that range, not
16 impossible, but you wouldn't use those words to describe
17 a close inspection.

18

19 Q. It would, of necessity, be much closer than
20 14,000 yards?

21 A. Yes.

22

23 Q. You then referred to the report of CAPT Burnett to the
24 Commander of Australian Squadron, which is at NAA.010.0061.
25 This is a report of CAPT Burnett, dated 7 September 1941,
26 concerning a convoy duty, and he indicates:

27

28 *... three instances occurred of Merchant*
29 *Ships, having made their Signal Letters in*
30 *reply to the signal NNJ, failing to respond*
31 *to the Warship - Merchant Ship Recognition*
32 *Procedure. The Merchant Ship either*
33 *continued to make her Signal Letters or*
34 *made no further sign at all.*

35

36 *2. On two occasions, owing to the good*
37 *visibility, it was possible to establish*
38 *the friendly nature of the ship with*
39 *reasonable confidence at a satisfactory*
40 *range, but on one occasion it was*
41 *considered prudent to alter the course of*
42 *the convoy away until the unidentified ship*
43 *was at a safe range. It is accordingly*
44 *recommended that Naval Control Service*
45 *Officers should impress on Masters the need*
46 *of having all officers well acquainted with*
47 *the recognition procedure.*

1
2 He gave the names of the ships as *Gabriella*, *Athlone Castle*
3 and *Columbia Star*.

4
5 In your book that we have referred to, you referred to
6 "satisfactory range" and you will recall that you put in
7 brackets after that "approximately 14,000 yards". There is
8 nothing in that correspondence or in that letter to justify
9 your inclusion of "14,000 yards" in the text of your book.

10 A. On what you're putting to me this morning, I would
11 agree that the statement that I made at that particular
12 point is not borne out by the documents. I would, though,
13 still say that Burnett's view was that 14,000 yards was
14 a crucial range.

15
16 Q. Is there any document or any other piece of evidence
17 that you can point to to support that?

18 A. Not that I can recall.

19
20 Q. Would you expect, Professor Frame, in relation to
21 identification procedures under the merchant ship
22 recognition procedure that where a ship is not complying
23 with the procedure, the warship would come to Action
24 Stations?

25 A. Yes.

26
27 Q. There is no account of any of these sightings in the
28 log of *HMAS Sydney*, yet on every occasion that *Sydney* came
29 to the first degree of readiness, there is an entry in the
30 log of the ship coming, in effect, to Action Stations.
31 What do you make of that?

32 A. On the one hand, you would be inclined to say that
33 it's an oversight. If it could be demonstrated that every
34 time *Sydney* came to Action Stations, it was recorded and
35 that it didn't do so for these particular instances,
36 I would find that odd.

37
38 THE PRESIDENT: Q. What is known is that every morning
39 when she went to Action Stations just before dawn, that is
40 recorded. It is also recorded, apparently, consecutively
41 on each occasion when she did go to Action Stations and
42 when she stood down and the times are recorded to the
43 minute. Yet there is no record at all of that occurring in
44 relation to these three ships.

45 A. The only thing it may have been is that Burnett took
46 the view in these particular instances, for whatever
47 reasons - and they may not be made plain in these

1 documents - that there was no need to go to Action Stations
2 and he took the view that these particular vessels didn't
3 justify that course of action. I still think that the
4 prudent thing to have done is as it has been described here
5 and in other aspects of his character - that he, in fact,
6 would have gone to Action Stations.

7
8 CMDR RUSH: Q. For the identification of *Salland* that he
9 referred to, the log discloses, for example, that he didn't
10 come to Action Stations, in a position, as we understand,
11 off the West Australian coast returning to Fremantle.

12 A. All I can say, and from the material that you have
13 presented, is that he must have felt that there was no need
14 to go to Action Stations because he had sufficiently
15 identified the ship, or, to the extent that he didn't think
16 it was hostile, he thought that this was a merchant ship
17 that was unable to discharge its duties or its
18 responsibilities under the tactical conditions prevailing
19 at the time and that he was quite confident of that and
20 therefore saw no need to do that, whereas *Straat Malakka*
21 presented him with a different situation.

22
23 Q. I suppose, on the one hand, here we have three
24 merchant ships that have not complied with ships
25 recognition procedure as they should have done, and *Sydney*
26 apparently didn't come to Action Stations, and we have
27 *Straat Malakka* not complying with ships recognition
28 procedure and an approach in to that ship potentially, on
29 the German account, for close inspection and, on one view,
30 the ship not coming to Action Stations?

31 A. But as I recall, in these particular instances, the
32 ship in question didn't turn and run. *Straat Malakka* did.

33
34 THE PRESIDENT: Q. As British ships were supposed to.

35 A. Again, I'm working on recollection. If the three
36 ships that we're talking about here didn't change course or
37 speed and therefore didn't give any indication that they
38 were seeking to evade what was occurring, we have
39 *Straat Malakka* acting quite differently.

40
41 CMDR RUSH: Q. As we'll come to, one stage in the
42 merchant ship recognition procedure requires the merchant
43 ship to turn and run, does it not?

44 A. Yes, but I don't think you're putting to me that these
45 ships did that.

46
47 Q. Which would be another indication that they hadn't

1 complied, on one view, with the merchant ship recognition
2 procedure?

3 A. Yes, but if the action that they were taking led
4 Burnett to think that they were not trying to evade him,
5 that they were not trying to escape an encounter or
6 something, he may have come to the view that that therefore
7 meant that he did not need to go to Action Stations.

8
9 Q. On one occasion, he in fact diverted the convoy to
10 keep it away, to ensure its safety from what he perceived
11 to be an unidentified merchant ship.

12 A. Yes. I'm not wanting to take issue with your claim
13 that there are instances here where he didn't do some
14 things that we might now say he ought to have done or
15 things which seem to be exceptions to the principle that
16 I've put, which is that he was a prudent man. You might
17 say that these particular instances here are signs that he
18 wasn't prudent, that he could have been more careful, but
19 he wasn't.

20
21 Q. You understand here that we're testing the theories --
22 A. Yes.

23
24 Q. -- to ascertain as best we can what went on. As
25 I understand it from your book, you understand that flag
26 signalling was a common practice at this time?

27 A. Yes.

28
29 THE PRESIDENT: By merchant vessels.

30
31 CMDR RUSH: By merchant vessels.

32
33 Q. One could not read flags at 14,000 yards.

34 A. I would have thought they could have been.

35
36 Q. They could have been read? Flags could have been read
37 at 14,000 yards?

38 A. You would need to ask someone who was on board. My
39 understanding was that you could get the outline of flags
40 at that range.

41
42 Q. Could we have a look at NAA.011.0351, which is the
43 recognition procedure laid down on 25 December 1940. The
44 first paragraph states:

45
46 *In order that the identity of*
47 *[His Majesty's] ships and British merchant*

1 *vessels may more readily established the*
2 *one to other NCS officers are instructed to*
3 *explain to masters the following system of*
4 *challenge and reply which is to be brought*
5 *into force forthwith. (ii) Warship*
6 *identifying merchant vessels. Warship*
7 *challenges - what are your signal letters.*
8 *Merchant vessel turns away increases to*
9 *full speed and makes her signal letters.*

10
11 The warship identifying signal letters is a request, as you
12 referred to in your book, NNJ; is that correct?

13 A. I think so, yes.

14
15 Q. If a ship is replying by flag, firstly, it should have
16 turned away and, secondly, it should put up its signal
17 letters?

18 A. Yes.

19
20 Q. What I want to put to you, Professor Frame, is that
21 the warship at that stage, if it's at 14,000 yards or
22 16,000 yards, is in a state of limbo, in effect, in the
23 circumstances that although it might be signalling by
24 light, it will not be able to read the merchant ship's
25 reply of its signal letters by flag?

26 A. It had been my understanding - and, again, if you
27 press me, I couldn't tell you the range - that merchant
28 vessel flags could be seen at distance. I can't recall the
29 distance that I believe they could be seen.

30
31 THE PRESIDENT: There is a considerable body of evidence
32 before this Inquiry that it is very much less than that -
33 6,000 yards or less, sometimes down to 1 mile.

34
35 CMDR RUSH: Q. Perhaps if we look, firstly, at
36 UKAA.010.0084 at 0088. This is a report of 2 December 1941
37 of the Captain of *Dorsetshire* concerning his sinking of
38 a raider on 1 December 1941. At page 5, this comment is
39 made:

40
41 *British and Allied Merchant Ships,*
42 *independently routed, are frequently met at*
43 *sea often hundreds of miles from the*
44 *position where they ought to be on the*
45 *plot. Their identity can only be*
46 *established by signalling, which is*
47 *extremely difficult outside a range of*

1 8 miles. In these circumstances the
2 temptation to close to signalling distance
3 (5 miles or less) is very great ...
4

5 I am not putting it there for any reference other than the
6 5 miles in relation to being able to understand and read
7 signals.
8

9 It is also referred to at NAA.074.0065, which is
10 a memo of CMDR Dechaineaux of 30 December 1941, in which he
11 has made a suggestion that merchant ships be fitted by
12 light and said this:
13

14 *It is sometimes very difficult to read*
15 *a flag hoist at as little as a mile. The*
16 *whole purpose of suggesting a daylight lamp*
17 *is that warships can identify ships from*
18 *a range at which they are not tactically in*
19 *a disadvantageous position, ie outside*
20 *5 miles at least.*
21

22 What I suggest, Professor Frame, is that there was
23 a contemporary recognition that to undertake the merchant
24 ship recognition procedure, warships, of necessity having
25 to read flags, were putting themselves in a tactically
26 disadvantageous position?

27 A. Yes, I can see that that could have occurred.
28

29 Q. There is also some evidence before the Commission of
30 Inquiry from an RAN serving officer, CAPT Bairstow, who has
31 had considerable experience in the Indian Ocean, and
32 I would ask that TRAN.022.0032 be put up. At line 1, he
33 was asked this question and gave this answer:
34

35 *Q. Before moving on from the ability in*
36 *such conditions to read signal flags, you*
37 *spoke of range. Could you please just*
38 *reiterate what the range bracket is within*
39 *which signal flags could be read in similar*
40 *weather conditions?*

41 *A. In these weather conditions --*
42

43 and I'll come to them --
44

45 *if you look at where the sun is, if you*
46 *take it to a normal, reasonably clear day,*
47 *as a rule of thumb, 5 nautical miles is*

1 *good. You would want to be inside*
2 *5 nautical miles to see flags quite*
3 *clearly. Outside of 5 nautical miles it*
4 *starts getting harder. Taking into*
5 *account, if you look there, the relative*
6 *position of the flags and where the sun is*
7 *and the haze of the funnel, where the*
8 *position of the flags is, range would*
9 *definitely be, I would consider, a factor*
10 *of how you would read the flags. Between*
11 *2.5 and 5 nautical miles - 5 nautical miles*
12 *is getting out towards it, which is*
13 *10,000 yards, give or take.*

14
15 All of that evidence, I suggest, puts a different slant on
16 your 14,000 yards?

17 A. It could do, yes.

18
19 Q. In these circumstances, that before *Sydney* is even
20 able to identify the unidentified ship by reading its flag
21 signal, it necessarily has to come in to a range which you
22 have identified in your book as being tactically
23 disadvantageous?

24 A. Yes, I could see that being a reasonable construction
25 of what you have put before me.

26
27 Q. Professor, in your book at page 97, you seem to agree
28 with something that Mr Michael Montgomery had written.
29 I am referring to discussion in the paragraph beginning,
30 "Detmers stated initially that *Sydney* had made the signal
31 'NNP'". Insofar as the secret call sign is asked for, is
32 it your understanding that it is asked for only if the ship
33 is suspicious or it is asked for as a matter of course to
34 fulfil merchant ship recognition procedure?

35 A. The latter.

36
37 Q. In the last two lines of that paragraph that I have
38 referred you to, you say:

39
40 *As Montgomery rightly points out, if Sydney*
41 *was not suspicious, there was 'no reason to*
42 *ask for the secret callsign'.*

43
44 That is incorrect.

45 A. I can't recall why I've made that point. Again,
46 I would say that I did write this 17 years ago and I'm
47 struggling to remember everything that led me to write the

1 things that I've written.

