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THE PRESIDENT: Do you have another witness?

CMDR RUSH: I do, sir. LTCOL (Retd) Whittaker.

THE PRESIDENT: Do we have a statement from Mr Whittaker?

CMDR RUSH: Yes, sir. Sir, perhaps if we could have a 10-minute adjournment to get those records.

THE PRESIDENT: All right, I will adjourn for 10 minutes.

SHORT ADJOURNMENT

CMDR RUSH: Sir, I call LTCOL (Retd) Whittaker.

<THOMAS WARREN WHITTAKER, sworn: [10.47am]

<EXAMINATION BY CMDR RUSH:

CMDR RUSH: Q. Sir, could you state your full name to the Commissioner, please?

A. Thomas Warren Whittaker.

Q. Do you reside at [REDACTED]

A. Correct.

Q. You are a retired Army officer?

A. Correct.

Q. What was your Army service, sir?

A. I did 30 years altogether, starting with the Territorial Army in the UK in 1936. I was then given a Regular Commission in the Indian Army in 1939. I served in India and Burma until Partition, which was 1947. Then I transferred back to the British Army and I served in the Royal Fusiliers then until 1967. It's hard on my memory.

Q. Sir, coming to more recent events, and I'll come to your actual submissions in due course, I want to ask you a few preliminary questions. On the information available to the Commission of Inquiry, you have developed an interest in relation to the loss of *Sydney* over a number of years?

A. Correct.

1 Q. That has included, has it not, assertions as to, for
2 instance, where the wreck of *Sydney* was to be found?

3 A. Yes. Sorry, could I have my briefcase, please?

4 I just had a nasty feeling I'd left it somewhere. Sorry
5 about that.

6

7 Q. I'm just asking you generally: for a considerable
8 period of time, you asserted that the wreck of *Sydney* was
9 to be found off the Abrolhos Islands.

10 A. Correct.

11

12 Q. That was based on a form of detection of metallurgical
13 objects under the sea that was developed by Mr Knight?

14 A. Correct.

15

16 Q. I know we're going over old ground, but you had even
17 suggested that you could see Samurai swords at one stage?

18 A. I beg your pardon?

19

20 Q. There was even a suggestion of Samurai swords with the
21 wreckage?

22 A. That was mentioned. I'd like to say at this stage
23 that my association with Lindsay Knight was basically for
24 navigating, recording and mapping. I had absolutely no
25 experience of the system that he was using.

26

27 Q. I want to ask you, as I said, some preliminary
28 questions about your submission. Is your submission in
29 relation to the engagement between *Sydney* and *Kormoran*
30 predicated upon the basis that *HMAS Sydney* was at Action
31 Stations?

32 A. Yes, sir.

33

34 Q. In relation to *Sydney* coming to Action Stations, as
35 far as that is concerned what do you base your evidence on
36 to say that *Sydney* was at Action Stations?

37 A. I base my evidence on the fact that a number of people
38 have said that *Sydney* always went to Action Stations when
39 she approached any unrecognised vessel and that this was an
40 absolute standard procedure, and there is no reason to
41 believe that it didn't happen this time.

42

43 Q. You say that a number of people have informed you that
44 it was, in effect, standard practice for *Sydney* to come to
45 Action Stations in the identification of merchant ships?

46 A. Of any unknown or unrecognised vessel.

47

1 Q. I take it from your answer, sir, that you have not
2 examined the logs of *HMAS Sydney* in connection with that
3 aspect?

4 A. I'm sorry, I didn't understand that.

5
6 Q. I take it that you have not examined the log of *HMAS*
7 *Sydney* --

8 A. No, I haven't.

9
10 Q. -- up until October 1941 as to the methodology that
11 was adopted on the ship for the identification of unknown
12 ships?

13 A. Yes, I've read about that in a number of cases, and
14 I firmly believe that this was *Sydney's* absolute standard
15 procedure, and she wouldn't deviate from it.

16
17 Q. Why would you expect that?

18 A. Because it was the standard procedure for the Navy at
19 the time, and the Captain of *HMAS Sydney* was well aware
20 that there was a German raider operating in the vicinity of
21 the Indian Ocean off Western Australia, and he was
22 expecting to meet that ship.

23
24 Q. You say that it was standard procedure at the time for
25 a ship to come to Action Stations for the purposes of
26 identification. What basis do you put forward for that?

27 A. Only that I have read in a number of cases by a number
28 of people that *Sydney* always went to Action Stations before
29 approaching an unrecognised vessel.

30
31 Q. Sir, the examination of *Sydney's* log for the year 1941
32 indicates that, indeed, on the majority of occasions that
33 *Sydney* changed course to identify vessels, she did not come
34 to Action Stations. Does that surprise you?

35 A. Well, I'm very surprised at that, because I believe
36 that if the vessel that she was investigating had not given
37 a satisfactory reply to her challenge, she would have come
38 to Action Stations, without any doubt.

39
40 Q. You are surprised at that for what reason?

41 A. I believe that if she came across an unrecognised
42 vessel, she would challenge it, and if she got
43 a satisfactory reply, she wouldn't come to Action Stations;
44 but if she didn't get a satisfactory reply, she would come
45 to Action Stations. That's standard Navy procedure, I'm
46 sure.

47

1 Q. So is your evidence that you would expect *Sydney* to
2 come to Action Stations only if she did not get a proper
3 reply to her challenge?

4 A. Yes, correct.

5
6 Q. So in those circumstances, you say, I take it, that
7 you would not expect *Sydney* to come to Action Stations for
8 the mere purpose of ship's identification?

9 A. If she didn't get a satisfactory reply to her
10 challenge, I'm sure she came to Action Stations, and the
11 reply that *Sydney* got was not a satisfactory reply,
12 because I'm certain that the *Sydney* would have needed to
13 check the name that *Kormoran* had given with the C-in-C in
14 Singapore, and that *Sydney* would have stayed off beyond,
15 say, 12,000 yards until she got such a satisfactory reply.

16
17 Q. How could *Sydney* go through an identification process
18 of a ship using flag signals at 12,000 yards?

19 A. *Sydney* had radio, W/T contact with the Admiral in
20 Singapore.

21
22 Q. No, I think you misunderstand my question. I'm really
23 looking at signalling just directly between ships before we
24 get to anything about radio contact. How could *Sydney*
25 identify flags in merchant ships recognition procedure at
26 12,000 yards?

27 A. She wouldn't do it by flags, because you can't operate
28 flag signals at that distance.

29
30 Q. Well, how --

31 A. It would have been done by light.

32
33 Q. The basis upon which your answers thus far have been
34 put is that *Sydney* would be at Action Stations as
35 a consequence of a ship not properly identifying itself in
36 merchant ship recognition procedures.

37 A. Well, can I go back a minute, then, sir. *Sydney's*
38 first action would be to order *Kormoran* to stop. If
39 *Kormoran* hadn't stopped, then *Sydney* would have opened fire
40 with one across her bows. If she still hadn't stopped, it
41 would open fire for effect. The fact is that I'm sure
42 *Kormoran* did stop. *Kormoran* people said - let me get it
43 right. The Captain of *Kormoran*, Detmers, in his initial
44 evidence in Perth, said that *Sydney* ordered her to stop.
45 Now, it is absolutely certain that if *Kormoran* hadn't
46 stopped, then *Sydney* would have opened fire. I'm sure.
47 There's no question about that.

1
2 Q. Sir, are you familiar with the ship's recognition
3 procedure that was required to be used by warships
4 identifying merchant ships as of November 1941?

5 A. Yes, I believe so.
6

7 Q. There was nothing about firing a shot about the bow or
8 ordering the merchant ship to stop, was there?

9 A. I'm sure there was. I'm sure it was absolutely
10 standard procedure that when a warship challenged an
11 unrecognised ship, the first thing the warship did was to
12 tell her to stop, and if she didn't stop, then it was
13 probable that the warship would open fire for effect.
14

15 Q. Sir, I'm going to put to you what the merchant ship
16 recognition procedure extant for November 1941 was, on the
17 screen in front of you. It is at NAA.011.0351. At the top
18 of the page, you'll see that this is a copy of a message
19 from Navy Office, from Admiralty, the date sent is
20 25 December 1940 and the date received is 28 December 1940,
21 and it sets out the following:
22

23 *In order that the identity of HM ships and*
24 *British merchant vessels may be more*
25 *readily established the one to the other*
26 *[Naval Control of Shipping] Officers are*
27 *instructed to explain to Masters the*
28 *following system of challenge and reply*
29 *which is to be brought into force*
30 *forthwith. (ii) Warship identifying*
31 *merchant vessels. Warship challenges -*
32 *what are your signal letters. Merchant*
33 *vessel turns away increases to full speed*
34 *and makes her signal letters. Warship*
35 *signals centre two letters of(?) merchant*
36 *vessel secret call sign. Merchant vessel*
37 *replies with first and last letters of her*
38 *secret call sign.*
39

40 Have you ever seen that instruction before?

41 A. Yes, I know, I'm aware of that.
42

43 Q. That, I suggest - and there is strong evidence before
44 the Commission of Inquiry - is the method that was to be
45 adopted, the instruction that was to be obeyed, by merchant
46 ship and warship in relation to ships identification;
47 that's right, isn't it?

1 A. But I'm sure that *Kormoran* didn't know the answer to
2 that signal, and that would be the reason why she was
3 ordered to stop.

4
5 Q. If we take it one step at a time. From the position
6 of *Sydney*, that is the methodology that *Sydney* was required
7 to adopt for merchant ships recognition?

8 A. Yes.

9
10 Q. I come back to my question. You have said that *Sydney*
11 would have stood off at 12,000 yards and signalled and then
12 gone to C-in-C China, et cetera. My question is: if
13 *Kormoran* is replying by flag, how could *Sydney* identify the
14 flag signal at 12,000 yards?

15 A. I'm absolutely convinced that *Kormoran* didn't try to
16 signal by flag, because you can't read flags at that
17 distance.

18
19 Q. So why are you convinced that *Sydney* did not approach
20 to read the flags?

21 A. Because the Captain of *Sydney* knew very well that
22 there was a German raider operating off the WA coast and he
23 was looking for her. There's no way he would approach any
24 ship at that stage until he had satisfactory evidence of
25 her identification.

26
27 Q. For how long do you say the Captain of *Sydney* had
28 knowledge, as you say, of a raider operating off the
29 Western Australian coast?

30 A. I'm sorry, sir, could you repeat that?

31
32 Q. For how long do you say that the Captain of *Sydney* had
33 knowledge, as you have just said he did --

34 A. Yes, yes.

35
36 Q. -- of a raider operating off the Western Australian
37 coast?

38 A. At a guess, approximately a month, because on two
39 occasions after Divisions, when *Sydney* was in Fremantle, he
40 told his crew that there was a German raider operating off
41 the coast and he was going to get her.

42
43 Q. There is some evidence of the Captain of *Sydney*
44 indicating to his crew at divisions in Fremantle and also
45 at divisions at sea on 5 October 1941 that there was
46 a raider in the area; is that what you're referring to?

47 A. Yes, yes.

1
2 Q. Then would it surprise you that immediately after
3 5 October 1941, it's shown in the log that in ships
4 identification of a merchant vessel, *Sydney* did not come to
5 Action Stations for the identification of a ship
6 within days of 5 October?
7 A. But does it show that *Sydney* challenged that ship and
8 got a satisfactory reply?
9

10 Q. It shows that *Sydney* challenged an unidentified
11 merchant ship and did not come to Action Stations.

12 A. Yes, but what reply did she get from that merchant
13 ship?
14

15 Q. There was eventually a satisfactory identification.

16 A. Okay, well, that's the reason why she didn't come to
17 Action Stations.
18

19 Q. But not at 12,000 yards.

20 A. But I'm certain that *Sydney* would not approach an
21 unidentified ship to within gun range of a suspected enemy
22 ship.
23

24 Q. How would *Sydney* then identify the ship if it didn't
25 approach within gun range?

26 A. She didn't have to approach within gun range at this
27 stage, because I'm convinced that, when challenged,
28 *Kormoran* gave the name *Straat Malakka*. But at this stage,
29 both ships are stopped and they're about 12,000 yards
30 apart --
31

32 Q. My question is this: how does *Sydney*, at
33 12,000 yards, identify, as you say, *Straat Malakka*?

34 A. Well, if she hadn't identified *Straat Malakka*, what
35 she almost certainly would have done was to make contact
36 with C-in-C Singapore to know if *Straat Malakka* was in fact
37 in the area.
38

39 Q. But how would she know, accepting for the moment your
40 surmise that she would have contacted C-in-C Singapore, to
41 ask C-in-C Singapore about *Straat Malakka* if the ship had
42 not been identified?

43 A. No, what I'm saying is that, when challenged, *Kormoran*
44 was ordered to stop, and she stopped. *Kormoran* then gave
45 her identity as *Straat Malakka*. Both ships are still
46 stopped. The *Sydney* then signals C-in-C in Singapore to
47 find out if *Straat Malakka* was in fact due in the area.

1
2 Now, while this was going on - and this probably took
3 anything from a quarter to half an hour - both ships were
4 still stationary, 12,000 yards or so apart. The next thing
5 is that because *Kormoran* is monitoring these signals and
6 would know that she was suspect, I believe it was at this
7 stage that she pretended to surrender and put up the white
8 flag.

9
10 THE PRESIDENT: Q. Mr Whittaker, I'm not aware of any
11 evidence at all which suggests that the two vessels
12 stopped, whether 12,000 yards apart or otherwise. The only
13 evidence to which you've referred is the evidence of
14 CAPT Detmers when he said, on his first interrogation, that
15 he received a signal to stop, not that he did stop.

16 A. Correct, sir, but I believe that --

17
18 Q. Just a minute. The signaller who received the signal
19 said there was no signal given to stop, so there is
20 a conflict there which has to be resolved. But whether
21 a signal to stop was received or not, there is no evidence
22 at all that I'm aware of which suggests that either vessel
23 did stop.

24 A. Sir, that is so, but it is certain, in my view, that
25 if *Kormoran* was ordered to stop and did not do so, first of
26 all, *Sydney* would have opened fire. The fact that she
27 didn't open fire, I believe, is evidence that she stopped
28 on the order.

29
30 CMDR RUSH: Q. Sir, if I can go back to the question
31 before the Commissioner, your theory is that both ships
32 were stopped 12,000 yards apart?

33 A. Correct.

34
35 Q. Your theory is that *Sydney* identified *Straat Malakka*?

36 A. My evidence is that *Kormoran* gave her identity as
37 *Straat Malakka*, and what I maintain is that the Captain of
38 *Sydney* would then signal Singapore to verify.

39
40 Q. How, on your evidence, did *Kormoran* signal to *Sydney*
41 that it was *Straat Malakka*?

42 A. By light.

43
44 Q. Certainly that evidence that we have is that *Kormoran*
45 did not use its light.

46 A. I'm well aware that *Kormoran* claimed that she made
47 very inefficient flag signals in order to spin out time and

1 to attract *Sydney* in close. I'm well aware of that, but
2 I'm absolutely certain that that story is a fabrication by
3 the *Kormoran* Captain and crew to hide the truth of what
4 really happened.

5
6 Q. It would be the natural thing for *Kormoran* to do,
7 wouldn't it - to use flag signals?

8 A. I don't believe so, sir. I believe that if she was
9 challenged by a warship from 12,000 yards, she would have
10 replied by lamp.

11
12 Q. The common way in which merchant ships replied to
13 warships at the time was by flag, wasn't it?

14 A. But I'm absolutely certain --

15
16 Q. I know your certainty, but I'm just trying to look at
17 the basis of it. You, I think, have assented to the
18 proposition that it was usual for merchant ships to reply
19 by flag to warships in relation to merchant ships
20 identification?

21 A. I don't believe I've said that, sir.

22
23 Q. Well, do you agree with the proposition?

24 A. No, I don't.

25
26 Q. Why not? Do you have any basis for disagreeing with
27 it?

28 A. The basis I have is that *HMAS Sydney* was aware of
29 a raider off the coast and that, under those circumstances,
30 there is absolutely no way *Sydney* would approach that ship
31 without getting a proper identification first, and that
32 would have been done from beyond the range of *Kormoran's*
33 guns.

34
35 Q. I'll move on. Do you have any basis to suggest that
36 it was not the usual practice for merchant ships to
37 identify themselves at this stage, at this time, by flag?

38 A. No, I'm not. I don't believe that that would possibly
39 happen under those circumstances.

40
41 THE PRESIDENT: Q. Have you read CMDR Dechaineaux's
42 report of early December 1941?

43 A. I beg your pardon?

44
45 Q. Have you read CMDR Dechaineaux's report of
46 early December 1941, in which he was addressing the loss of
47 *Sydney*?

1 A. I'm not aware of that one, sir.

2

3 Q. One of the recommendations that he made was that
4 merchant ships should all be equipped with lights so that
5 they would not have to engage in signalling by flag.

6 A. I'm not aware of that. I should have thought that
7 most merchant ships, by that time, would have been equipped
8 with lights. But I would like to stress that I don't
9 believe that *Sydney* would have approached *Kormoran* within
10 gun range until she had got a satisfactory solution.

11

12 CMDR RUSH: Q. Sir, at what distance do you say light
13 could be read?

14 A. Certainly at 12,000 yards.

15

16 Q. We had expert evidence yesterday before the Commission
17 of Inquiry from a very experienced Naval Captain that
18 5 nautical miles to 6 nautical miles would be very good.

19

20 THE PRESIDENT: For flags.

21

22 CMDR RUSH: Q. For flags.

23 A. Six nautical miles, that's 12,000 yards.

24

25 Q. I'm sorry, 5 to 6 nautical miles by flag would be very
26 good.

27 A. Okay.

28

29 Q. So if flag signals were being used on this occasion,
30 it obviously meant that *Sydney* must have come within 12,000
31 yards?

32 A. Well, if signals by flag were readable at 12,000
33 yards, then she would have got the information that the
34 ship she had challenged was the *Straat Malakka*. *Sydney*
35 would then have verified that. She would not have
36 approached the ship until she got verification from the
37 C-in-C.

38

39 Q. Sir, as I say, if flag signals can't be read at
40 12 miles and the best is 6 miles --

41 A. But, sir --

42

43 Q. -- if flags were used for identification, it meant
44 that *Sydney* must have come at least within that range?

45 A. I'm sorry, I think we have a misunderstanding here.
46 I'm talking about 12,000 yards as the range beyond which
47 *Sydney* would have stopped and challenged *Kormoran*, not

1 12 nautical miles.

2

3 Q. Twelve thousand yards?

4 A. That is 6 nautical miles, in my estimation.

5

6 Q. That would have put *Sydney* well within the range of
7 *Kormoran's* guns, wouldn't it?

8 A. Twelve thousand yards?

9

10 Q. Yes.

11 A. I understood that that was about her maximum range.

12

13 Q. We have evidence that her maximum range is in excess
14 of 20,000 yards, but accurate to 18,000 yards. At 12,000
15 yards, I suggest, raiders were known as a consequence of
16 their weaponry in November 1941 to be accurate at that
17 distance?

18 A. I am convinced that *Sydney* would not have approached
19 within the effective range of a possible raider's guns
20 until she had a positive identification. Now, I'm sorry
21 about the misunderstanding between 12 nautical miles and
22 12,000 yards.