2

3 THE PRESIDENT: Q. But if she is going through the
4 standard process of merchant ship recognition, she would
5 normally ask for or pass the internal letters, would she
6 not?

7 A. Yes. As I look at this particular page, I am a little
8 surprised by what I've written.

9

10 Q. It doesn't seem to be correct.

11 A. I wouldn't have thought so now.

12

13 CMDR RUSH: Q. You extracted, at page 133, part of
14 a monograph written by Admiral Sir John Collins. You
15 referred to:

16

17 *... a warning issued by the Commodore*
18 *Commanding the Australian Squadron shortly*
19 *after the outbreak of War in 1939.*
20 *A pamphlet dated 7 October 1939 warned*
21 *that 'months, and even years of immunity*
22 *were no guarantee that the next vessel is*
23 *not the disguised raider and vigilance can*
24 *never be relaxed'.*

25

26 Then you set out:

27

28 *This order is very much to the point.*
29 *However, most patrolling British cruisers*
30 *found that many merchant ships did not*
31 *respond correctly to repeated signals.*
32 *According to a report from one Commanding*
33 *Officer of a cruiser not more than*
34 *25 per cent of merchant ships replied to*
35 *the signal 'NNJ' ('You should make your*
36 *secret letters') correctly.*

37

38 Stopping there, it seems that Admiral Collins got it wrong
39 as well, because NNJ is not a request for secret signal
40 letters; it is merely a request for the ship's
41 international signal letters, is it not?

42 A. Yes. I noted that there have been other submissions
43 to the Commission that there has been some inaccuracy when
44 it comes to depicting those signals, and I'm included in
45 that.

46

47 THE PRESIDENT: Q. You're in good company with

1 Sir John Collins in that respect. He got it wrong as well.
2 A. I'm relieved, sir.

3
4 CMDR RUSH: I tender, sir, from the International Code of
5 Signals book of 1931 at PUB.005.0110 the signal NNJ, which
6 is, "You should make your signal letters."

7
8 **EXHIBIT #237 EXTRACT FROM THE INTERNATIONAL CODE OF SIGNALS**
9 **BOOK 1931, THE SIGNAL NNJ, WHICH IS "YOU SHOULD MAKE YOUR**
10 **SIGNAL LETTERS", BARCODED PUB.005.0110**

11
12 CMDR RUSH: Q. We're back at page 134 of the book,
13 reading from Admiral Collins:

14
15 *'The failure to make the correct reply,*
16 *therefore, gave little indication of the*
17 *true nature of the vessel. Despite the*
18 *Commodore's order there may have been*
19 *a tendency, after many such experiences, to*
20 *assume the suspect was just another*
21 *friendly ship which did not know the*
22 *procedure.*

23
24 *Whatever the reason, there were several*
25 *examples before Sydney's action of failure*
26 *to appreciate that the suspect might, in*
27 *fact, be a formidable enemy.'*

28
29 You went on to state after that quotation:

30
31 *The fact that only 25 per cent of merchant*
32 *ships replied with their secret callsign*
33 *when challenged is irrelevant to Burnett's*
34 *alleged decision to bring his ship to*
35 *within 1,500 yards before making the*
36 *challenge.*

37
38 I wonder why you would say it is irrelevant, if we look
39 back and examine instances where experienced ships'
40 Captains, in relation to the requirements of the ships
41 recognition procedure, have done exactly that?

42 A. I think I was resisting the notion that a generalised
43 observation, which this is, necessarily applies to specific
44 conduct of Burnett. I think what I'm trying to say is
45 that, okay, these other things may have happened in
46 25 per cent of cases, but that doesn't therefore make more
47 likely that Burnett acted in a particular way on that day.

1
2 Q. But to say that it is irrelevant is quite a statement.
3 We've seen the report of CMDR Dechaineaux of 13 December
4 1941 referring to merchant ships not complying with
5 recognition procedure and, here, Collins referring to the
6 same thing. I just wonder --

7 A. I went on to say that it's irrelevant to bring it
8 within 1,500 yards. I think, again, it's a separate thing.
9 To bring a ship in to 1,500 yards is quite a different
10 proposition. I don't see that the two things are related.
11 That people are not replying and his bringing his ship to
12 1,500 yards - I can't see the connection.

13
14 CMDR RUSH: Sir, if I can put on the screens and tender
15 the letter of the Captain of *Durban*, which is apparently
16 what Admiral Collins is referring to, at COI.007.0048. It
17 deals with his report, as he indicates in the first
18 paragraph, concerning the encounter of *Durban* with
19 a merchant vessel on 13 March, which may have been the
20 captured British ship *Speybank*.

21
22 In paragraph 4, he states as follows:

23
24 *I first signalled to her the international*
25 *signal NNJ ("You should make your signal*
26 *letters"). She did not answer this. This*
27 *was in no way unusual. It is my experience*
28 *that only 25% of merchant ships answer this*
29 *signal correctly and in any case most*
30 *merchant ships delay considerably before*
31 *answering when first called.*

32
33 **EXHIBIT #238 LETTER OF THE CAPTAIN OF HMS DURBAN, DATED**
34 **25 MARCH 1942, BARCODED COI.007.0048**

35
36 CMDR RUSH: Q. Professor Frame, accepting what is said
37 there by the Captain of *Durban* as being the general
38 experience, that only 25 per cent of ships answer the
39 request NNJ in accordance with merchant ships recognition
40 procedure, I would suggest to you that that is perhaps
41 a potentially important factor to take into account as to
42 how CAPT Burnett may have assessed the situation on
43 *Sydney's* approach to *Straat Malakka*?

44 A. I think it provides a context, and you've painted that
45 context, to say that there were one in four merchant ships
46 that were doing the right thing and three in four that
47 weren't. My point is that it's one thing to say that that

1 was the case; it's another thing to say, "Oh, I'm going to
2 bring my ship to 1,500 yards." That's all. I'm wanting to
3 separate out those two things. I'm accepting with you that
4 25 per cent of ships only were, if you like, complying with
5 the procedures at the time, but I would need to have
6 demonstrated to me that this was in Burnett's mind to the
7 extent that it actually affected his judgment that day.

8
9 Q. What if, in the circumstances of *Sydney*, the
10 international signal letters of *Straat Malakka* could not
11 have been read until *Sydney* had come within the 1 mile of
12 Dechaineaux or the 2 or 2.5 miles? What then?

13 A. I'm not understanding your question.

14
15 Q. What if it be the circumstances that the signal
16 letters that were put up in answer to the NNJ signal from
17 *Sydney* could not be read by *Sydney* unless *Sydney* came to
18 1,500 metres or 2 miles or 2.5 miles? What then?

19 A. It's, even then, a different thing: 2.5 miles is
20 5,000 yards, and there is a big difference between that and
21 1,600 yards. At 1,600 yards, the chance of doing anything
22 is much reduced. Even at 5,000 yards, there is
23 a significant difference. I don't know that you're putting
24 to me that that was the reason that *Sydney* came so close.

25
26 Q. What we do know is that *Straat Malakka - Kormoran* -
27 was sailing at about 260 degrees straight into the setting
28 westerly sun, which you would agree would be one factor
29 that would make flags difficult to read?

30 A. Yes, but I think we understood from the Germans that
31 *Sydney* didn't have difficulty seeing its flags.

32
33 Q. Where did we understand that from?

34 A. I can't recall.

35
36 THE PRESIDENT: Q. How would the Germans know?

37 A. Because of the sequence of events.

38
39 Q. On one German account, there was a signal from *Sydney*,
40 "Hoist your flags clear", indicating that it couldn't read
41 them.

42 A. But I don't know that we know that with respect to
43 this particular engagement.

44
45 Q. Yes, we do.

46 A. In what way?

47

1 Q. Because it's in the records.

2 A. I'm not actually sure what we're --

3

4 CMDR RUSH: Q. We know, from the interrogation of one of
5 the German officers, I think from the Bridge, that the
6 Germans say that *Sydney* sent a signal to the effect of,
7 "Hoist your signal flags clear".

8 A. Oh, yes, I'm accepting that, but what I'm saying is
9 that that doesn't mean therefore that they could not be
10 seen. At that point, they couldn't actually see what flags
11 had been hoisted, not that they were not visible. That's
12 all I was drawing attention to.

13

14 THE PRESIDENT: Q. They may have been able to see the
15 flags, but they didn't know what they meant, because they
16 couldn't read them. That's why, I would expect, *Sydney*
17 would send a signal saying, "Hoist your flags clear, so we
18 can read them"?

19 A. I'm not sure what you're asking me.

20

21 CMDR RUSH: Q. I think you have put forward the
22 proposition that the flags could be read and understood,
23 where there is some evidence to the effect that *Sydney* was
24 having difficulty reading the flag signals of *Kormoran*,
25 particularly in relation to its international signal
26 letters.

27 A. But not at 1,600 yards.

28

29 Q. How do we know that?

30 A. I'm too far away from writing about this to be able to
31 give you the kind of reply that I wish I could.

32

33 Q. I think you did give a lecture on it at the Australian
34 War Memorial last year.

35 A. Yes, in broad detail, not to this detail, and
36 I haven't trawled as broadly as you have for these papers,
37 and I think they're all relevant to coming to an
38 explanation for what Burnett did.

39

40 Q. I think I do recall you saying to Ms Fran Kelly,
41 Professor Frame, that there is nothing else to be found?

42 A. Well, in the sense there's nothing being hidden.
43 No-one has hidden any documents from anyone.

44

45 Q. In any event, I put to you that there were a number of
46 factors that could have made the reading of *Kormoran's*
47 flags, the international signal letters, quite difficult,

1 one being that *Kormoran* was travelling into the sun.

2 A. Yes.

3

4 Q. We have evidence as to the relative wind over the deck
5 of *Straat Malakka* also putting the flags at an angle, which
6 would have made it difficult for *Sydney* to read the flags
7 as it approached.

8 A. Well, could do.

9

10 Q. There is also evidence from the Germans that they were
11 attempting to fly the flags in a manner to avoid their
12 clear recognition by *Sydney* by use of the halyard and the
13 superstructure of *Kormoran*.

14 A. Yes, it was a delaying tactic.

15

16 Q. The other aspect, perhaps not as major but certainly
17 referred to by the Naval officers who have given evidence,
18 is the heat haze from the funnel of *Kormoran*.

19 A. Yes, that could have been a factor.

20

21 Q. All those factors could potentially make the reading
22 of the flags by *Sydney*, the first point of identification
23 of the merchant ship, difficult?

24 A. Yes, but I would go back to my earlier point, which is
25 that the character of CAPT Burnett was such that I don't
26 think that - what you're putting to me is that he put his
27 ship into a position which was increasingly more perilous,
28 and I don't believe that he would have come into that
29 situation unless he was convinced it was safe to do so.

30

31 At whatever range - we might agree it's 10,000 yards
32 or 14,000 yards - if he thought that by going any nearer,
33 he was imperilling his ship, I don't believe he would have
34 done that. I think he thought that he had reason to
35 proceed within that range. I'm just working on that
36 general premise, that that's the kind of man that he was.

37

38 Q. Professor Frame, at page 210 of the book, in the first
39 paragraph, you state:

40

41 *It is also likely that Sydney stood off the*
42 *raider at 14,000 yards for some time. The*
43 *evidence of the survivors is quite clear on*
44 *this point. At least one hour elapsed from*
45 *the time that Sydney was sighted by*
46 *Kormoran until the engagement.*

47

1 What is the evidence of survivors, even on a general level,
2 that you rely on to say that Sydney stood off the raider at
3 14,000 yards?

4 A. I can't recall specifics. My general recollection is
5 that when the ship was sighted on the horizon, there were
6 a number of things that were going on before Sydney then
7 proceeded to the position that it did at the time of the
8 engagement.

9

10 Q. By "stood off", you mean took up a position where it
11 maintained a distance of 14,000 yards?

12 A. Something of that order.

13

14 THE PRESIDENT: Q. I'm sorry, I'm not aware of any
15 evidence that suggests that.

16 A. Well, I can't recall. This is why I said that I had
17 some difficulties coming here today, because it has been so
18 long since I've written about this. I'm not trying to
19 obfuscate, nor am I trying to hide errors that I've made.
20 I just cannot remember.