23

24 Q. No, it could be me, sir, but if *Kormoran's* guns are
25 accurate well over 12,000 yards --

26 A. Well, *Sydney* would have --

27

28 Q. -- on the theory that you have propounded this
29 morning, *Sydney* was in range of those guns?

30 A. What I'm trying to say, sir, is that the *Sydney* would
31 have stayed out of the effective range of a raider's guns.
32 We have got in a bit of a muddle over 12 nautical miles and
33 12,000 yards, but I am absolutely convinced that *Sydney*
34 would have stopped outside the effective range of
35 *Kormoran's* guns, whatever that might be.

36

37 Q. That would make identification impossible, wouldn't
38 it?

39

40 THE PRESIDENT: By flag.

41

42 CMDR RUSH: Q. By flag?

43 A. Impossible by flag, but I'm sure it was entirely
44 possible by light.

45

46 Q. Mr Whittaker, are you aware of examples of ships on
47 Australia Station approaching merchant ships for the

1 purposes of identification and coming within a very short
2 range of those ships?

3 A. I've heard of those cases, yes, sir.

4
5 Q. And are you also aware of Royal Navy ships doing
6 exactly that?

7 A. Yes, sir.

8
9 Q. In relation to those incidents that you are aware of,
10 what opinion did you form as to those occurrences and the
11 way in which merchant ship recognition procedure was being
12 conducted?

13 A. I formed the opinion that those ships wouldn't have
14 been approached unless they gave a satisfactory reply to
15 the challenge.

16
17 Q. May we turn, sir, to NAA.010.0074. This is a report
18 of the Commanding Officer of *Hobart* of 5 May 1941, in
19 relation, as you see, to, "Incorrect merchant ship
20 recognition procedure - '*Iron Warrior*'":

21
22 *Submitted for information, the following*
23 *report regarding Merchant Ship Recognition*
24 *Procedure carried out with the SS "Iron*
25 *Warrior" on 3rd June, 1941.*

26
27 *2. On this date, in position 37 deg*
28 *22 south 150 degs 22 east "Hobart"*
29 *challenged SS "Iron Warrior" with the group*
30 *NNJ.*

31
32 Which is entirely consistent with what we looked at before.

33
34 *After two repetitions, "Iron Warrior"*
35 *replied with the answering sign and after*
36 *further attempts to obtain Signal Letters*
37 *using the group NNJ, "Hobart" asked "What*
38 *are your Signal Letters", in plain*
39 *language. After a short interval of*
40 *a minute the Signal Letters were given*
41 *incorrectly, a "Y" being made instead of*
42 *a "Q". This was immediately corrected by*
43 *"Iron Warrior".*

44
45 *3. "Hobart" then challenged with centre*
46 *two letters of "Iron Warrior's" Secret Call*
47 *Sign several times, but on each occasion*

1 *this was replied by a "T" and no attempt*
2 *was made to complete the procedure by*
3 *transmitting the first and last letters.*
4 *Signalling was then ceased as the ship had*
5 *been definitely identified from other*
6 *evidence, having passed within three*
7 *quarters of a mile ...*

8
9 So that would be a procedure that you would condemn.

10 A. I agree.

11
12 Q. But as far as it occurring, you're aware of this and
13 other incidents?

14 A. Yes.

15
16 Q. May we turn to CHUR.001.0038, which is part of
17 a letter that was written by Mr Patrick Beesly to
18 Mr Montgomery on 22 September 1979, Mr Beesly being in
19 charge of Raider Intelligence at Admiralty, working under
20 CMDR Denning up until the end of 1941.

21
22 I want to take you down to the second paragraph, about
23 eight lines down.

24
25 *Very many British cruisers approached*
26 *unidentified merchantmen most incautiously*
27 *because their minds were not concentrated*
28 *on the fact that the ship concerned might*
29 *be a raider and highly dangerous. Examples*
30 *quoted to me by participants; Dorsetshire*
31 *and Python - had Python been an armed*
32 *raider and not an unarmed supply ship,*
33 *Dorsetshire might well have been sunk, even*
34 *though she was specifically searching for*
35 *a raider. The Italian Ramb, sunk by*
36 *Leander. Captain Roskill, who took command*
37 *of Leander shortly afterwards, has told me*
38 *that from what he had heard, Leander would*
39 *have been sunk if Ramb had been a German*
40 *and not an Italian ship. There are many*
41 *examples of British cruisers approaching*
42 *genuine British or Allied merchantmen in*
43 *the most incautious manner.*

44
45 What I want to suggest to you, sir, is that the ships
46 recognition procedure in relation to merchant ships led on
47 many occasions to ships approaching merchant ships

1 incautiously and coming within range of cruisers' guns?
2 A. But with respect, sir, it's my very firm opinion that
3 that did not happen in this case. The Captain of *Sydney*
4 knew very well that there was a German raider operating off
5 the coast, and there is no way that he would approach such
6 a ship within gun range until he was satisfied of her
7 identity.

8
9 Q. In relation to the idea that you put forward in your
10 submission of a shot across a merchantman's bows, are you
11 aware of any example of that arising on Australia Station
12 up until November 1941?

13 A. I'm not, but I received advice as to the procedure for
14 challenge from LCDR Ean McDonald, a very experienced
15 officer, and he related to me what the challenge procedure
16 was, and I have no reason to doubt that.

17
18 Q. Sir, are you aware of anti-scuttling instructions that
19 were in operation at this time?

20 A. I am, sir.

21
22 Q. And the purpose of anti-scuttling instructions was to
23 prevent the scuttling of enemy merchant ships?

24 A. Yes, sir, yes.

25
26 Q. In relation to your submission to the Commission of
27 Inquiry, you haven't mentioned anti-scuttling instructions?

28 A. No, sir.

29
30 Q. But they were something that you would agree, I take
31 it, must have been acting on the minds of Naval Captains in
32 relation to merchant ships recognition?

33 A. Sir, I believe that in this particular case, this is
34 not so. We have the Captain of *Sydney*, who is expressly
35 looking for a raider off the coast of Western Australia,
36 and there is no way that he would have acted in that
37 manner.

38
39 Q. Why do you say that the Captain of *Sydney* was
40 expressly looking for a raider?

41 A. Because on two occasions before this last voyage, the
42 Captain of *Sydney* told his crew that there was a raider
43 operating off the coast and he intended to get her.

44
45 Q. But if you accept the log of *Sydney* for the month
46 of October, in five instances where the ship altered course
47 for the purposes of identification --

1 A. Yes, I'm aware of that.

2

3 Q. -- she came to Action Stations on three occasions, and
4 on two she did not. How does that fit in with the surety
5 that you had that on this occasion she came to Action
6 Stations?

7 A. Well, the main reason I say that is that, on this
8 occasion, the Captain of *Sydney* was aware of a German
9 raider operating off the coast and that he would have
10 carried out full recognition procedures.

11

12 Q. But, sir, on the evidence that is before the
13 Commission of Inquiry, the awareness that you refer to was
14 extant with the Captain at the time of the examples that
15 I've given?

16 A. I'm sorry, sir, could you repeat that one?

17

18 Q. The awareness of the raider that you referred to of
19 the Captain of *Sydney* was in existence at the time the log
20 indicates she did not come to Action Stations for the
21 purpose of recognition.

22 A. All I can suggest, in that case, is that *Sydney* got
23 a satisfactory recognition in each case and it wasn't
24 necessary to come to Action Stations.

25

26 Q. So on that answer, you are putting forward the
27 proposition that *Sydney* did not come to Action Stations for
28 the purpose of ships recognition?

29 A. I believe that if she didn't come to Action Stations
30 before that answer, she certainly would have afterwards.

31

32 Q. But the question was in relation to what you are
33 saying and the answers that you have given to the
34 Commission of Inquiry, you are putting forward the
35 proposition that *Sydney* did not come to Action Stations for
36 the purposes of ships recognition?

37 A. I can't prove that either way as far as this
38 particular instance is concerned.

39

40 Q. But if you accept what I put to you from the log of
41 *Sydney*, there are instances where she didn't come to Action
42 Stations for the purposes --

43 A. Yes, I would accept that. But, with respect, I don't
44 accept that she would have done this in the case of the
45 meeting with *Kormoran*.

46

47 THE PRESIDENT: Q. Why don't you accept that?

1 A. Because, sir, I'm absolutely certain from what I have
2 read that the Captain of *Sydney* was well aware that there
3 was a German raider operating off the coast of Western
4 Australia and that, under those circumstances, he would
5 have taken every possible care not to get caught out by
6 this sort of activity.

7
8 Q. The problem arises from the material that CMDR Rush
9 has been putting to you: if one accepts that CAPT Burnett,
10 throughout all of the time of October 1941, was aware of
11 the possible existence of a German raider in the area, the
12 log shows that, when approaching vessels for recognition
13 purposes, she did not always go to Action Stations.

14 A. Yes, I can't dispute that, sir, but I believe that in
15 this particular case, because he knew that there was
16 a raider operating in the area, he would have carried out
17 the full recognition procedure.

18
19 Q. Then why wouldn't he have done so on the other
20 occasions, when we know that he didn't?

21 A. I really can't answer that, sir, because I don't know
22 the full circumstances surrounding those other occasions.

23
24 CMDR RUSH: Q. Sir, you have provided a submission to
25 the Commission of Inquiry. It is entitled, "The Sinking of
26 *HMAS Sydney II*, Evidence for the Late Captain Burnett's
27 Defence".

28 A. Yes.

29
30 THE PRESIDENT: This is at SUBM.005.0089. I will mark
31 that exhibit 137.

32
33 **EXHIBIT #137 SUBMISSION PROVIDED BY LTCOL (RETD) WHITTAKER**
34 **ENTITLED "THE SINKING OF *HMAS SYDNEY II*, EVIDENCE FOR THE**
35 **LATE CAPT BURNETT'S DEFENCE", BARCODED SUBM.005.0089**

36
37 CMDR RUSH: Q. There are some matters arising from this,
38 sir, that I would like to take you to. If we can turn,
39 please, to page 0093, which is paragraph 4, "Raider
40 Tactics - Armament"?

41 A. Got it.

42
43 Q. At the bottom of that page, you state this:

44
45 *Her main armament consisted of six 15cm*
46 *guns but no more than four of them could be*
47 *brought to bear at any one time.*

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A. Yes.

Q.

Detmers' claim that they could be brought into action within 10 seconds is not true. His aim was to hide the fact that he opened fire with a torpedo from an underwater tube.

I just want to ask you, firstly, about evidence in relation to 10 seconds in relation to the decamouflaging. You refer, I think, to some of that evidence, but we have evidence before the Commission of Inquiry from someone who has examined the systems extant on *Kormoran* that, for example, the number 5 15cm gun would have been firing, on a conservative estimate, at 12 seconds.

A. Sir, I read that evidence and I accept that this statement in my paper was wrong. I would like to hand in this document, in which I have said that I now accept the evidence that the 15cm guns could be brought into action certainly within 15 or 20 seconds.

CMDR RUSH: Sir, may I hand that to you and ask that it be marked as an exhibit. We will have copies made over lunchtime.

**EXHIBIT #137A SUPPLEMENTARY SUBMISSION OF
LTCOL (RETD) WHITTAKER**

CMDR RUSH: Q. Sir, whilst you assert the use of an underwater torpedo, in relation to your statement that Detmers' reference to 10 seconds was to hide the use of it, you would withdraw that, too, I take it?

A. I'm sorry?

Q. Your having an acceptance of the time that it took to fire, do you withdraw the statement that it was Detmers' aim to hide the fact that he opened fire with an underwater torpedo?

A. I don't withdraw that statement, sir.

Q. That he used the underwater torpedo?

A. I'm sure that he used the underwater torpedo tube. If I may explain, I am certain that once *Kormoran* had surrendered, *Sydney* steamed around to have a good look at her, took station on *Kormoran*'s starboard quarter and

1 prepared to lower a boat. It was at this point that
2 *Kormoran* altered course slightly to starboard in order to
3 align her underwater torpedo tube, and she opened fire with
4 that torpedo while still flying a white flag, and it wasn't
5 until after that torpedo hit the *Sydney* that *Kormoran*
6 decamouflaged and opened fire with her guns. That's my
7 claim.

8
9 Q. And that claim is founded on your assumption that the
10 ships identified each other at 12,000 yards, or
11 thereabouts; both were stopped in the water, and *Kormoran*
12 had put up a white flag?

13 A. Correct.

14
15 THE PRESIDENT: Q. I have indicated before that I am not
16 aware of any evidence at all which suggests that both
17 vessels stopped. Do you have any?

18 A. Sir, it's my contention that Detmers, at his first
19 interrogation, admitted that he was ordered to stop.

20
21 Q. I agree.

22 A. And he doesn't then say that he did stop, but my
23 contention is that if he hadn't stopped, *Sydney* would have
24 opened fire and I'm sure there's no question about that.

25
26 Q. Therefore, you say that he did stop?

27 A. Therefore, I'm certain that he did stop.

28
29 Q. And you then say that because *Sydney* would wish to
30 stay outside gunnery range, she must have stopped as well?

31 A. Correct.

32
33 Q. That's the way you get to having both vessels stopped?

34 A. That's right.

35
36 Q. I understand that. What evidence is there that there
37 was a white flag flown?

38 A. Three people gave evidence at various stages, or
39 reported at various stages, that there was a white flag
40 flying, and I have recorded them in this document of mine.

41
42 Q. Would you take me to that?

43 A. Paragraph 12, sir. It was LEUT Petersen, Cardacci's
44 son and Mr Evans, third mate of *Koolinda*.

45
46 THE PRESIDENT: This is Mr Clark's letter to the last
47 Inquiry.

1
2 CMDR RUSH: I'll come to it, sir, in due course.

3
4 THE PRESIDENT: Yes.

5
6 CMDR RUSH: Q. You also rely, in relation to that, do
7 you not, on material that was apparently provided to you
8 from the Parliamentary Inquiry concerning Mr Linke?

9 A. Sorry, I didn't catch it.

10
11 Q. A German. I'll just find it in your submission. Do
12 you not refer to Mr Linke as having provided material?

13 A. Yes.

14
15 Q. If you go to page 110, halfway down the page you
16 state:

17
18 *Hans Linke told David Kennedy that at the*
19 *start of the action, Kormoran fired*
20 *a torpedo from an underwater tube and hit*
21 *Sydney under the bridge. He said:*

22
23 *"Some of our comrades cried out 'hooray,*
24 *hooray'. This was the first shot of the*
25 *action. Linke said that the action was*
26 *discussed and talked over in the prison*
27 *camp. The torpedo personnel explained it*
28 *and it was passed from mouth to mouth in*
29 *conversation."*

30
31 A. Yes, understood.

32
33 THE PRESIDENT: What page is that?

34
35 CMDR RUSH: It is at page 0110, sir.

36
37 Q. If we can start there, Mr Linke was a radio operator?

38 A. He was.

39
40 Q. And he was in a position in the ship where he was
41 unable to see the action?

42 A. Correct.

43
44 Q. Have you read the transcript of the interview that he
45 gave to Mr Kennedy?

46 A. Yes, I have.

47

1 Q. Perhaps I might ask that that be brought up. It is at
2 COI.006.0056. I want to take you to a couple of passages
3 of this, sir. At the bottom of the page, Mr Kennedy is
4 recorded as asking Mr Linke in an interview of October
5 1998:

6
7 *Mr Kennedy: Was the Marconi [referring to*
8 *a jamming device] able to cover against the*
9 *signals coming from the Sydney, for*
10 *example?*

11
12 *Mr Linke: I can't say that with certainty,*
13 *I was not on Sydney and couldn't hear the*
14 *signals we transmitted but I could imagine*
15 *the ones in the vicinity of the Sydney*
16 *would have been perceived as a disturbance*
17 *because we were pretty close to each other.*
18 *I don't know the distance, but it wasn't*
19 *large, and the jamming transmitter would*
20 *have covered the messages. That would have*
21 *been well possible.*

22
23 *Mr Kennedy: Who used these Marconi*
24 *transmitters?*

25
26 *Mr Linke: Well, the Marconi transmitter*
27 *was in radio room 2. Radio room 1 was*
28 *upstairs behind the bridge, and radio room*
29 *2 was down two decks which means you*
30 *couldn't look out as there were no*
31 *portholes. That's where the Marconi*
32 *transmitter was installed as a fixed*
33 *installation. We were informed by radio*
34 *room 1 upstairs (as staff in radio room 2)*
35 *as to when we were to start operating the*
36 *radio-jamming transmitter.*

37
38 So you would have appreciated that it was clear that
39 Mr Linke had no opportunity to observe the initial parts,
40 at least, of the engagement?

41 A. Correct.

42
43 Q. Then you also would have read at COI.006.0059, where
44 Mr Kennedy asked Mr Linke about the Q signal from *Kormoran*.
45 If I can just leave that on the screen but ask you this:
46 do you accept that *Kormoran* gave off a Q signal?

47 A. I do.

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Q. What did you understand the purpose of a Q signal to be?

A. I had the suspicion - and I've read it somewhere but I can't quite recollect where - that that Q signal would have been sent off to alert his masters in Germany that he had a problem.

Q. There was a method and a reason that Allied ships used Q signals, wasn't there?

A. Yes.

Q. The reason for giving off a Q signal was to indicate that the ship may be in danger of a raider?

A. Yes.

Q. And you accept that *Kormoran* sent off a Q signal?

A. Yes.

Q. And that Q signal was received at least by the tug *Uco*?

A. By?

Q. *Uco*.

A. *Uco*, yes, yes.

Q. Why do you think Detmers ordered a Q signal to be sent from his ship?

A. It's possible that he was hoping that *Sydney* would accept the Q signal that in fact she wasn't a raider; she was an Allied ship in trouble, and it was hoping to get *Sydney* to break off from what she was doing and go and look for the origin of this Q signal. But that, I believe, was purely a ruse, which didn't work.

Q. Do you say that the ships were stationary in the water when the Q signal was sent?

A. Yes.

Q. That would be, I suggest, just an incomprehensible position for *Kormoran* to be in, to be sending a Q signal at that stage, even on your scenario?

A. Well, I can't really answer that.

Q. If you accept that the Q signal was sent, as you do --

A. Yes, I have to.

1 Q. -- I put it to you that it is a clear factor going
2 against your proposition that the ships were, for this
3 recognition procedure, stationary in the water 12,000 yards
4 apart.

5 A. At this stage, I don't believe that this was part of
6 the recognition procedure. I think that it is possible
7 that this signal was sent by *Kormoran* in order to alert
8 people in Germany that it had a problem, but I don't
9 believe that it really affected this situation here.

10

11 Q. You don't think it was sent as a ruse to *Sydney* to try
12 to ward off *Sydney*?

13 A. Well, it could have been, it could have been.

14

15 Q. That's the likely scenario, isn't it?

16 A. Yes.

17

18 Q. Isn't it?

19 A. Yes, could have been.

20

21 Q. And if that be the likely scenario, what I'm putting
22 to you is that it goes against your proposition that this
23 happened while the ships stood idle in the water 12,000
24 yards apart?

25 A. I don't accept that, sir, because I'm absolutely
26 certain that the ships were stationary about 12,000 yards
27 apart. The questions about the QQQ signal - I don't alter
28 my opinion on that.

29

30 Q. Anyway, you will see it says:

31

32 *Mr Kennedy: OK, how long after the QQQQ*
33 *has it taken?*

34

35 *Mr Linke: Approximately a quarter of an*
36 *hour afterwards I would say, then Kormoran*
37 *changed the flags, the German war flag was*
38 *pulled up on the 8th mast and the railing*
39 *was actually tipped down so the artillery*
40 *had a free space to operate.*

41

42 You have used Mr Linke as a basis for your saying that an
43 underwater torpedo was fired. What Mr Linke is putting
44 forward there is that the German flag went up as the
45 decamouflage was occurring.