21

22 CMDR RUSH: Q. Continuing on, you say:

23

24 *At least one hour elapsed from the time*
25 *that Sydney was sighted by Kormoran until*
26 *the engagement. With Kormoran cruising at*
27 *14 knots and Sydney closing at nearer to*
28 *30 knots, Sydney should have covered the*
29 *distance of 7-9 miles between the two ships*
30 *in thirty minutes. However, at 1715,*
31 *Detmers claimed that Sydney was still*
32 *9,000 yards distant. Five minutes later,*
33 *he claimed the range was 1,200 yards. As*
34 *the Australian interrogators noted, the*
35 *Germans wanted to get rid of half an hour.*

36

37 I want to suggest to you, firstly, that there is no
38 evidence to suggest that the Australian interrogators have
39 stated that the Germans wanted to get rid of half an hour,
40 and you certainly haven't referenced it.

41 A. No.

42

43 Q. In relation to the 9,000 yards, I suggest that what
44 you are referring to is the so-called action report that
45 was taken from Detmers upon his escape from the Dhurringile
46 prisoner of war camp in 1945?

47 A. Sorry, what was the question? I'm not --

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Q. The only reference to "9,000 yards" and "1715" is taken from the action report, which was a coded account, taken from Detmers upon his escape from the Dhurringile prisoner of war camp in 1945?

A. If that's where it came from, I'm happy to accept that.

Q. If we accept that, I suggest that it puts your comment that the Australian interrogators noted that the Germans wanted to get rid of half an hour completely out of context, because the interrogations occurred some five years or four and a half years before this account surfaced?

A. I can't comment with confidence on what you're putting to me.

Q. This is a theory that is propounded by Mr Montgomery in his book. Without taking you to it, the Commission has been back to the decoding of the Detmers account, which demonstrates that the 90 hectometres that he refers to is a mistake and it should be 9, which is 900 metres.

For the purposes of the question, I would ask you to accept that the evidence that is before the Commission of Inquiry is that the "9,000 yards" that you have referred to is really 900 yards or thereabouts. It puts your theory in a completely different context, does it not?

A. If I accept what you have said, yes. I don't think it was known, though, at the time, was it, that it was 900 metres or whatever else it was?

THE PRESIDENT: No, it wasn't. It has only recently become established.

CMDR RUSH: Q. You then go on, Professor Frame, to say in the next paragraph:

Having been ordered to stop, Kormoran then hoisted the Dutch flag. This is consistent with the evidence of Bunjes who said that the Dutch flag was hoisted some time before the signal letters were given for Straat Malakka.

I suggest that you could be referring only to the interrogation notes of Bunjes in relation to that?

1 A. I presume so.

2

3 Q. It is not recorded in his interrogation notes.
4 Perhaps if we could go to them at NAA.012.0764 at 0765, if
5 we go to the paragraph that commences:

6

7 *The raider was about 120 miles from the*
8 *coast ...*

9

10 If we go down about 10 lines to the centre, this is
11 attributed to Bunjes:

12

13 *The Cruiser approached rapidly, and at*
14 *about 7 miles began flashing. Raider had*
15 *the Dutch flag, and signalled that she was*
16 *the Straat Malakka. When the ships were*
17 *about 1,200 metres apart on parallel*
18 *courses and abeam, the Cruiser asked for*
19 *the secret call sign. The Raider opened*
20 *the covering plates of the guns and fired*
21 *the first shots ...*

22

23 There is nowhere in that account any suggestion from
24 Bunjes, I suggest, that the raider stood off at
25 14,000 yards?

26 A. Well, where did I get that view from? I know that's
27 for me to explain, but I'm saying to you, would I have just
28 created that?

29

30 Q. I don't know, but insofar as you have referred to the
31 Bunjes account, the interrogation notes suggest something
32 completely contrary to what you have put in your book.

33 A. Again, I can't recall on what basis I made the
34 statement about Bunjes.

35

36 Q. You then go on to state:

37

38 *Detmers' strategy was to prolong the*
39 *identification by whatever means to ensure*
40 *that Sydney's suspicions were not aroused*
41 *until he was in a position to fight.*

42

43 In the context of Sydney staying off at 14,000 yards,
44 I wonder what you are referring to as to the strategy that
45 Detmers, you think, might adopt in that scenario?

46 A. That he was wanting to take time. I think there are
47 a number of things. The first one is that he obviously

1 wants to get his people in a position where they were able
2 to deploy all of *Kormoran's* weapons, and the longer that
3 *Straat Malakka* waits until it fires and the longer that
4 *Sydney* stands off probably means it's less likely that
5 a gun battle will result. It suits him to wait, to get
6 *Sydney* to come nearer and nearer and nearer, which then
7 increases his tactical advantage.

8
9 Q. Apart from your theory and what you've referred to as
10 Bunjes', is there anything else that you can point to - and
11 I appreciate the time since you wrote the book - to suggest
12 that *Sydney* stayed off at 14,000 yards?

13 A. As you're putting it to me today, I didn't reread my
14 book and then come to a view that I could kind of defend
15 this particular position. I think I've really said all
16 I wanted to say on the matter.

17
18 I tried to produce what I thought was a cogent
19 explanation for what occurred. I had no particular barrow
20 to push. There was no-one's interest that I wanted to
21 serve. It was simply that I tried to come up with an
22 explanation of why this thing would have occurred, on the
23 basis that Burnett was a prudent man, who wouldn't
24 stupidly, recklessly put his ship into danger.

25
26 That being the case, I took whatever I believed was
27 the evidence available at that time. Things were a lot
28 different in 1992-1993, and I produced what I thought was
29 a reliable, reasonable account of what occurred.

30
31 I didn't footnote every single statement, for lots of
32 reasons. One of them is publishers. This book was already
33 too long. I will accept, and I am happy to accept, that
34 there are some things where you have corrected me today,
35 and I am grateful for that.

36
37 Q. May I ask, then, about the last sentence in this
38 paragraph:

39
40 *Burnett was justified in approaching the*
41 *Dutch ship because she had obeyed his*
42 *orders, and because he would need to board*
43 *the ship if she were unable to prove her*
44 *identity.*

45
46 What orders, at 14,000 yards, had *Kormoran* obeyed?

47 A. I'm not sure. I would have to, again, reread it and

1 then come to a view. As you've put it to me, I can't give
2 you a good answer other than that I obviously came to the
3 view, on a basis that you probably dispute, that at some
4 point at 14,000 yards Burnett thought that there was reason
5 to come nearer.

6
7 Q. Professor Frame, I'm not disputing anything. I'm
8 testing the theories so that the Commissioner can --

9
10 THE PRESIDENT: Q. May I understand your theory. It is,
11 is it, that as *Sydney* approached, at some point - we'll
12 call it 14,000 yards - something occurred?

13 A. Yes.

14
15 Q. And, as I understand you, you say that it may have
16 been an order to stop given by *Sydney* to *Kormoran*?

17 A. That's correct.

18
19 Q. And that thereafter *Kormoran* did stop?

20 A. Yes, or appeared to stop.

21
22 Q. And that thereafter or at that point of time, *Sydney*
23 stood off while that was occurring?

24 A. Yes, *Sydney* didn't press the matter. It stood off.
25 At some subsequent point, *Sydney* then moved into the
26 position that it did when the engagement occurred.

27
28 Q. Just analysing that, apart from one reference, there
29 is no evidence that *Sydney* issued an order to stop; there
30 is certainly no evidence that *Kormoran* did stop; and there
31 is no evidence that I am aware of that *Sydney* stood off.

32
33 If that's right, then the structure that you have
34 erected is a thesis which doesn't stand up. But the mental
35 process that you went through, as I understand it, was to
36 try to understand the mind of CAPT Burnett to reach the
37 conclusion - correctly, I would think - that he was an
38 experienced Naval officer, reserved, sensible, in command
39 of a warship, with a good officer staff around him on the
40 Bridge.

41
42 So you have then said, therefore he would not have
43 done anything silly, and therefore something else may have
44 happened, and you have then speculated about what that
45 something else is. Is that the process that you went
46 through?

47 A. Most of it is speculation, but I think CMDR Rush

1 rightly said it was a theory, because none of us were there
2 and none of us can speak to anyone who survived.
3 Therefore, I put up a few key points, which required
4 explanation. On the basis of what was available to me as
5 I was writing in 1992 and 1993, I said, "Look, something
6 must have happened at that particular point."
7

8 Now, we obviously need to get to the point of saying
9 that everything that the Germans supplied about the
10 engagement is both comprehensive and reliable, and the
11 Commission will come to its own view on that. I was
12 looking at a couple of points where Burnett's actions could
13 be understood in the light of his character, and I said it
14 was nothing more than a theory. I believe it to be theory,
15 and everything else, as we have been saying, is theorising.
16 We don't know what was in Burnett's mind and we will never
17 know what was in Burnett's mind. There is an element of
18 surmise, but you couldn't say with confidence.
19

20 Q. There are two things about that. We have a fairly
21 comprehensive account from a great number of people, namely
22 the Germans, as to what they say actually happened
23 physically - that's one thing - and one will have to make
24 a judgment about whether one accepts all of that or not or
25 whether there are errors in it.
26

27 But if you then take the step of saying, "I want to
28 look into CAPT Burnett's mind", at some point of time you
29 have to decide what his thought process was, and that
30 really is getting into speculation. But take your
31 14,000 yards point, or some other point - it does seem to
32 me that it is clear beyond argument that at some point of
33 time *Sydney* was on a parallel course abeam *Kormoran* in the
34 order of 1,000 metres distant - 1,000, 1,200, 1,500.
35

36 If one accepts that fact - and there is a lot of
37 evidence to support it, oral and now physical from the
38 wreckage - then some integrity is given to a substantial
39 aspect of the German account. But it also means, taking
40 your point that you look at the mind at CAPT Burnett, that
41 at some point of time he decided to take the ship to that
42 position, because it got there.

43 A. Yes.
44

45 Q. Whenever or wherever that decision point was, it seems
46 to me that there are five possibilities. The first is
47 that, looking at CAPT Burnett's state of mind, at some

1 point he was persuaded that *Kormoran* was a friendly vessel.
2 That's one possibility.

3 A. Yes.

4
5 Q. The second possibility is that whilst he was
6 interrogating or trying to recognise this ship, he didn't
7 know, but he expected that the ship might be friendly. The
8 interrogation process had not been completed. That's the
9 second possibility.

10 A. Yes.

11
12 Q. The third possibility is that *Sydney* was in the
13 process of identifying *Kormoran*, but because of conditions,
14 some of which CMDR Rush has referred to, she could not read
15 flags and the only way to identify her was to go in close,
16 to something within 4 miles, 5 miles, perhaps less, and she
17 went in to 1,200 metres. The third possibility is that in
18 CAPT Burnett's mind, he did not know at the point of
19 decision-making whether the vessel was friend or foe.
20 That's the third possibility.

21 A. Yes, but if you are not persuaded that it's not
22 a friend, then you don't have any options at 1,200 yards.

23
24 Q. We'll come to that in due course.

25 A. Sure.

26
27 Q. That's the third. A fourth possibility is that *Sydney*
28 was in the process of identifying *Kormoran* but suspected
29 that she may have been an enemy ship. That's a fourth
30 possibility.

31
32 The fifth possibility is that the Captain of *Sydney*
33 was persuaded that the vessel before him was in fact an
34 enemy vessel but was not a raider; it was perhaps a supply
35 ship to a raider.

36
37 At my present stage of thinking, they're the only five
38 possibilities that I can think of if one is going to try to
39 get into the mind of CAPT Burnett, and it seems to me that
40 they cover all possibilities.

41 A. You've excluded that he thought it was a raider and
42 came in regardless.

43
44 Q. Well, I don't know that I have, but, anyway, we'll see
45 if that's a sixth or whether it fits into one of the five.

46 A. Right.

47

1 Q. I think it falls into category 4, actually. But,
2 anyway, one way or t'other. Which is it that you suggest
3 is the correct category?

4 A. I think that he believed it was a German supply ship.
5

6 Q. So he recognised at distance, whatever that distance
7 may be, that this was an enemy vessel, but not a raider,
8 and therefore he thought it was safe to approach it? Is
9 that your theory?