46 A. I don't believe that is so, sir. I'm convinced that
47 the torpedo was fired from the underwater tube while

1 *Kormoran* was still flying the white flag.

2

3 Q. But why would you not accept Mr Linke's statement in
4 relation to the flying of the German war flag but accept
5 his statement in relation to an underwater torpedo?

6 A. Sorry, sir, could you say that one again?

7

8 Q. Do you reject what Mr Linke has set out there, that
9 approximately a quarter of an hour after the Q signal, the
10 *Kormoran* changed the flags; the German war flag was pulled
11 up on the 8th mast; and the railing was tipped down so
12 artillery had a free space to operate?

13 A. But I believe that the torpedo was fired from the
14 underwater tube before that action took place and that the
15 *Kormoran* did not hoist the war flag and decamouflage until
16 after the torpedo had hit.

17

18 Q. So you do not accept the statement as put forward
19 there by Mr Linke?

20 A. No.

21

22 Q. I go back to my question. In essence, you are
23 prepared to take pieces out of his statement that support
24 the theory that you so firmly hold but reject statements
25 that do not support the theory?

26 A. Yes, because I believe that a large number of
27 statements were made by the Captain and crew of *Kormoran*
28 which were designed specifically to hide the fact that they
29 had flown the white flag and then waited until *Sydney*
30 closed in and then had opened fire with a torpedo from the
31 underwater tube.

32

33 Q. Sir, I need to put it to you: do you think it is
34 a reasonable basis to be putting forward, as you say,
35 evidence that you will accept what fits in with the theory
36 but reject, from the same source, what doesn't?

37 A. Well, there is no doubt at all that the QQQ signal was
38 sent, because that was picked up by other ships. However,
39 I don't believe that that alters what I believe to be the
40 course of the battle, in that *Kormoran* opened fire with
41 a torpedo from an underwater tube whilst flying a white
42 flag.

43

44 THE PRESIDENT: Q. Is there any evidence at all that you
45 can point to which would support that view?

46 A. I beg your pardon, sir?

47

1 Q. Is there any evidence at all which you can point to
2 which would support the view that the first step in the
3 battle was the firing of an underwater torpedo?

4 A. My main reason for saying this is that if *Kormoran* had
5 behaved as claimed by CAPT Detmers and the crew and had
6 hoisted the German Ensign, decamouflaged and opened fire
7 with her guns even within 10 or 20 seconds, I believe that
8 if that had happened, *Sydney* would have opened fire with
9 her eight 6 inch guns and could have fired a couple of
10 salvos before *Kormoran* could have even got one shot away,
11 and that would have devastated *Kormoran*. She wouldn't have
12 had a chance.

13

14 The evidence is that *Sydney* circled *Kormoran* with her
15 6 inch guns laid on her.

16

17 Q. Whose evidence is that?

18 A. CAPT Detmers, I think, said that. It certainly
19 appears in --

20

21 Q. I'm not aware of any evidence that suggests that
22 *Sydney* circled *Kormoran*.

23 A. Let me try to think. I think somewhere in Linke's
24 evidence, there is a statement to show that *Sydney* steamed
25 around *Kormoran* to have a good look at her before taking
26 station eventually on *Kormoran*'s starboard quarter.

27

28 CMDR RUSH: We'll have a look at it.

29

30 THE PRESIDENT: Q. We'll have a look, but, nonetheless,
31 Linke was two decks down and couldn't see.

32 A. I beg your pardon, sir?

33

34 Q. We will have a look at what Mr Linke said, but
35 I thought you had agreed that he was two decks down below
36 deck and could not see what was happening?

37 A. That is true, but, again, although he wasn't in
38 a position to see what was happening then, he was in
39 a position to talk to other members of the crew in the
40 prison camp, and this document that we were looking at by
41 Herr Messerschmidt was put together, I'm certain, as
42 a result of discussions and agreement between the survivors
43 while they were in prison camp.

44

45 Q. There is a great problem with that theory, which
46 I know has been advanced by a number of people. The
47 problem arises from the fact that *Kormoran* survivors were

1 rescued or recovered by, I think, six different vessels --
2 A. Yes, sir.

3
4 Q. -- and some reached land. They were interrogated by -
5 if six is right - six different people in six different
6 circumstances and before they had any chance to collaborate
7 on any story.

8 A. Sir, I believe that --

9
10 Q. And if I may just conclude, the six different
11 interrogators each then wrote a report about their
12 assessment of those six different groups of interviews, and
13 they reached, if I may say so, a very similar conclusion.

14 A. That's right. Sir, it's my contention that Detmers
15 was well aware that if he surrendered and then opened fire,
16 this would be a very serious war crime, punishable by
17 firing squad, and before the battle, probably when they had
18 carried out one of the rehearsals for the use of the
19 underwater tube under these circumstances, that would have
20 included a briefing by CAPT Detmers as to what they were to
21 say if they were captured, and that is the origin of the
22 German story of the battle and that is why pretty well all
23 the German survivors told the same story. They had been
24 told to say that by the Captain.

25
26 Q. That's just pure speculation on your part, isn't it?

27 A. Not entirely, sir. There is evidence that Detmers
28 prepared for this event by practising the use of his
29 underwater torpedo tube in a work-up in the Baltic. There
30 is also some evidence that a couple of months or so before
31 the battle, CAPT Detmers carried out a rehearsal and that
32 one of the witnesses mentioned that at this time they had
33 also been told what to say if they were taken prisoner.

34
35 Q. It is true that there were underwater torpedoes used
36 on one occasion in the Baltic and it is true that there was
37 an underwater torpedo used on another occasion on the
38 sinking of a merchant vessel?

39 A. Yes, I'm aware of that.

40
41 Q. But I don't think it is true to say that anyone said
42 that they were told what to say. Indeed, there is
43 a considerable body of evidence which says they were not
44 told anything about what to say.

45 A. Naturally, they would certainly not admit that they
46 had been told what to say. But I believe, and as I read in
47 one of the transcripts, I think when you were taking

1 evidence in Germany, one of the people you saw there did
2 admit that they had been instructed what to say - not just
3 before or immediately after the battle, but a couple of
4 month or so before, after they had carried out one of these
5 rehearsals for the battle.

6
7 THE PRESIDENT: I'll check that, but I don't have any
8 recollection of that at all.

9
10 CMDR RUSH: Q. Even accepting that, sir, for the
11 purposes of this question, how could CAPT Detmers give
12 instructions about what to say of the engagement with
13 *Sydney* two months before? How could he give instructions
14 about what they should say about the engagement with
15 *Sydney*?

16 A. Because he was rehearsing the action he would take if
17 he met an enemy warship, and that included pretending to
18 surrender and then opening fire with a torpedo from the
19 underwater tube when the warship took station on the
20 quarter. That torpedo tube was expressly fitted in
21 *Kormoran* to cover this particular possible event.

22
23 THE PRESIDENT: Q. What makes you say that?

24 A. Because the only reason for having a torpedo tube set
25 at 125 degrees from the centre line was to cover the
26 quarter, where it was known that Allied warships, when they
27 set about to board a suspect ship, took station on the
28 quarter. That torpedo tube was expressly fitted to cover
29 that, and that was what they rehearsed in the Baltic.

30
31 CMDR RUSH: Q. Sir, on what do you base your evidence
32 that that was the position which Allied warships took when
33 boarding?

34 A. Certainly, in discussing this with some other
35 people --

36
37 Q. That is a position that would put the Allied warship
38 in range of the broadside of guns as opposed to taking up
39 a position on the stern, the bow?

40 A. But although I can't actually put my finger on it at
41 the moment, I am certain that it was the standard procedure
42 at that time for warships to take station on the quarter of
43 a suspect ship, because that was reckoned to be the safest
44 place, and, from there, they could then send a boarding
45 party over to inspect the ship.

46
47 Q. I know that you have referred to it in your submission

1 as being the safe position, but are you relying on what
2 you've been told in relation to that?

3 A. Basically, yes, sir.

4

5 Q. I will very quickly come back to this Linke transcript
6 on page 0059, the last question on that page from
7 Mr Kennedy.

8

9 *Mr Kennedy: You say there was an*
10 *underwater torpedo and that made a lot of*
11 *sense because this underwater torpedo could*
12 *be used there and the Captain was smart*
13 *enough to use these weapons in the right*
14 *way. Who has worked out how this hit has*
15 *worked, have you heard this afterwards on*
16 *the radio, or?*

17

18 *Mr Linke: Well, with the underwater*
19 *torpedo you actually had to aim with the*
20 *whole ship.*

21

22 A. Correct.

23

24 Q. Is that right?

25 A. Yes, correct.

26

27 Q. So it required the ship to be in a pretty precise
28 position?

29 A. Correct.

30

31 Q.

32 *The torpedo tube was at an inclined angle,*
33 *it was built in pointing forward ...*

34

35 A. Wrong. Where does that say it?

36

37 Q. If you just read the second line. He corrects it
38 later.

39

40 THE PRESIDENT: Q. Mr Linke.

41 A. What are we referring to, sir?

42

43 THE PRESIDENT: If you look on the screen, you will see
44 this is a transcript of the taped interview between
45 Mr Kennedy and Mr Linke.

46

47 CMDR RUSH: Q. He corrects it, but he initially said:

1
2 *The torpedo tube was at an inclined angle,*
3 *it was built in pointing forward, but I'm*
4 *not sure.*

5
6 A. That's definitely wrong, there's no doubt about that.

7
8 Q. Then he says:

9
10 *No, it was in the back so the whole ship*
11 *had to be turned into position so that the*
12 *underwater torpedo could be aimed and we*
13 *did that and also had a hit, the front part*
14 *of bridge of the Sydney.*

15
16 Is that right?

17 A. Yes.

18
19 Q. So on your summation, did this happen while *Sydney* was
20 circling *Kormoran*?

21 A. No, what I maintain happened - I'll tell you what, if
22 you could turn to --

23
24 Q. Perhaps we'll just finish the answer and I'll come
25 back to it, okay?

26
27 *... so that the underwater torpedo could be*
28 *aimed and we did that and also had a hit,*
29 *the front part of bridge of the Sydney.*
30 *The torpedo hit it because Sydney at this*
31 *moment went into the depths but then*
32 *recovered, perhaps certain compartments*
33 *were flooded and then it came up again. It*
34 *went very low then came up again. This was*
35 *a sign to us that the torpedo hit. Then*
36 *the 5cm artillery was used.*

37
38 A. Right.

39
40 Q. That's what you rely on in relation to the use of the
41 underwater torpedo?

42 A. Yes. The important thing there is that the guns
43 opened fire after the torpedo hit.

44
45 Q. Then read on.

46
47 *Mr Kennedy: Do you know where the two*

1 *ships were positioned back then?*

2

3 *Mr Linke: No, I can't say that because*
4 *actually we passed each other and I don't*
5 *know which direction they ran.*

6

7 So clearly, as we've discussed, Mr Linke could not have
8 seen what was going on?

9 A. Yes, exactly.

10

11 Q. Then Mr Kennedy put this proposition in a question:

12

13 *Mr Kennedy: Approximately how fast were*
14 *both ships running then? It wasn't really*
15 *possible to go too fast if you're shooting*
16 *an underwater torpedo.*

17

18 *Mr Linke: Well how fast we were with the*
19 *underwater torpedo, I don't know, but it*
20 *can't have been very fast, it was rather*
21 *slow when the torpedo had been launched, at*
22 *that point it was rather slow. Otherwise*
23 *we couldn't have aimed so well, the torpedo*
24 *might have just gone under the ship, but it*
25 *must have hit the Sydney on the top front*
26 *end of bridge.*

27

28 How does that fit in with your theory?

29 A. That's Mr Linke mainly reporting what he had heard.
30 He didn't see these things, as you have said; he was in the
31 wireless shack a couple of decks down. But I would like to
32 draw your attention, sir, to my page 14, if you would,
33 because I think this might clear things up quickly.

34

35 Q. Page 114?

36 A. No, page 14. Oh, it's SUBM.005.0089_R, which is my
37 page 14, paragraph 16. That's it. It's on the screen now.

38

39 Q. I understand that these are a number of factors and
40 probable matters, and I will come back to each of those,
41 but I would like to finish with Mr Linke before we lose
42 track. Mr Linke is not saying that the ship was stopped,
43 is he?

44 A. No, but, as you say, he was three decks down and
45 wouldn't know exactly what state the ship was in.

46

47 Q. And he wouldn't know if the underwater torpedo was

1 fired?

2 A. I think from other statements that he has made, he
3 knew very well that the underwater torpedo was fired.

4
5 THE PRESIDENT: Q. If you go back to the previous page,
6 0059, and read that closely, he doesn't even say there that
7 the underwater torpedo was fired?

8 A. There's no doubt about it, Mr Linke's evidence mainly
9 is based on what you would call hearsay as a result of
10 discussions when they were in prison camps. It is not
11 recording what he saw happen, because he couldn't see,
12 anyway.

13
14 CMDR RUSH: Q. At page 0063, at the bottom of the page,
15 Mr Kennedy asked:

16
17 *Mr Kennedy: Did you go upstairs? Did you*
18 *have a chance to see anything, or did you*
19 *have to help someone?*

20
21 *Mr Linke: I went upstairs later when the*
22 *battle was over then I went to the upper*
23 *deck and I observed how the smaller*
24 *weapons, ours on the Kormoran, kept free*
25 *the aft deck of the Sydney and how the crew*
26 *which should go to the aft deck while they*
27 *were standing there were torpedo tubes.*
28 *They wanted to go there but our small*
29 *weapons, the 3.7 and the 2cm air defence*
30 *and anti-tank missiles stopped them from*
31 *getting there. This area on the free deck,*
32 *the people would have to split up and our*
33 *smaller weapons pushed them back, they*
34 *tried to run but then they had to move back*
35 *and retreat.*

36
37 So it was at a much later stage of the engagement, you
38 accept, that Mr Linke was able to make observations?

39 A. Yes, but he couldn't make any observation of when the
40 torpedo was fired.

41
42 Q. Then over the page at 0064, the second reference on
43 the page to Mr Kennedy:

44
45 *Mr Kennedy: Do you know which crew or who*
46 *shot the underwater torpedoes?*

47

1 *Mr Linke: An engineer has told us someone*
2 *said that torpedo Herman Otman says that he*
3 *was artillery, but I can't say that,*
4 *I don't know. I assume that the torpedo*
5 *was fired by an Unter-Ofizier.*
6

7 He couldn't even say who --

8 A. Yes, I'm sure that's right.

9

10 Q. And if you go back, sir, to 0059 and the answer that
11 I read to you, which you relied upon for saying that Linke
12 said that it was fired, I would suggest - and I would ask
13 you to read it again - that that answer is --

14 A. Sorry, I missed that?

15

16 Q. At page 0059, the answer at the bottom of the page.
17 Mr Linke does not say there that the underwater torpedo was
18 fired.

19 A. Yes, well, Mr Linke wouldn't know, anyway, because he
20 was not on deck or in a position to observe the battle at
21 the time.

22

23 Q. You wanted to raise matters in your submission.

24 A. Page 14, paragraph 16, or on your paper 0103. That's
25 it.

26

27 Q. Under the heading "What probably happened - Burnett's
28 actions", you set out (a):

29

30 *Kormoran's crows nest lookout sighted*
31 *a ship. Detmers stated that he turned*
32 *towards the setting sun (a heading of about*
33 *250 degrees).*
34

35 Do you accept that?

36 A. Yes, and that's in Detmers' book.

37

38 Q. Why do you accept that?

39 A. Because Detmers wrote that in his book, and it fits in
40 as probably true, anyway.

41

42 Q. Why does that fit in as probably true?

43 A. Because *Kormoran* had a very high mast, an especially
44 high crows nest, and *Sydney* would have been observed from
45 that crows nest before *Sydney* could observe *Kormoran*.

46

47 Q. But why is turning 250 degrees into the setting sun

1 probably true?

2 A. Because that was *Kormoran's* standard procedure, to try
3 to pretend that she was an Allied merchant ship, because
4 that was what Allied merchant ships did when they saw an
5 unidentified vessel.

6

7 Q. What did they do? What did they do?

8 A. Turned away and went to full speed.

9

10 Q. And what about into the setting sun?

11 A. Well, it so happens that it was into the setting sun,
12 and I believe Detmers in his book said so.

13

14 Q. And you think there might have been a reason for that?

15 A. By turning into the setting sun, it would make it more
16 difficult for people on an approaching warship to see what
17 *Kormoran* was doing.

18

19 Q. And make it very difficult to read signals?

20 A. Not light signals.

21

22 Q. Wouldn't it?

23 A. I don't think so.

24

25 Q. If a ship is going into the setting sun --

26 A. But the sun's pretty high at this stage, because it's
27 only 4 o'clock or 5 o'clock in the afternoon.

28

29 Q. What about flag signals?

30 A. I don't believe flag signals were involved at this
31 distance.

32

33 Q. We've discussed that, but if they were, what impact
34 would the setting sun have on the flags?

35 A. I believe that at this particular time of day, the sun
36 was still sufficiently high over the horizon not to
37 interfere with the view of flag signals.

38

39 Q. You have set out that Detmers stated that he turned
40 towards the setting sun. They're your words, and, you
41 accept, his.

42 A. Yes, yes, yes.

43

44 Q. The setting sun, I suggest, in relation to a ship
45 going off into the setting sun - surely, you accept that
46 that would make it very difficult to read flag signals?

47 A. But I don't believe that at that time the sun was

1 sufficiently low to interfere with the seeing of them, but,
2 in any case, I don't believe that at this distance flag
3 signals were involved.

4
5 Q. Sir, if a ship is heading off into the setting sun,
6 I know that you are putting a case for the defence --

7 A. That's right.

8
9 Q. -- of the Captain of *Sydney* --

10
11 THE PRESIDENT: There's no prosecution here. This is just
12 an Inquiry.

13
14 CMDR RUSH: Q. Surely, you would accept the difficulty
15 of reading flags into the setting sun?

16 A. Yes, if the sun was low and approaching the horizon,
17 that's quite true. But I believe that at this time of the
18 afternoon, the sun would not be sufficiently low to prevent
19 that.

20
21 Q. Then you say:

22
23 *(b) Sydney encountered a suspect vessel,*
24 *went to action stations and ordered her to*
25 *stop.*

26
27 A. Right. Well, now, I'm assuming that *Sydney* went to
28 Action Stations because that was the standard procedure at
29 the time. The fact that *Sydney* ordered her to stop -
30 CAPT Detmers, at his first interrogation, said that he was
31 ordered to stop.

32
33 Q. Before we get to stopping, your (b) is:

34
35 *Sydney encountered a suspect vessel, went*
36 *to action stations and ordered her to stop.*

37
38 What you are saying is that *Sydney* encountered an
39 unidentified vessel?

40 A. Correct.

41
42 Q. And, you say, went to Action Stations?

43 A. Correct.

44
45 Q. Yet you now accept, and you put, that Action Stations
46 could have occurred after the sighting of the unidentified
47 vessel?