10 A. That's the most likely scenario, in my view.
11

12 Q. Is it your view that *Sydney* was at Action Stations?
13

14 A. Yes, sir.
15

16 Q. On what basis?

17 A. As we've just said, if he did think it was a German
18 supply ship, he would come to Action Stations, and also the
19 fact that, as we've seen from the wreck, *Sydney* fired, and
20 the German evidence is that *Sydney* returned fire very
21 quickly. Therefore, you don't go from, as it has been
22 suggested by some, people just wandering all around the
23 ship doing their day jobs to suddenly being at Action
24 Stations and able to deploy the weapons. That feeds back
25 to us, in my view, the possibility that it was closed up at
26 Action Stations.

27 Q. The German evidence is that the 4-inch guns were not
28 manned, the machine guns were not manned, there was crew
29 standing adjacent to what's called the spud locker and that
30 there were other people walking around the deck and that
31 there was a sudden rush of officers up to the Bridge. That
32 doesn't seem to me to be like a ship at Action Stations.

33 A. But that suits the Germans to portray *Sydney's*
34 readiness in that way.
35

36 Q. Why do you say that?

37 A. Because *Sydney* is the only warship lost to an armed
38 merchant raider in World War II, and questions were asked
39 subsequent to the fact as to how this occurred. I don't
40 believe that the German accounts - in the major outline of
41 what occurred, I've never said that I thought they were
42 wrong, but there were matters which were known only to
43 CAPT Detmers which it seemed to me were not accurately and
44 reliably disclosed, and I think there was a situation where
45 he did fire other than under the German Battle Ensign and
46 that it was in his interests to have people painting *Sydney*
47 as being woefully unready for an action.

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Q. But that is speculation on your part to try to, as it were, exculpate CAPT Burnett rather than approaching the matter from the other direction and saying, "What is the evidence?", and considering it?

A. But the German stories, having read them over the years, do get better with the telling. So what we heard, I think, during World War II then almost becomes in the 1950s, 1960s, 1970s, and 1980s that there was a carnival atmosphere on *Sydney*, there were cooks and stewards wandering around sunning themselves. If that's the state of *Sydney*, then it seems to me that it is contrary to what one would expect of a cruiser in a wartime situation, and it's contrary to what I understood to be the conditions prevailing in most other ships at that time in terms of operational discipline.

Q. I really have to say to you that whilst I will be reporting on what was said in the 1950s, 1960s and 1970s, that's of little interest. The real interest is what was said immediately afterwards in the assessment made by the seven experienced Naval officers who interviewed the Germans and said they believed them.

A. Well, that means that you have come to the view that *Sydney* was not ready for this action and that Burnett was culpable.

Q. I haven't come to that view at all.

A. But if you accept what the Germans say, it seems to me that's the outcome you're left with.

Q. No, no, what I said to you was something different. The survivors were interrogated by seven different senior officers, and they were interrogated at times when they had no chance of collaborating with each other. They were separate physically before they were interrogated.

Each of those senior officers wrote a report, and those reports, in essence, came to the same conclusion, and the conclusion was that, speaking generally, the account given by the Germans was correct. That is one way of approaching it.

Another way of approaching it is to look at the statements which were taken afresh when they were first interrogated as a whole and consider that and see what conclusion one would come to as a matter of fact-finding.

1
2 That approach varies very greatly from the approach
3 which you've taken, which is to say: CAPT Burnett was
4 a sensible man; therefore, he wouldn't have done anything
5 silly; therefore, what the Germans say must be untrue.
6

7 If I may say so, that approach doesn't seem to me to
8 be a very analytical approach to trying to resolve this
9 problem. But, as I understand it - and correct me if I am
10 wrong - that is the approach you've taken in your book, is
11 it not?

12 A. I didn't start with any approach. It seemed to me
13 that what the Germans were describing required Burnett to
14 be other than, I believe, with all the evidence, the kind
15 of man that he was. It wouldn't be safe to put great
16 reliance upon Germans, at the distance that you've
17 discussed, many of them closed up at Action Stations - it
18 wouldn't be safe to put reliance upon their estimation of
19 Sydney's combat readiness at that point.
20

21 They're not in a position to make judgments about how
22 Australians got ready for an engagement or what Action
23 Stations looked like, or a boarding party or anything else.
24 To rely upon them I don't think would be a safe thing to
25 do, because you're relying upon them to say that, "Well,
26 there were cooks and stewards on the upper deck, there were
27 different things going on. It was plain to us they weren't
28 ready for a fight."
29

30 Q. No, no, no. If I may say so, you have completely
31 misconceived the process. The Germans didn't volunteer
32 anything. They were interrogated by Australian officers.
33 They answered only the questions they were asked. What is
34 recorded in their statements is the Australian translation
35 of what was said by Germans in answer to specific questions
36 put to them. That's the only information we have. It is
37 not volunteered by Germans. It is responses to questions
38 put by Australian Naval officers.
39

40 A. But there are some things --

41 Q. And they asked them, for instance, "Were the machine
42 guns manned? Were the 4-inch guns manned?" They didn't
43 volunteer that. "Were the 6-inch guns manned? Were the
44 torpedoes manned?" There were questions which were put to
45 them, and their responses were recorded. That's one
46 approach, which is the approach that the Naval and military
47 authorities took in 1941.

1
2 But your approach, if I may say so, is entirely
3 different. It is to say, start from the other end:
4 Burnett was a sensible, intelligent man; he wouldn't have
5 made a mistake; therefore, we can speculate as to why he
6 did particular things, irrespective, as it were, of what
7 the evidence may establish. Do you understand what I'm
8 putting?

9 A. Yes, I do. I do understand the difference. What do
10 you want me to say?

11
12 Q. I just want to understand why it is that you would
13 adopt an approach like that.

14 A. Because no-one is here - I mean, who would speak for
15 Joseph Burnett?

16
17 Q. (Indicating CMDR Renwick)

18 A. Well, in 1992 he wasn't and it seemed to me that at
19 the time I first wrote it was sport to say, "Oh, well,
20 Burnett did this", "Burnett did that", "Burnett was
21 a fool", or that Burnett was something else and it did seem
22 to me that, back in the early 1990s, the man had almost no
23 credibility whatsoever. There didn't seem to be
24 a reasonable case mounted for what he might have thought
25 and what he might have done.

26
27 I've not suggested that what I've said is fact. Like
28 all historians, you gather the evidence, the information
29 that's available to you at that time. You see what the
30 evidence shows you. I had already come to this kind of
31 question when I was writing about *Voyager*, where I didn't
32 want to say particular things about CAPT Stevens, the
33 Captain of *Voyager*, until I had enough of a sense of the
34 kind of man he was to get an impression: did he drink the
35 night of the collision; did he do the kinds of things of
36 which he was accused? That's the way generally I've
37 approached it.

38
39 Yes, I would say that I did set out to mount
40 a reasonable defence for what Burnett may have done, but I
41 persistently said we will not know and, therefore, there
42 should be suspension of judgment, and certainly suspension
43 of the kind of denunciation that at that time, in the early
44 1990s and at some times since, we've seen in the public
45 domain.

46
47 Similarly, last year, just before the wreck was found,

1 the German survivors were suggesting that you only get one
2 Joseph Burnett in your Naval career, and this was ours.
3 That is appalling, that these men, in one of our national
4 newspapers, should basically say that Burnett was
5 incompetent and a fool, and with the material that
6 CMDR Rush has put to me, I don't think that is a judgment
7 of that man that anyone could make.

8
9 Q. In contrast, you, as an historian, wrote this:

10
11 *... Detmers is an advocate in his own cause*
12 *and that his word cannot be accepted as*
13 *truthful at face value.*

14
15 Do you agree?

16 A. Yes, sir.

17
18 Q. You also wrote:

19
20 *It can be assumed that Detmers was*
21 *concerned during the War to give no*
22 *material assistance to his captors. He had*
23 *justifiable reasons for concealing the*
24 *details of the engagement until the German*
25 *capitulation in May 1945. However, the*
26 *Australian view of the action and his part*
27 *in it had not changed substantially since*
28 *early 1942. After his return to Germany,*
29 *Detmers 'sense of history and his own*
30 *vanity gave him sufficient reason to*
31 *produce a version of the action from which*
32 *he emerged in the best possible light while*
33 *concealing anything which may have*
34 *suggested he violated international law.*

35
36 Do you agree that you wrote that?

37 A. Yes.

38
39 Q. You assumed that he violated international law?

40 A. Yes.

41
42 Q. You also wrote:

43
44 *Was Detmers capable of knowingly violating*
45 *international law and lying to conceal the*
46 *fact if the operational demands were*
47 *necessary? Being mindful of his ruthless*

1 *determination to achieve his objectives and*
2 *the need to avoid ignominious defeat, one*
3 *must conclude that Detmers had the*
4 *capability and probably the willingness to*
5 *violate international law and, later, to*
6 *deceive his captors.*

7
8 You wrote that?

9 A. Yes.

10

11 Q. And, finally, you wrote:

12

13 *In the case of Detmers, there is an echo of*
14 *truth in his account but he remains an*
15 *advocate of his own cause. Were his*
16 *account not embellished to give the*
17 *impression of complete stupidity on the*
18 *part of the Australian ship, his*
19 *contentions might be more palatable. The*
20 *inconsistencies in his statements over time*
21 *and his obvious efforts to portray events*
22 *to suit his own ends, makes him the least*
23 *reliable source of evidence among the*
24 *Kormoran's crew. His efforts to*
25 *manufacture an account from which he*
26 *emerges in the most favourable light draws*
27 *attentions to his actions and creates*
28 *a feeling that he has something to hide.*
29 *Beneath the facade that Theodor Anton*
30 *Detmers has orchestrated, the truth is*
31 *somewhere to be found.*

32

33 And I think you wrote that?

34 A. Yes, sir.

35

36 Q. Does that mean that you approached this historical
37 task on the basis that you were seeking to establish or
38 maintain the integrity of CAPT Burnett and his actions, on
39 the basis that you had a preconceived notion, when
40 addressing the evidence, that his opponent, CAPT Detmers,
41 was a person who would breach international law, commit
42 crimes and the like?

43 A. No, sir.

44

45 Q. Why not? That's what you wrote.

46 A. If I could just provide a little brief background?
47 I was criticised and chastised, and all manner of things

1 like that, because when I wrote about *Voyager*, which was
2 the book immediately before this --

3
4 Q. I've read it.

5 A. -- all sorts of terrible things were said about me and
6 I offered my resignation over the matter because I had
7 written things that were contrary to the Navy's best
8 interests, that I had put the worst construction on some
9 events rather than the better.

10
11 I wrote this book simply because my publisher
12 approached me and said, "We think there's a market for
13 a book on *HMAS Sydney* and we would like you to think about
14 writing it."

15
16 Of all of my 24 books, I didn't choose this one. This
17 is the only one that I didn't choose. The publisher came
18 to me. I said I would work on the book. I then gathered
19 up all of the material. When I had read enough of the
20 material, when I had made some assessments of the character
21 of Detmers and Burnett, I then came to, you might say,
22 a defining view on both individuals, and you might then say
23 that has influenced the way I have written my particular
24 contribution to the story about this episode.

25
26 I didn't approach it thinking, "Oh, I'm an Australian,
27 I need to defend Joseph Burnett", and "Germans do the kinds
28 of things that Theodor Detmers did." I don't think that
29 and I wouldn't write that. I came at the subject
30 completely cold. I had written almost nothing about it
31 previously, and I tried to let the material, as I was able
32 to get it around me, guide me as to the way I approached
33 the subject.

34
35 Q. You did write in your book that you approached the
36 matter with a certain bias, and you explained what that
37 bias was --

38 A. Yes.

39
40 Q. -- namely, that you thought all of the actions should
41 be considered through the eyes of a Naval officer, and
42 I could well accept and understand that. But then to
43 approach it on the basis of the passages that I have just
44 read to you, that one of the two contestants in this would
45 lie and hide the truth and breach international law and
46 commit crimes and manufacture accounts and, therefore, his
47 evidence should be diminished, while seeking to speculate

1 as to the course of actions of the other party, doesn't
2 seem to me to be a very balanced approach, if I may say so.
3 A. Well, it's only unbalanced if you don't think there's
4 some element of justification for it. This was a war in
5 which I believe Detmers personally believed. That then
6 needs to be understood as the context in which he did the
7 things that he did.

8
9 I suspect that when he took *Kormoran* to sea on the
10 very first day, he expected - well, I'm sure, he never
11 thought the ship would go home and his chances of death
12 were high. Therefore, on those occasions when I have
13 offered praise of Detmers - and I have - it is on the basis
14 that he was a very good seaman, that he was a tactician in
15 terms of raider warfare, amongst the best the 20th Century
16 observed, and that on this particular day on which he
17 encountered *Sydney*, this was another day in which - and
18 this is the way I believe his mind worked - "If a warship
19 came from that bearing, that bearing or that bearing, this
20 is how I would respond."

21
22 I think that every day from when the ship left
23 Germany, he was thinking about all of the range of threats
24 that may have been directed at his ship and how he would
25 best counter them. I think, on the day, plainly he won,
26 and, with hindsight, we would all say that Burnett - no, we
27 may not all say; I would say - should have stayed off at
28 some distance and not been as trusting, if that's what he
29 was, or should have been more prudent than I have obviously
30 given him credit for.

31
32 CMDR RUSH: I don't know if you want to take the 10-minute
33 break, sir?

34
35 THE PRESIDENT: I will take a short adjournment.

36
37 **SHORT ADJOURNMENT**

38
39 THE PRESIDENT: Q. Professor Frame, just one thing. If
40 I understood you correctly this morning, you said that you
41 thought the most likely circumstance was that the Captain
42 of *Sydney* thought that the vessel before him was an enemy
43 vessel but not a raider?

44 A. That's correct.

45
46 Q. What is it that could have indicated to CAPT Burnett
47 that fact and what has led you to that view?

1 A. I think a couple of things. One of them is that
2 CAPT Detmers didn't blink; in other words, as *Sydney* came
3 closer and closer and closer, he didn't fire. He waited
4 until the ship was at point-blank range and where he could
5 sink it. I think that Joseph Burnett, as he got nearer,
6 was not persuaded it was a raider, because other raider
7 Captains would have fired by then. You wouldn't have
8 expected to have got in to 1,200 yards and then for the
9 ship to have fired. I think that the nearer he got, the
10 more benign he thought it was.

11
12 Q. Yes, but going back to what we call the decision
13 point, you said 14,000 yards - whatever the distance was -
14 at that point of time, what is your view about what you
15 think CAPT Burnett may have thought about the vessel?

16 A. Consistent with the general flow of my theory, this
17 wasn't a raider, this was a supply ship, and maybe there
18 were various elements of the judgment that he made, but,
19 again, I've worked back to say, why would you come near?
20 You've said you have not discounted the possibility that he
21 knew it was a raider and still came in, anyway. If he knew
22 it was a raider, he wouldn't have come in; he would have
23 stayed at least some distance.

24
25 You have to come to a mind on how close he might have
26 come while establishing that fact, but it does seem to me
27 that the closer he got, there was no hostile intent from
28 *Kormoran*; it did all the kinds of things that you would
29 expect a German supply ship to do. I think he thought that
30 if it had been a raider, it would have fired at some
31 distance and not let *Sydney* get so close. He was aware
32 that German supply ships were a possibility, and I think he
33 was of the view that --

34
35 Q. He was aware that raiders were a possibility as well.

36 A. Yes, he was, but there were other alternatives.
37 Again, it's only that he came and brought his ship into
38 a position from which there was no recovery, I've made that
39 a crucial point to say that he would only do that if he
40 didn't think he was going to have a ship firing upon him.
41 I mean, nobody wants to be involved in a gunfight at
42 1,200 yards.

43
44 CMDR RUSH: Q. Professor Frame, there are five matters
45 that I want to cover, if I can, hopefully reasonably
46 quickly. At page 210 of your book, in relation to the
47 order to stop, in the bottom paragraph, you state:

1
2 *While appearing to comply with Sydney's*
3 *order to stop, Kormoran would need to*
4 *proceed very slowly through the water at*
5 *two or three knots, both to prevent her*
6 *swinging around across the swell and*
7 *exposing her entire profile and to help her*
8 *to maintain her westerly course into the*
9 *sun.*

10
11 If that had happened, I suggest it would have been
12 immediately apparent to the officers on the Bridge of
13 *Sydney* that *Kormoran* had in fact not stopped - because she
14 didn't swing around, she did maintain her course and she
15 didn't adopt any profile consistent with the conditions.
16 A. They could have come to that view, I suppose they
17 could have. I think you could simply say there could be
18 something innocent in wanting simply to keep the ship's
19 head to the west and just keep that profile. That wouldn't
20 constitute a hostile intent.

21
22 Q. Then you say:

23
24 *The reduction in speed, possibly achieved*
25 *by the use of only one engine, would not*
26 *have been completely apparent to the German*
27 *crew as Kormoran was already heading into*
28 *the wind and swell which gave the*
29 *appearance of additional speed.*
30 *A substantial drop in the raider's speed*
31 *would also explain why Sydney was later*
32 *able to cover so much distance ...*

33
34 A drop from 14 knots to 2 to 3 knots would have been
35 immediately apparent, I suggest, to a crew that was at
36 actions stations waiting for an engagement?

37 A. Yes, but what I was saying was that keeping the ship's
38 head to the west and going very slowly wouldn't have been
39 appreciable to the ship's company.

40
41 Q. Then just on this matter, at page 211 in the first
42 paragraph, you say:

43
44 *The suggestion that Kormoran had either*
45 *slowed down or stopped has support in some*
46 *German accounts. Indeed, sketches prepared*
47 *by Fritz Treber for Captain Farncomb of the*

1 *engagement seemed to show that Kormoran was*
2 *not underway as Sydney approached ...*
3

4 You provided one of the sketches. The original is at
5 WAM.015.0043. I wonder what it is about those sketches
6 that would suggest Treber, in some way or another, is
7 suggesting that *Kormoran* was not under way?

8 A. There is no wake behind *Kormoran* on number 1. There's
9 nothing behind the ship to show any movement. Then when
10 you see the ship, he has marked down the direction in which
11 it went after the engagement. That's what I was basing it
12 on. Do you see the arrows behind *Sydney* and then there's
13 that track or projected track forward of *Kormoran* on number
14 2?

15
16 Q. So *Kormoran* opened fire at 6pm:

17
18 *About 6.20pm Sydney badly hit, on fire and*
19 *dropping astern. Kormoran on fire, forging*
20 *ahead.*
21

22 What I suggest is equally consistent with that sketch is
23 that it is showing a course for *Sydney* coming abeam of
24 *Kormoran*, then the two ships on fire and a course for both
25 of them, and then *Sydney* dropping astern.

26 A. Yes, I'm not sure what - I'm just saying that I can
27 see in that someone saying that *Kormoran* was not moving at
28 the point of the engagement.
29

30 Q. The other issue with the sketches, as to their
31 complete accuracy --

32 A. Well, they're not terribly accurate.
33

34 Q. They can't be.

35 A. Yes, I mean, I don't know that we'd actually agree
36 that *Sydney* was - I mean, *Sydney* on number 1 is shown to be
37 abeam; on number 2, she's abaft the beam. I would have
38 thought the bearing at the time of the engagement with
39 *Sydney* was slightly abaft the beam rather than being on the
40 beam. I think that's generally the view. Therefore, the
41 sketches are inaccurate.
42

43 I was only working on the basis that if you look at
44 this, there's *Kormoran* stationary in the water, I'm arguing
45 with enough engine revs to keep the head to the west, and
46 *Sydney* comes in on a converging course and then comes
47 alongside. I think number 1 is the inaccurate one. But if

1 you want to say that because of the general inaccuracy, you
2 can't substantiate what I'm saying, then that's --

3
4 Q. If we look at page 211, in the next paragraph, I'll
5 try to quickly summarise what you put. You indicate on
6 your theory:

7
8 *With Kormoran having obeyed the order to*
9 *stop --*

10
11 at 14,000 yards or thereabouts --

12
13 *it is likely that Sydney continued the*
14 *interrogation as she approached from*
15 *a position of safety, astern of the*
16 *unidentified ship. As the purported Dutch*
17 *merchantman had stopped and Sydney was*
18 *making rapid progress towards her in the*
19 *hope of preventing her from scuttling if*
20 *she were an enemy ship, the Walrus was not*
21 *needed and could be shut down. In*
22 *accordance with Admiralty procedure,*
23 *Burnett then ordered the 'Dutch' ship to*
24 *hoist her international signal letters. It*
25 *is most likely that Ahlback did fumble with*
26 *the signal letters as Detmers suggested.*
27 *Detmers' statement that Sydney hauled away*
28 *to starboard at about 9,000 yards was*
29 *probably an attempt by the Australian ship*
30 *to read the signal letters.*

31
32 As I understand this part of the theory, it is Sydney
33 approaching a stationary *Kormoran*, still interrogating and
34 not having ascertained the identity of the ship?

35 A. Yes.

36
37 Q. Then you go on to say that having ascertained the
38 identity *Straat Malakka*, Burnett would have consulted the
39 latest edition of vessels in the area and ascertained that
40 *Straat Malakka* was not on the plot.

41 A. Yes.

42
43 THE PRESIDENT: Q. Why would a Captain of a warship,
44 when a vessel is first sighted at distance, not ask his
45 plot, "What vessels can I expect in the area?"

46 A. He may have already known.
47

1 Q. If he did, he would have known that there was no ship
2 like *Kormoran* expected in the area from a distance of 20 to
3 25 miles.

4 A. But that also presumes, sir, that the intelligence
5 supplied or even the shipping summaries are accurate. As
6 we've said, there are other points at which there was
7 inaccuracy. So, yes, I accept the point you're making,
8 except that Burnett might have thought that it wasn't
9 reliable, the information that he had. In other words,
10 "This ship is not meant to be here. I don't know what it
11 is. It's none that I expect to be here. That doesn't then
12 give me grounds, at whatever range, to shoot it."

13
14 CMDR RUSH: Q. If I can cover perhaps two pages in
15 a paragraph, you then surmise that *Sydney*, whilst still
16 approaching, identified the ship as *Straat Malakka*, then
17 requested the secret call sign, and the secret call sign
18 was not given by *Kormoran* as *Sydney* continued to approach.

19 A. Yes.

20
21 Q. At the bottom of page 213, in that scenario, you
22 suggest:

23
24 *This presented Burnett with a dilemma.*
25 *Prudence dictated that he should have fired*
26 *at 'Straat Malakka' and forced the ship to*
27 *surrender. However, the fear of killing*
28 *innocent people and sinking an innocent*
29 *ship would have weighed heavily on*
30 *Burnett's mind. Were the suspect vessel*
31 *a German prison ship, Burnett needed to*
32 *think of the hundreds of Allied sailors*
33 *that might be drowned ...*

34
35 Just in relation to that, the likelihood of a prison ship
36 at that location off the coast of Western Australia was
37 nil, was it not?

38 A. I wouldn't have said it was nil. I mean, it was
39 unlikely, but I wouldn't have said it was nil.

40
41 Q.
42 *This had occurred when Pinguin was sunk and*
43 *more than 200 Allied men were lost.*
44

45 Then you compare the way in which Burnett might have
46 approached it to that of Collins and Farncomb?

47 A. Yes.

1
2 Q. You then say:
3

4 *By this stage, the Germans stated that*
5 *Sydney was still on Kormoran's starboard*
6 *quarter. In other words, Sydney was still*
7 *in the safest position that was available*
8 *to her given that the need to read 'Straat*
9 *Malakka's' flag hoists prevented her from*
10 *being dead astern. As Kormoran was unable*
11 *to reply and the range had closed to*
12 *5,000 yards, Sydney prepared to board the*
13 *Dutch merchantman from a distance of*
14 *1,200 yards.*
15

16 If that scenario be correct, it is a scenario, is it not,
17 that is very close to the approach that was taken by
18 CAPT Bevan in *Leander* that you have criticised earlier in
19 your book?