1 A. Yes, that's entirely possible, but the important thing
2 here is that *Kormoran* was ordered to stop, and she did. If
3 she hadn't stopped, *Sydney* would have gone to Action
4 Stations immediately at that stage, so the going to Action
5 Stations could have been either just before the signal was
6 sent or just after. I have suspected that *Sydney* went to
7 Action Stations first, but, again, I may be wrong there.
8 It's absolutely certain that after *Kormoran* stopped, *Sydney*
9 would have gone to Action Stations.

10

11 Q. But *Kormoran* stopped with a white flag, you say?

12 A. *Kormoran* stopped initially when challenged and gave
13 the name *Straat Malakka*. I maintain that, after a pause,
14 CAPT Detmers would have realised that the game was up and
15 that she would be recognised as a raider, so at this point
16 she put up a white flag in order to get *Sydney* to close in
17 so that she could carry on with the action as she had
18 planned and rehearsed.

19

20 Q. And this is your theory?

21 A. Yes.

22

23 Q. The next step in your theory is at (c):

24

25 *Kormoran* stopped and gave her name as
26 *Straat Malakka*.

27

28 A. Yes.

29

30 Q. Why do you say that that would have happened after
31 *Kormoran* stopped?

32 A. Because once she had stopped, this was the challenge,
33 and *Kormoran* obviously had to go on pretending as long as
34 possible that she was in fact *Straat Malakka*, because that
35 was the ship she was impersonating.

36

37 Q. Why on earth would she stop, if that's what she was
38 trying to do?

39 A. Yes, but she was told to stop. The Captain of
40 *Kormoran*, Detmers, agreed that she was told to stop, and
41 I am absolutely certain that, if she hadn't stopped, *Sydney*
42 would have opened fire. I'm sure there's no question about
43 that.

44

45 Q. But what you're setting out and saying there's no
46 question about, as we've seen, is in direct contradiction
47 of the standard procedure for ships identification.

1 There's nothing in ships identification that says that the
2 merchant ship should stop.

3 A. Yes, what I'm saying - and Detmers agreed with it - is
4 that he was told to stop. Now, it's absolutely certain
5 that if she hadn't stopped, *Sydney* would have opened fire.
6 That's standard procedure.

7
8 Q. I suggest to you that from what we've looked at this
9 morning, that is not standard procedure, but there is
10 a direct signals procedure to be followed before you get
11 close to that.

12 A. I'm sorry, I didn't follow that.

13

14 Q. We went through the standard procedure for ships
15 identification.

16 A. Yes.

17

18 Q. There's nothing about ordering the merchant ship to
19 stop.

20 A. Well, the procedure that I understood from
21 LCDR McDonald was that the warship orders the unidentified
22 vessel to stop. It's certain, from what I've seen, that
23 *Kormoran* was ordered to stop by *Sydney* and that she did
24 stop. The Captain of the *Kormoran* said that he was ordered
25 to stop. If he had been ordered to stop and had failed to
26 do so, *Sydney* would have opened fire, I'm certain of that.

27

28 Q. Then you set out at (d):

29

30 *Sydney stopped beyond the effective range*
31 *of Kormoran's guns.*

32

33 Just stopping there - and I know we've been over it, but if
34 it was at 12,000 yards, you now agree that *Sydney* would be
35 within the range of *Kormoran's* guns?

36 A. I can't agree that *Sydney* was in the range of
37 *Kormoran's* guns. There was a misunderstanding earlier on
38 as to whether we were talking about 12,000 yards or
39 12 miles. I am absolutely convinced that, at this stage,
40 *Sydney* would not have approached closer than the effective
41 range of *Kormoran's* guns.

42

43 Q. And if you accept that the effective range of
44 *Kormoran's* guns is 18,000 yards, are you saying that *Sydney*
45 stood off, for the purposes of ships identification, at
46 that range?

47 A. That's the sort of range, yes, sir.

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Q. And you're saying that the procedure in relation to signalling and identification took place at that range?

A. Yes, sir.

THE PRESIDENT: Q. And necessarily it must have been by lights; it could not have been by flags?

A. I beg your pardon?

Q. Necessarily, the signalling must have been by lights by both ships.

A. Exactly.

Q. It could not have been by flags, because they could not have read them?

A. Yes. I'm certain of that, sir.

CMDR RUSH: Q. You're certain it was by light?

A. Yes.

Q. Why?

A. Because I've always understood that that range was beyond the range at which flag signals were possible.

Q. You say further at (d):

Burnett contacted C-in-C CHINA (in Singapore) to verify that Straat Malakka was in the area.

A. Correct.

THE PRESIDENT: Q. We know that he did not do that.

A. Pardon?

Q. We know that he did not do that. There is no signal that suggests that. Indeed, one of the great criticisms made by those looking into this matter immediately after was that he had not broken radio silence.

A. Again, I have no direct evidence of this contact, but it was always my belief that she would have done so.

CMDR RUSH: Q. Even if it was to happen, why would it be Commander-in-Chief China Station?

A. Because *Sydney* was acting under orders of the C-in-C in Singapore. She was sailing under those orders.

1 Q. We're talking about a position just over 100 miles off
2 the Western Australian coast.

3 A. Correct, but I'm absolutely certain, from what I have
4 read, that, throughout the whole of this voyage, the *Sydney*
5 was sailing under the direct orders of C-in-C in Singapore,
6 because the C-in-C in Singapore was responsible for ship
7 movements in this area.

8
9 Q. And the VAI, "vessels area indicated" - are you
10 familiar with the VAI?

11 A. No.

12
13 Q. The system of providing information on merchant ships
14 to Australian ships.

15 A. Yes, I'm aware of that.

16
17 Q. The vessels area indicated.

18 A. Yes, and I'm sure that the *Straat Malakka* was nowhere
19 on that list.

20
21 Q. But the VAI didn't emanate from C-in-C China?

22 A. No, I agree. I agree.

23
24 Q. Again, I ask you: why would *Sydney* go to C-in-C China
25 if the system in relation to the plotting of merchant ships
26 came from Australia?

27 A. Purely because the *Sydney* was sailing under the direct
28 orders of C-in-C China at the time.

29
30 Q. You say further at (d):

31
32 *HMAS Harman monitored the signals.*

33
34 What is the evidence for that?

35 A. There are quite a number of reports from *Harman* and,
36 in particular, there is quite a detailed report, which
37 I have listed in fact in this piece of paper. Oh, here it
38 is. Paragraph 13, please.

39
40 Q. What page is that, sir?

41 A. Page 0101. That's it.

42
43 Q. You are relying here on a statement under "*Sydney's*
44 *Tactics*", paragraph 13.

45 A. Yes.

46
47 Q.

1 *On his way back to Fremantle from Sunda*
2 *Strait, Sydney encountered an unidentified*
3 *vessel. Robert Mason, Chief Writer to*
4 *LCDR McLachlan, Commanding officer,*
5 *HMAS Harman recorded that, at about*
6 *8pm ... on 19 November, he was told by*
7 *Chief Petty Officer Telegraphist Ben Tiller*
8 *that a signal had been received from Sydney*
9 *saying that she had "a queer customer*
10 *bailed up in the Indian Ocean and was*
11 *trying to identify her".*

12
13 Was that received locally or by wireless transmission,
14 morse code?

15 A. By morse code, radio.

16
17 Q. Do you think that Sydney would have used the words
18 that you've quoted

19 A. No, because I believe that that is a paraphrase of the
20 signal that came in, because at this time Robert Mason was
21 in the passage and didn't hear these exchanges direct. He
22 was told by Ben Tiller that this had happened, and this
23 statement was supported by telegraphist John Gore, and it
24 is purely a summary of the actions that had taken place.

25
26 Q. Mr Mason's statement is a summary? There is nowhere,
27 even accepting Mr Mason for the moment, where Mr Mason
28 refers to *Straat Malakka*.

29 A. No, no.

30
31 Q. Well, how do you say that the signal was received
32 asking for verification of *Straat Malakka*, on the basis of
33 what Mason said?

34 A. I'm not saying that, sir, with respect.

35
36 Q. Well, sir, with respect, that's exactly what you say
37 in paragraph (d) - "to verify that *Straat Malakka* was in
38 the area".

39 A. Sorry, I missed that line. Which is it?

40
41 THE PRESIDENT: Q. On page 14.

42 A. My page 14?

43
44 Q. Yes.

45 A. Oh, yes, right.

46

47 Q. Subparagraph (d).

1 A. The main basis for my statement there is that
2 *Kormoran*, having signalled that her name was *Straat*
3 *Malakka*, following standard procedure *Sydney* would have
4 checked with, first of all, the documents that she held and
5 would find that *Straat Malakka* wasn't listed, and I'm
6 saying would then probably have checked with
7 C-in-C Singapore.

8
9 CMDR RUSH: Q. That was not standard procedure, was it?
10 You've used the term. It wasn't standard procedure to
11 check in that manner?

12 A. Well, I believe it was standard procedure to verify
13 the identity of any ship.

14
15 Q. And you agree that there are no signals either from
16 Singapore --

17 A. There are no signals that we know of.

18
19 Q. And that Mason never used the words "*Straat Malakka*"?

20 A. No, that's probable, because what Mason is saying is
21 that the *Sydney* had contacted C-in-C Singapore to check up
22 on the ship. I believe that's right, that Mason didn't
23 hear the term "*Straat Malakka*" at this stage, but what I'm
24 sure he did do was to hear that *Sydney* was checking up on
25 the identity of a ship.

26
27 Q. Sir, in subparagraph (e), you say:

28
29 *Detmers must have realised that the game*
30 *was up so he surrendered and flew a white*
31 *flag.*

32
33 A. That's right.

34
35 Q. I will come back to some of the evidence that you rely
36 upon for that, but perhaps it is better left for the
37 moment. At (f) you say:

38
39 *It is probable that Sydney accepted her*
40 *surrender and made a wide circle round*
41 *Kormoran in order to have a good look at*
42 *her.*

43
44 That's purely your opinion or your thoughts as to what
45 might have happened?