20 A. I worked on the basis of what would make Burnett come
21 in to 1,200 yards, and I took the view that the only thing
22 that would bring him in to 1,200 yards was not to read the
23 signals in the halyards, but to conduct a boarding. When
24 I looked at all the possibilities, why 1,200 yards - that's
25 the figure that everyone agrees with - I thought that
26 boarding was really the principal possibility.
27

28 In terms of not getting the kind of reply he wanted at
29 5,000 yards, he then is confronted with a situation, "Do
30 I fire at this range?", noting - and that's why the
31 previous paragraph appears - "This ship is showing no
32 hostile intent, it can't give me the replies I want. Am
33 I actually going to shoot it at this particular range?"
34

35 We would say today that, yes, he should have shot it
36 at range. He didn't do that. He kept on coming. So, if
37 you like, there's another point, from on the horizon,
38 whichever that first decision point is, he comes in. He
39 then gets to about 5,000 yards. He's in that position
40 astern where he's slightly to the starboard of astern, and
41 he's still in a reasonable position. But when he goes
42 beyond 5,000 yards, that's getting awfully close.
43

44 The only thing that I can theorise as to what would
45 bring him in to 1,200 yards is a boarding, because if
46 *Kormoran* stopped, as I think it stopped in water, it's
47 stationary, okay the ship's head is facing to the west and

1 he goes and fires upon it and sinks it - I could just as
2 easily imagine people saying, "Fancy Joseph Burnett, when
3 the ship showed no resistance, it was stationary in the
4 water, it was fumbling and doing all these other kinds of
5 things, and he sank it. If it was a supply ship, we could
6 have got the ship, got the cargo, maybe saved people on
7 board", and all of those kinds of factors.

8
9 So I was working back from the 1,200 yards and, again,
10 the kind of person that I believed him to be, not full of
11 bravado. I'm sure Farncomb and Collins would have shot it
12 before 5,000 yards, but I do think he comes in, not wanting
13 to unnecessarily expend ammunition or to destroy the ship
14 and possibly kill the men.

15
16 Q. But on that scenario, Professor Frame, you would have
17 it that *Sydney* had approached at 1200 metres to a ship that
18 was suspicious, that it had not identified and had failed
19 to give its secret call sign?

20 A. That's correct. But no other raider Captain acted in
21 that particular way. To give credit to Detmers, the closer
22 that he got and that he wasn't fired upon probably
23 encouraged him to come even nearer. That's the way that
24 I'm seeing it as far as Detmers' playing, and Burnett's
25 thinking, "If he's going to shoot me, he would have fired
26 upon me by now", but he hasn't done that and he keeps on
27 coming.

28
29 Q. Let's go back to page 118, where you summarise the
30 engagement between *Leander* and the Italian *Ramb* class
31 frigate, an armed merchant cruiser. Halfway down the page,
32 you say this:

33
34 *A duel more closely resembling the*
35 *Sydney-Kormoran action was fought by the*
36 *light cruiser HMS Leander on 27 February*
37 *[1941]. During a routine patrol in waters*
38 *off the Maldiva Islands in the northern*
39 *Indian Ocean, Leander noticed a suspicious*
40 *vessel heading towards the east at an*
41 *unexpectedly high speed. The cruiser*
42 *increased speed and made a preliminary*
43 *identification of the ship as an Italian*
44 *Ramb Class freighter. The presence of*
45 *a gun on the forecastle only added to*
46 *suspensions. After closing to 11,000 yards*
47 *with her 6-inch guns trained fore and aft,*

1 *Captain RM Bevan in Leander ordered the*
2 *suspicious vessel to hoist her colours.*
3 *The red ensign was hoisted four minutes*
4 *later. When ordered to display her signal*
5 *letters, the suspected Italian raider took*
6 *five minutes to hoist 'GJYD'. These*
7 *letters did not appear in either the Signal*
8 *Letters of British Ships or the Signal*
9 *Letter Index although it was thought she*
10 *may have been trying to pass herself off as*
11 *the British merchant ship Grosmont Castle.*

12
13 *Finally, to confirm their suspicions,*
14 *Leander made the secret challenge. When*
15 *there was no reply, Bevan decided to board*
16 *the unidentified ship and ordered her by*
17 *flag and signal lamp to stop. After*
18 *five minutes elapsed and no reply had been*
19 *received, Leander prepared to fire a single*
20 *shot across the bows of the suspected*
21 *raider when she hoisted either the Italian*
22 *naval or merchant ensign, there is some*
23 *dispute about which, and trained her gun on*
24 *Leander which was just forward of the*
25 *raider's quarter at a range of 3,000 yards.*
26 *When the Italian ship fired and failed to*
27 *hit Leander even at such close range, the*
28 *British cruiser responded with five rapid*
29 *salvos which devastated the Italian ship.*

30
31 In the next paragraph, you state this:

32
33 *As Ramb 1 had the potential to cause*
34 *serious disruption to Allied shipping*
35 *movements, her sinking was considered by*
36 *the Commander-in-Chief East Indies, Vice*
37 *Admiral Ralph Leatham, to be a highly*
38 *commendable action on the part of*
39 *Captain Bevan and Leander. However, Bevan*
40 *had unnecessarily hazarded his ship by*
41 *bringing Leander into a position where*
42 *Ramb 1 could have inflicted serious damage*
43 *on her had the Italian gunnery been*
44 *accurate. Given his initial suspicions and*
45 *the raider's consistent failure to reply*
46 *rapidly and accurately to Leander's*
47 *challenges, Bevan should have remained*

1 *abaft the raider's quarters and outside, or*
2 *at the extremity of, her arcs of fire.*
3 *Bevan and Leander had been fortunate.*

4
5 On the scenario that you paint, as we have been to with
6 *Sydney/Kormoran*, I suggest there is an enormous similarity
7 with this action and the criticism that you made of
8 CAPT Bevan?

9 A. There are some similarities, but as we noted in the
10 narrative, the Italian ship did have a forecastle-mounted
11 gun, whereas *Kormoran* had no visible weapons.

12
13 The second thing is that there is a big difference
14 between coming up abeam and giving, if you like, the enemy
15 a broadside target and trying to do everything that you can
16 to come up on a safe bearing and to reduce the ship's
17 profile, which is what Burnett tried to do.

18
19 I think probably with hindsight, both with *Leander* and
20 also with *Sydney*, thereafter people didn't behave in this
21 particular way. Sometimes it does need to be shown that
22 you can't act in a particular way, because these are the
23 consequences, for people then to properly get the lesson,
24 and I think thereafter people did.

25
26 But I agree with you, there are some similarities
27 between *Leander* and *Sydney*. But, again, I think what
28 happens is that - never having commanded a warship, but
29 those that have tell me - one of the good things about the
30 Navy is that the person on the spot makes the judgments.
31 There are many sources of information that are available to
32 them, many things that bear upon their mind. I would
33 hazard a guess that what's in the mind of two Captains is
34 quite different. The tactical situations are a little
35 different, as are the strategic situations that they're
36 facing, and the Italians were not the Germans.

37
38 Q. Let me put this scenario. I suggest that on the basis
39 that you have identified of CAPT Burnett, it would be
40 highly unlikely that he would bring his ship to
41 1,200 metres, to a ship he hadn't identified, who had
42 failed to give the secret call sign. What I suggest is
43 that that action is more consistent with that interrogation
44 still taking place?

45 A. Yes, I think throughout *Sydney's* last run, he was
46 doing everything that he could, as he approached, to
47 ascertain the identity of the ship. At the same time,

1 though, for whatever reason, he plainly came to the view
2 that it didn't have hostile intent and couldn't damage his
3 own ship. Otherwise, again, I would say I can't see why he
4 would bring his ship into a potentially perilous position.
5

6 THE PRESIDENT: Q. The evidence seems to indicate that
7 the signal IK was not made until *Sydney* was almost abeam of
8 *Kormoran* and about 1200 metres away?

9 A. I can't recall all of the sequence of events, but
10 I would say, sir, that *Sydney's* coming up astern - and my
11 point about keeping the sufficient engine room revolutions
12 to keep *Kormoran's* head to the west is that it has the
13 effect of, when we say, oh, *Sydney* was brought to the beam
14 of *Kormoran*, I don't think that's the case. If I could use
15 my hands for a moment, if *Kormoran* is facing that way,
16 *Sydney* is coming up in this position, when *Kormoran* then
17 decides to take engine room revolutions off, let the
18 weather alter the ship's head, it moves around, and by
19 virtue of *Kormoran's* movement it brings *Sydney* into
20 a position approaching its beam, not that *Sydney* comes to
21 a position on the beam of *Kormoran* (indicating).
22

23 Q. That's contrary to all of the German accounts.

24 A. Well --
25

26 Q. I mean, there's just no evidence to support it, is
27 what I'm saying. You may be right, if your speculation is
28 right. But I don't understand any basis on which you can
29 get to that factual situation?

30 A. I could be wrong, but I don't think anybody is
31 suggesting that if my left-hand is *Kormoran*, *Sydney* came up
32 from astern and just did that (indicating). I don't think
33 anyone has ever said that.
34

35 Q. That's precisely what everyone is suggesting.

36 A. Well, it's contrary to some of the diagrams and other
37 things that you've shown - at least that I've put there.
38 My view is that it was like that and like that, and that's
39 the point of the firing (indicating). In fact, I think on
40 the front cover of the book, which was painted at the
41 request of the *Kormoran* survivors, it gives you that
42 impression, that it's not broadside, that it's slightly
43 abaft the beam, and I'm wanting to contend that it's the
44 altered ship's head of *Kormoran* which creates the
45 impression that *Sydney* was abeam of *Kormoran*, not because
46 *Sydney* put herself in that position.
47

1 Otherwise, why would CAPT Burnett come up astern and
2 then expose himself at 1,200 yards broadside? That doesn't
3 make sense, either.

4
5 CMDR RUSH: Q. Professor Frame, I suggest that there was
6 a procedure that a ship's Captain would have followed in
7 relation to this engagement if the ship's Captain was
8 suspicious of the ship, and that procedure is contained in
9 the Fighting Instructions of 1939 at UKAA.006.0147, and it
10 is instruction 123.

11
12 The instruction reads as follows:

13
14 *Action by detached ships or units on*
15 *patrol.*

16
17 *When a cruiser (or other type of vessel) is*
18 *operating independently of the fleet and*
19 *requires to examine a strange vessel, the*
20 *customary signal to order her to heave to*
21 *is a shot across her bows. If the vessel*
22 *is suspected of being hostile and armed,*
23 *the following procedure should be carried*
24 *out:-*

25
26 *(a) After the vessel has stopped the*
27 *cruiser whilst keeping end-on should close*
28 *to a position about a mile ahead of her, to*
29 *minimise the danger of torpedo fire.*

30
31 *(b) If it is decided to board, a boat*
32 *should be lowered and the vessel ordered to*
33 *close it.*

34
35 I suggest that if Sydney was suspicious in the manner in
36 which you say, that would be the instruction and that would
37 be the manner of approach of CAPT Burnett?

38 A. Except that putting himself ahead of *Kormoran* and not
39 astern would have at some point exposed him broadside and,
40 therefore, opened up the target area, and therefore he made
41 the judgment, "I'll come astern rather than come ahead."

42
43 Q. Professor Frame, that would not be the case if
44 *Kormoran* was stationary and Sydney was capable of
45 maintaining a position on the bows?

46 A. Sorry, I'm not following what you're --
47

1 Q. I understand, on your scenario, and certainly
2 according to the fighting instruction, *Kormoran* would be
3 stationary?

4 A. Yes.

5
6 Q. *Sydney* would be maintaining a position on its bow;
7 that's the instruction.

8 A. On whose bow?

9
10 Q. On *Kormoran's* bow.

11 A. No, I'm arguing that *Sydney* has taken up a position
12 astern of *Kormoran*. I thought that was what the evidence
13 had been - that *Sydney* came up astern, that it couldn't
14 come up ahead, because getting itself to a position ahead
15 would have meant, if you like, manoeuvring in such a way as
16 to give *Kormoran* a broadside target.

17
18 Q. The manner of approach, I suggest, should have been
19 that with a suspicious ship, *Sydney*, pursuant to the
20 fighting instruction, should have made its approach
21 bows-on?

22 A. Yes, but I'm saying getting to a bows-on position, you
23 would have had to so manoeuvre the ship that you gave them
24 at one point a broadside perspective of you --

25
26 THE PRESIDENT: Q. Unless you started the manoeuvre at
27 distance.

28 A. Unless you started the manoeuvre at distance. I mean,
29 I argue that, by doing that, it would have meant a fairly
30 large manoeuvre to the west, and he's actually wanting to
31 get back to Fremantle, so that may have been one of the
32 factors; he decided, "I probably should go right round and
33 bows-on this guy, but given the position we're in and where
34 I want to go, and he's probably a merchantman and not
35 obeying the procedures, I'll come up astern".

36
37 You can make the judgment as to the reasons for coming
38 bows-on or stern-on, but I suppose the benefit would have
39 been, if he had come bows-on, he wouldn't have come within
40 the range of fire of the submerged torpedo tubes.

41
42 CMDR RUSH: Q. A couple of other matters. At page 214
43 of your book, in the bottom paragraph, you say this:

44
45 *With Sydney close enough for the raider's*
46 *guns to have some chance of success,*
47 *Kormoran's engines would be providing just*

1 *enough revolutions to keep the ship heading*
2 *towards the west. However, if the ship's*
3 *head were to drift slightly towards the*
4 *south-west, Kormoran would be able to*
5 *decamouflage the guns and torpedo tubes on*
6 *the starboard side without this being*
7 *noticed by Sydney. As Kormoran was heading*
8 *into the sun, the shadow created by the*
9 *raider's superstructure would have made it*
10 *a little more difficult for Sydney to*
11 *observe her decamouflaged guns as she swung*
12 *slowly around to starboard. If Sydney were*
13 *unable to keep bows-on to Kormoran, and the*
14 *raider's engines and rudder were used in*
15 *conjunction with the prevailing wind to*
16 *swing the ship's head, Kormoran could*
17 *quickly manoeuvre herself into a position*
18 *parallel with Sydney with her guns cleared*
19 *to fire.*

20
21 A. Yes.

22
23 Q. Firstly, are you really suggesting that there was
24 a potential for *Kormoran* to decamouflage her guns, without
25 *Sydney* seeing?

26 A. Yes, I think there was a possibility. I have already
27 put to you the scenario where *Sydney's* coming up astern of
28 *Kormoran*. If, for a short period of time, *Kormoran* uses
29 the engines to turn the ship further to the south, in other
30 words, on the far side of what *Sydney* can observe, then
31 they're in a position to do decamouflaging activity. You
32 take off the extra revs that you needed to get the ship
33 headed more towards the south-west, and then as the ship
34 then swings around the other way, you've already
35 decamouflaged.

36
37 We're confronted with the problem of why *Sydney* seems
38 to be in a position where, if *Kormoran* is decamouflaging,
39 it doesn't seem to do anything. So my view of that is
40 driven by the concern that *Sydney* seems not to do anything
41 while this decamouflaging activity is occurring, which is
42 going to be obvious from *Sydney's* Bridge unless, what I'm
43 trying to suggest, it wasn't that much just to put a few
44 more revs ahead to get the ship's head of *Kormoran* to move
45 slightly to port and therefore, if you like, conceal from
46 *Sydney's* view what was happening on the starboard side, and
47 then let the weather then bring the ship back around.

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Q. Have you made any study of what was involved in *Kormoran* decamouflaging its guns and torpedo tubes?

A. Yes, I think I made some comment here simply about the time --

Q. Just forgetting the time. What's involved in relation to the superstructure of the ship to decamouflage its main armament and torpedo tubes?

A. In terms of the main armament, there was a hoisting, lifting-type arrangement, which had to get the doors back. You then had to deploy the weapon, aim the weapon and fire the weapon.

Q. And in relation to torpedo tubes?

A. I can't recall for the upper deck tubes, and I can't even recall where they are now. The underwater torpedo tubes required no decamouflaging.

Q. Are you contending that all of that could take place and that there be movement of *Kormoran* to enable these guns to bear and in some way or another this was acting covertly and not being seen by *Sydney*?

A. Well, the alternative is that *Sydney* saw it and did nothing.

Q. How long do you say it would take for the guns to decamouflage?

A. Well, CAPT Detmers, as I understand it - and I'm going on recollection --

Q. No, not Detmers. He said 6 seconds, as you referred to in the book. How long do you say?

A. My recollection is that others on the ship's company were not so generous in their description of how quickly they could do it. Again, I'm going on recollection. It's more like 30 seconds to enable it to do it, because of what I understand to be the size of the panels that needed to be moved, the hoisting, and then actually getting the gun on bearing as well. It's one thing to get rid of the camouflaging. It's another thing to train it and it's another thing then to clear it away for firing.

Q. Why didn't *Sydney* fire over that 30 seconds?

A. Well, if they can't see what's happening on the starboard side because *Kormoran* has manoeuvred the ship's head slightly to port so it's obscured - in other words,

1 what they're then seeing briefly is the port quarter of
2 *Sydney*. In other words, *Sydney* has manoeuvred.
3 Previously, there's the starboard side of *Kormoran*. It has
4 moved that way (indicating). In other words, they've just
5 kicked the ship's head down towards the south so that now,
6 basically, they're looking right up the stern of *Kormoran*
7 and slightly over the port quarter.

8
9 Why am I saying this? Because I'm troubled by the
10 fact that *Kormoran* is able to decamouflage, however long it
11 took, and *Sydney* is not doing anything.

12
13 Q. Can you perhaps go to the whiteboard. I don't quite
14 understand how you have got this at the moment.

15 A. Yes. What I'm suggesting is that *Sydney* has come up
16 and she's astern of *Kormoran*. This is *Kormoran* and this is
17 *Sydney*. I'm saying that *Kormoran* has enough revs on in
18 order to keep the ship's head that way, whereas the effect
19 of the weather would be to turn the ship's head that way.

20
21 I'm saying that for a brief period of time if you put
22 on a few more revs and get the ship's head to go that way
23 slightly, it has the effect that, when *Sydney* views
24 *Kormoran*, she's actually seeing that sort of view, so she's
25 looking over that side, so what's happening over this side
26 (indicating) is not physically visible.

27
28 Q. Just so that we understand it, on the basis of what
29 you are saying, the decamouflaging is taking place where?

30 A. Is taking place when the stern has been kicked to the
31 port and it's happening over here (indicating) while *Sydney*
32 can't see what's happening on the starboard side. I mean,
33 previously, for instance, if *Sydney* is coming up here, she
34 couldn't see what was happening on the port side.

35
36 Q. So you are saying that this occurred with *Sydney* fast
37 approaching; there is *Kormoran* bearing to port side,
38 decamouflaging guns, and *Sydney* just kept approaching and
39 then started or commenced to come abeam of *Kormoran* without
40 taking any action?

41 A. What I'm saying is that *Sydney* is coming up astern of
42 *Kormoran*. When they're at whatever range it is - it's
43 probably less than 2,000 yards - what I'm suggesting is
44 because they think they're going to have to fire the
45 weapons on the starboard side, Detmers has to think, "How
46 am I going to decamouflage and deploy these kinds of
47 weapons? I'm in this situation here". One way that he can

1 do it is simply to bring the ship's head around so that it
2 obscures *Sydney*'s vision of the starboard side. He doesn't
3 need to be moving forward in the water. It just needs to
4 be tipping, if you like, getting the head to come to port,
5 because if he doesn't do that - you see, previously when
6 we're coming up here, say for instance there's dead astern
7 and here we are in this section here. The problem you have
8 is that there's decamouflaging going on on that starboard
9 side and *Sydney* doesn't do anything.

10
11 So I'm, if you like, proposing this, theorising this,
12 because we have the problem of *Sydney* apparently not taking
13 action when that decamouflaging on the starboard side
14 occurs, which previously had been within its vision.

15
16 THE PRESIDENT: Q. Professor Frame, it is a theory, as
17 you say. The problem with it is that there's no evidence
18 to support it. There is no evidence --

19 A. But --

20
21 Q. Just a minute. There is no evidence, save one account
22 given by Detmers when he says he was ordered to stop, an
23 account which was never repeated. The signalman who
24 received the signals did not say he received any signals to
25 stop, and there is no evidence at all that *Kormoran* ever
26 did stop?

27 A. Well, I believe the ship stopped.

28
29 Q. I know you believe it, but on what basis?

30 A. On the basis that we know that, as far as I'm aware,
31 the torpedo was fired. I'm correct in recalling that -
32 that the underwater torpedo tube was deployed?

33
34 THE PRESIDENT: No.

35
36 CMDR RUSH: I don't know where you get that from.

37
38 THE PRESIDENT: Q. Only from Mr Montgomery, I think.

39 A. I didn't get much from Michael Montgomery. But I'm of
40 the view that it suits *Kormoran*'s every interests to be
41 stationary.

42
43 Q. There is a great body of evidence to say that the
44 underwater torpedo was never fired until the ship was about
45 to be scuttled.

46 A. I'm of the view that, in terms of the tactical
47 situation, it better serves *Kormoran* to be stationary.

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Q. That may be, but there's just no evidence about it. The evidence is all to the contrary. You can't just put aside what 10 or 15 people have said, independently of each other.

A. But I think you said that Detmers said he had stopped.

Q. No, I didn't. Detmers said on one occasion that he was ordered to stop. He never said that he did stop. The signalman never gave any evidence that they received any signal to stop. There is no evidence from anybody that *Kormoran* did stop.

A. Well, I'm positing, on the basis of a number of other things, that that the ship was stationary in the water explains a number of other things that occurred.

Q. You can mount speculation on that basis on what might have occurred, but there's nothing to support it.

A. But the problem we're left with, sir, is *Kormoran* decamouflages, according to my reconstruction, in *Sydney's* view.

Q. Yes.

A. And I'm attempting to explain that, given that you would think that *Sydney* would do something rather than nothing when it saw such action taking place.

Q. One explanation might be that in fact both ships did immediately prepare their major armaments for firing, perhaps that *Kormoran* fired her smaller armaments first --

A. I think that likely.

Q. -- but that *Kormoran* got her major armaments away first and that, very early on, *Sydney's* Bridge and Director Control Tower were struck severely.

A. Yes.

Q. One of the problems is that we now have a great deal of empirical evidence that we didn't have before 13 March last year. We now know that the location of the vessels is where CAPT Detmers said they were.

A. Yes.

Q. We now know, as we knew before, that before any evidence was taken from the signallers on *Kormoran*, it was known that perverted messages were picked up by two receiving stations - the tug *Uco* and Geraldton - perverted

1 QQQ messages. So the subsequent evidence given by the
2 German signallers supports the fact they didn't know about
3 it, which rather suggests that their account of sending out
4 Q signals was correct. The timings were within minutes of
5 each other.
6

7 We now know that *Sydney* was struck about 20 metres or
8 so from the bow adjacent to or nearby turret A, as the
9 Germans had said. We didn't know that before. We can now
10 establish that.
11

12 We now know that, as the Germans said, *Sydney's* Bridge
13 and Director Control Tower were hit very early on in the
14 engagement. That damage is now visible, although obviously
15 the timing can't be established.
16

17 Central to the German account was that at an early
18 point of time, *Sydney* suffered very severe damage on her
19 port side. We now know that she took 41, at least, 15cm
20 shells plus other light armaments, 2.3 and 20mm guns.
21

22 The German account was that after taking that
23 punishment, *Sydney* turned to port and passed astern of
24 *Kormoran* and then made a turn slightly to starboard, thus
25 exposing her starboard side to the fire from *Kormoran*. We
26 didn't know if that was true. We now know it is, because
27 the starboard side suffered at least 47 15mm strikes.
28

29 The Germans said that the *Sydney's* major armament,
30 6-inch guns, had ceased to fire when she passed astern of
31 *Kormoran*. We now know the position in which those guns
32 are, and they are as the Germans described.
33

34 The Germans described that there was severe fire in
35 the Bridge and the Director Control area. That is now
36 known to be true. The Germans said that a 15-inch shell
37 hit the launching pad, catapult, on *Sydney*. That is now
38 known to be true. They said that it destroyed the
39 aircraft. That is now known to be true.
40

41 It is said that the *Sydney* then sailed away at
42 a couple of knots and disappeared some hours later in the
43 darkness. That is now known to be true, because the
44 vessels are some 12 miles apart.
45

46 So there is a great deal of empirical evidence which
47 previously did not exist, which now does exist, which

1 supports the integral elements in the German account, only
2 one of which relates to signals, but the others of which
3 are confirmatory of the general account given.
4

5 Yet what your theory involves - you didn't know this
6 when you wrote the book - is a disregard of all of that and
7 a rejection of the German account, which can now be
8 established as empirically being essentially sound.
9

10 If those elements which are contained in the German
11 account can now be empirically established to be sound, one
12 must ask the question why you wouldn't accept the balance
13 of it?

14 A. I don't think I've ever rejected them outright.
15 I said that on some points I thought they were unreliable.
16 There were some points, people claim to have seen things
17 that I didn't believe they could have physically seen and
18 some things which had the signs of being hearsay.
19

20 Q. I understand that. Go on, sorry.

21 A. And I've said publicly that I do think that the
22 location of the wrecks and the damage is consonant with
23 everything that they said. There are details, and the
24 Commission is asked to look into them, some details of the
25 German accounts which have to be clarified, and that's what
26 the Commission will do. But I don't think I've ever said
27 that I thought that, in the broad, the accounts were wrong
28 or that they were anything other than accounts you give
29 when you didn't think you were giving any tactical
30 advantage to the Australians.
31

32 Q. But the problem with that is that your whole thesis is
33 built on the premise that *Kormoran* was stopped, and there
34 is simply no evidence of that and no-one ever suggested
35 that *Kormoran* did stop. If you accept all the balance of
36 the German account, why do you not accept their evidence
37 that she didn't stop?

38 A. A couple of grounds. One, if the ship had not
39 stopped, *Sydney* would have fired. Therefore, it leads me
40 to believe that the ship was stopped.
41

42 Q. That's just circular argument to establish a premise.
43 That's not logic.

44 A. Well, it seems to me that if *Kormoran* had kept on
45 going and done a number of other things, it would have
46 increased Burnett's suspicion, not lessened it. I take
47 that view. Yes, part of my theory rests on the fact that

1 the ship was - it may not have appeared to be stationary to
2 the ship's company, who may still have heard the engine
3 room, the revolutions of the ship, because it was actually
4 being forced to a direction other than that in which the
5 weather would naturally let it sit, but, yes, my theory
6 does rely on the ship being stationary. Because a number
7 of other things almost oblige it to be that way, to give
8 explanation of some things which seem to me otherwise
9 difficult to explain, including the decamouflaging, which
10 is where we started this particular line of inquiry.

11

12 CMDR RUSH: Q. Just to conclude on decamouflaging, if we
13 can go to the diagram that you place in your book at
14 page 240, what we're looking at in the bottom diagram are
15 the mounted guns on *Kormoran*. There are no starboard guns,
16 are there, Professor Frame, in the sense of the main
17 armament of 15cm guns? I beg your pardon. There's
18 a starboard gun, number 5, on the stern.

19 A. It's on the quarterdeck there.

20

21 Q. Yes, at the stern, quarterdeck. I suggest that,
22 whatever angle *Kormoran* would have taken up, it would be
23 apparent on decamouflaging, to *Sydney*?

24

25 THE PRESIDENT: *Kormoran* could fire on either port or
26 starboard side with four 5.9 inch guns, 15cm guns, as I
27 understand it.

28

29 CMDR RUSH: Q. If we look at the process, 6, 5 and 4 are
30 all guns that would be readily apparent to *Sydney*, whatever
31 angle *Kormoran* took up on decamouflaging?

32 A. Again, I had understood that the lifting arrangements
33 they had to bring the guns to bear - there was a separate
34 set of arrangements for each port and starboard side.

35

36 Q. But what I'm suggesting to you is that if you look at
37 the starboard side guns, 5 is a starboard 15cm gun, and
38 then you have the arrangements through the ship of 5 and 4,
39 which are guns, even if you allowed just for those two
40 being decamouflaged - the process would have been clearly
41 able to be seen by those on *Sydney*?

42 A. I can't be sure of that.

43

44 Q. You did, I think, refer in another part of your book
45 to the ability of *Sydney* and its range-finder to be
46 extremely good at picking up matters on merchant ships.

47 A. Yes. I had understood that if you were training the

1 gun and wanted to deploy it on the starboard side, then it
2 was visible on the starboard side but not on the port side,
3 but if the physical configuration is other than I had
4 understood it, then I see the point that you're making.
5

6 I'm just concerned about the decamouflaging taking
7 place at a time and at a moment when *Sydney's* inactivity,
8 as I kind of understand it, the delay, is of concern to me.
9

10 Q. Just one other matter, Professor Frame. The way you
11 depicted the diagram for the lowering of the boat. *Sydney*
12 had the choice of, in effect, lowering a boat by coming to
13 the port or starboard side, as it chose, of *Kormoran*; there
14 was no need for it to come along port side to starboard
15 side; it could have come along starboard to port side?
16

17 A. That's correct.

18 Q. And if *Sydney* wanted to lower a boat in the prevailing
19 conditions, I suggest that its approach to *Kormoran* would
20 have been to enable the boat to be lowered in a lee and to
21 take advantage of the sea and weather conditions, and if
22 that be the case, it would have done so so that it
23 approached *Kormoran* on *Kormoran's* port side --

24 A. Port side rather than starboard side. Yes, I could
25 see that argument. I'm going on the basis that on *Sydney*
26 they were stuck on the starboard side. They may have
27 thought, for whatever reason, that it was just as easy to
28 deploy on the port side. There could be a fault with the
29 starboard-side boat - that kind of happens. There could be
30 a davit problem. They might have decided, "Look, we have
31 to go that way and we have to put up with putting the buoys
32 into the water in a bumpy sea."
33

34 CMDR RUSH: They are the matters, sir.
35

36 <EXAMINATION BY CMDR RENWICK:
37

38 CMDR RENWICK: Q. Could we put up the transcript at
39 page 2336 on 18 March, which was some evidence given by
40 Mr Olson last week. Professor, in relation to the question
41 of whether *Sydney* was at Action Stations at the time
42 *Kormoran* decamouflaged, you take the view it was?
43

44 A. Yes.

45 Q. And the principal reason for that was the ability of
46 *Sydney* to return fire promptly, as a number of survivors
47 had testified?

1 A. Yes.

2

3 Q. If we go to the bottom of page 2335, you see
4 a question there was put by CDR Rush, I think.

5

6 Q. *But for 15 or 20 seconds, Sydney would*
7 *have been, on your scenario, watching*
8 *Kormoran decamouflage its guns before*
9 *Sydney fired its first salvo?*

10

11 I would like you to read to yourself, if you would, the
12 answer in the next two paragraphs and indicate whether you
13 agree with it.

14 A. I don't know that I could agree - again, I'm going on
15 recollection - that *Sydney* fired first. I don't think
16 I could agree with that. I also note, further down - I'm
17 just going on the question that was asked about his being
18 confronted with the raider unmasking its guns, and on what
19 he's described, it seems even odd that you would take so
20 long then to act. Then if I go a little bit further here,
21 it talked about *Sydney* going astern, I think he said.

22

23 Q. Yes.

24 A. For *Sydney* to be going astern, it would have had to be
25 stopped. I don't know whether he's suggesting they put the
26 engines astern or made stern way.

27

28 Q. Just assume the argument is putting engines astern.

29 A. Okay. That's going to take a long time to have any
30 effect at all.

31

32 Q. Is it?

33 A. If you're coming in - if we're working on the basis
34 they weren't stationary and they're moving, to stop the
35 ship having forward momentum and then to get a stern
36 propulsion going and then for the ship to be appearing to
37 go astern, that's going to take a little bit of time.
38 I can't see why you would necessarily --

39

40 THE PRESIDENT: Q. Dropping astern doesn't mean going
41 astern.

42 A. I thought he said, though, something - if I could have
43 a look.

44

45 Q. My understanding of what he was saying was that the
46 two ships were parallel, the engagement occurred and *Sydney*
47 dropped back so that they were no longer abeam.

1 A. I'm sorry, I possibly have misread it in my haste to
2 read it.

3
4 THE PRESIDENT: Then made the turn to port.

5
6 CMDR RENWICK: Q. So please make those assumptions.
7 A. Yes, the thing that concerns me again is that they're
8 broadsided and that *Sydney* has come alongside *Kormoran*
9 1,200 yards broadside so that the full profile of the two
10 ships is brought to bear.

11
12 THE PRESIDENT: Q. I don't think anyone debates that
13 it's not a desirable position, but I equally don't think
14 that there is any debate any more that that position was
15 achieved. Now, the real debate is how it came about.
16 A. What I want to suggest is that it was the action of
17 *Kormoran* that had the effect of putting *Sydney*, I still
18 think, abaft the beam rather than directly abeam, but I've
19 kind of said something about that already. I don't know
20 that there's more I could say about what he has had to say.
21 It's another account of what may have occurred.

22
23 CMDR RENWICK: Q. Another topic. You have made a study
24 of both the *Voyager* disaster and the loss of the *Sydney*.
25 You have written books on both.
26 A. Yes.

27
28 Q. In each case, of course, the Captain died and can't
29 speak in his defence, and of course the *Voyager* Inquiry was
30 held almost immediately after the loss of the *Voyager*.
31 A. The first of the two, yes.

32
33 Q. So it is not really comparable to the loss of
34 knowledge caused by the whole crew in the *Sydney* Inquiry in
35 that sense, is it?
36 A. No, *Voyager* was much easier to come to a mind on,
37 because at least there was one survivor from the Bridge and
38 other evidence about things that might have happened on the
39 Bridge. We know about Duncan Stevens' behaviour, his
40 attitude, his decisions, and the days and, even in some
41 instances, months before, so we could develop a pattern of
42 understanding how he may have acted.

43
44 But certainly, having some eyewitnesses on board
45 really did help to give us an explanation of what happened
46 on the Bridge, because, otherwise, it would have been
47 totally inexplicable, and I think we can creep up on an

1 explanation for what happened to *Voyager* and why it made
2 that perilous turn.

3
4 Q. May I take you finally to what you said in the preface
5 to your book at page (xvii). At (xv), there is a heading
6 "History and Historians", and then at (xvii) you say --

7
8 THE PRESIDENT: This is the most recent edition?

9
10 CMDR RENWICK: No, sir, this is the first edition.

11
12 THE WITNESS: That's the second edition.

13
14 CMDR RENWICK: I beg your pardon. It's the edition we
15 have been referring to today. At (xvii) --

16
17 THE PRESIDENT: Mine only goes up to (xv).

18
19 CMDR RENWICK: This book (indicating), sir.

20
21 THE WITNESS: I'm grateful for the sales.

22
23 CMDR RENWICK: Q. It's on the screen, sir. I just want
24 to ask you, looking at page (xvii), whether you still hold
25 to the view that you have expressed in the final paragraph
26 in these sentences:

27
28 *However, since every member of Sydney's*
29 *ship's company was lost after its final*
30 *action with Kormoran, a mystery was*
31 *unavoidable and a controversy was*
32 *inevitable. One survivor could have*
33 *explained much of what we do not now know.*
34 *But no-one survived and we are bereft. Our*
35 *bereavement is not just for them and their*
36 *company but for the absence of answers to*
37 *satisfy our longing: how and why did they*
38 *die. The mystery will continue; the*
39 *controversy need not.*

40
41 Does that remain your view?

42 A. Yes, it does.

43
44 CMDR RENWICK: Thank you. Nothing further, sir.

45
46 CMDR RUSH: I have no further questions, sir.

47

1 THE PRESIDENT: Thank you, Professor Frame.

2

3 <THE WITNESS WITHDREW

4

5 CMDR RUSH: Sir, that concludes the evidence for today.
6 Mr Kennedy is the witness at 10am tomorrow.

7

8 THE PRESIDENT: I will adjourn to 10am.

9

10 **AT 1PM THE COMMISSION WAS ADJOURNED**
11 **TO WEDNESDAY, 25 MARCH 2009 AT 10AM**

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