46 A. Not entirely, because - I can't actually quote at the
47 moment, but there are reports that the Germans said that

1 Sydney did steam round the ship, and there were reports
2 that what they thought were cooks were standing on the
3 rails or standing up at the rails watching, when in fact
4 that was probably a boarding party that was ready to go.
5 However, I can't put my finger on the exact circumstance,
6 sir. There was definitely a report from German survivors
7 that Sydney steamed around and had a look at her.

8
9 Q. A boarding party wouldn't be dressed in white, would
10 they?

11 A. I don't know.

12
13 Q. If there were cooks on the rail of Sydney, would
14 that --

15 A. I would say that was most unlikely. When the ships
16 were at Action Stations, the cooks had better things to do.

17
18 Q. But if there were cooks there, the ship wasn't at
19 Action Stations?

20 A. Yes, well, that would be right.

21
22 Q. Then you say at (g):

23
24 *Sydney stopped on Kormoran's starboard*
25 *quarter and started to lower a boat.*

26
27 Why would Sydney stop on the starboard quarter?

28 A. Because she stopped on the starboard quarter in the
29 safe position within about 1,000 yards of *Kormoran* and
30 turned slightly to starboard and started to lower a boat.
31 She never in fact succeeded in doing so.

32
33 Q. Have you studied the wind and wave/sea conditions of
34 the day?

35 A. I beg your pardon?

36
37 Q. Have you studied the wind and wave/sea conditions on
38 the day?

39 A. I'm aware that the seas were probably from the
40 south-west.

41
42 Q. Why would a boat be lowered on the starboard side of
43 *Kormoran*?

44 A. I don't know, but all the evidence that I've seen is
45 that Sydney was on the starboard side of the *Kormoran* at
46 the time of the battle.

1 Q. And you would say, on your theory, that *Sydney* could
2 have stopped on starboard or port side on the quarter, as
3 she pleased?

4 A. Correct.

5

6 Q. The evidence that the Commission has from seagoing
7 officers is that *Sydney*, if it were to stop and lower
8 a boat, would not do so on the starboard quarter, because
9 that means that it couldn't create a lee and it couldn't
10 give the boat the sea conditions to the ship.

11 A. But, as I understand it, having stopped, *Sydney* then
12 turned to starboard to make her lee in which she could
13 lower the boat, and that's an important part of the system.

14

15 Q. Where did you get that information from?

16 A. The German evidence, as I have it, is that *Sydney* did
17 start to lower a boat.

18

19 Q. I'm sorry, the German evidence is?

20 A. That *Sydney* prepared to lower a boat. That's the
21 evidence, as I understand it. Now, in order to do that, it
22 is probable that *Sydney* turned to starboard to make her
23 lee.

24

25 Q. If one accepts your theory --

26 A. That's right.

27

28 Q. -- the probability is that *Sydney* would not have done
29 it on the starboard side of *Kormoran* but on the port side
30 of *Kormoran*.

31 A. But, with respect, sir, the evidence of the battle is
32 that *Sydney* was on *Kormoran*'s starboard side and that
33 *Kormoran* opened fire with her starboard guns. Therefore,
34 *Sydney* must have opened fire eventually with her port guns.

35

36 THE PRESIDENT: Q. But if you take the evidence of the
37 battle, as you just did, neither ship was stopped.

38 A. I'm sorry, sir?

39

40 Q. If you take the evidence of the battle that you just
41 sought to rely upon, neither ship was stopped.

42 A. But, with respect, sir, I don't believe that neither
43 ship was stopped.

44

45 Q. I appreciate that.

46 A. I believe that both ships had stopped and were still
47 stopped.

1
2 Q. I appreciate that. Do you understand that you're
3 having a little bit each way? You want to say, "I don't
4 accept the story of the battle, because it says that the
5 ships are moving." You want to have it that the ships were
6 stopped, yet you want to say that she wouldn't have been on
7 the port side, because the evidence of the battle is that
8 she was on the starboard side.

9 A. But I believe that the evidence that *Sydney* stopped on
10 *Kormoran's* starboard quarter is right. I believe that the
11 story that the two ships were sailing on parallel courses
12 side by side at about 1,000 metres is the German story and
13 it's not true.

14
15 CMDR RUSH: Q. At (h) you say:

16
17 *Kormoran was now directly up sun of Sydney,*
18 *as planned by Detmers. Kormoran turned*
19 *slowly to starboard to align her underwater*
20 *torpedo tube with Sydney.*

21
22 That's your theory?

23 A. Yes, yes, that's right.

24
25 Q. So from being in a stopped, stationary position, it
26 required *Kormoran* to at least put her engines --

27 A. With her helm hard over and running her port engines,
28 she can turn with hardly any forward movement at all.

29
30 Q. So *Kormoran* started moving in the water to position
31 herself?

32 A. Yes.

33
34 Q. And, on your theory, in direct disobedience of the
35 order to stop?

36 A. No. *Kormoran* stopped and stayed stopped, but she
37 would have been careful to keep her heading at around 250.
38 She could do this, and, when Detmers was ready, could turn
39 to starboard with practically no forward movement, or
40 hardly discernible forward movement, from *Sydney's* point of
41 view, but she had to do this in order to align this fixed
42 torpedo tube with the *Sydney*.

43
44 Q. How far apart were the ships at this stage?

45 A. About 1,000 metres or 1,000 yards.

46
47 Q. Why do you say that?

1 A. The evidence that I've seen varies considerably
2 between about 800 yards and 1,500 yards, but there's no
3 absolute concrete distance. I'm using 1,000 yards merely
4 as the probable distance.

5
6 Q. If a ship surrendered, why would the warship stay off
7 at 1,000 yards?

8 A. Because that, I'm certain, is the Navy procedure for
9 boarding a suspect ship - that she would stop in the safe
10 position, which is on the quarter, lower a boat with an
11 armed party, and send the boat over to take her prisoner.

12
13 Q. How long did the torpedo take?

14 A. I beg your pardon, sir?

15
16 Q. How long would the torpedo take?

17 A. How long would that take?

18
19 Q. Yes.

20 A. About a minute, plus or minus 10 or 15 seconds.

21
22 Q. So the track of her torpedo would have been obvious
23 over that time?

24 A. Well, there is a possibility that *Kormoran* used
25 electric torpedoes that were normally carried by
26 submarines, but I would accept that even if she used the
27 torpedo that left a bubble trail, with *Sydney* stopped, if
28 they did see the trail coming towards her, there was
29 nothing *Sydney* could do about it; it was too late.

30
31 THE PRESIDENT: Q. Mr Whittaker, the technical evidence
32 that I have now received, which comes from an examination
33 of the *Sydney* wreckage, makes it plain that the torpedo
34 which hit *Sydney* struck at about 90 degrees.

35 A. Correct.

36
37 Q. Which means that it could not have come from an
38 underwater torpedo?

39 A. Could I illustrate this on that whiteboard, please,
40 sir?

41
42 Q. Please do. Perhaps we'll bring the whiteboard to you.

43 A. The German story, sir, is that the *Kormoran* was on
44 a course of about 250 and that *Sydney* eventually was
45 travelling on the same course about 1,000 yards apart, and
46 that's when the Germans allege that *Kormoran* opened fire
47 with guns and - sorry, let's go back a bit - that *Kormoran*

1 put up her battle flag, decamouflaged and opened fire with
2 her guns and torpedoes.
3

4 In this case, if this had happened, the *Kormoran* would
5 have had to use her deck-mounted torpedoes to engage
6 *Sydney*, because the underwater torpedo tube was fixed.
7

8 Now, I maintain that, having steamed round, *Sydney*
9 took station on *Kormoran*'s quarter, ready to send over
10 a boarding party. *Kormoran* then, according to Detmers'
11 evidence in his book, turned slowly to starboard. *Sydney*
12 was in the act of lowering a boat, and in order to give
13 a lee to the boat also turned to starboard. By turning
14 gradually to this position, you arrive at the point where
15 *Kormoran* could fire a torpedo and hit *Sydney* just forward
16 of A turret.
17

18 Q. Yes. What I have just put to you is this: the
19 technical evidence now makes clear that the torpedo which
20 struck *Sydney* did not strike *Sydney* at an angle like that
21 but struck at 90 degrees.

22 A. A lot depends on how far *Sydney* had turned in order to
23 lower the boat, but it has to turn only a very a little bit
24 and it is at 90 degrees.
25

26 Also, if I might add, I have read - I can't remember
27 who by at the moment - that if they were travelling at
28 about 1,000 yards apart and at 14 knots, it would have been
29 very difficult for *Kormoran*, even from an above-water tube,
30 to hit *Sydney*, because of the aim-off required. Anyway,
31 that's beside the point.
32

33 Q. That's what warships do all the time.

34 A. I beg your pardon, sir?
35

36 Q. That's what warships do all the time. Ships don't
37 normally stop to fire torpedoes, or, more importantly, the
38 targets don't normally stop to enable that.

39 A. But on this particular occasion, sir, I'm certain that
40 the underwater torpedo tube that had been fitted in
41 *Kormoran* was put there precisely to counter this sort of
42 situation and, what's more, Detmers tried it out in the
43 Baltic before he left.
44

45 CMDR RUSH: Sir, is it convenient to take the luncheon
46 break now and resume at 1.45?
47

1 THE PRESIDENT: If you wish, yes.

2

3 CMDR RUSH: I don't have much more to ask LTCOL Whittaker,
4 but I would like to get my papers together. Following
5 that, we will call Mr Eagles.

6

7 THE PRESIDENT: Will you be long with this witness?

8

9 CMDR RENWICK: No, sir.

10

11 THE PRESIDENT: We will adjourn until a quarter to 2.

12

13 **LUNCHEON ADJOURNMENT**

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1 **UPON RESUMPTION:**

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3 CMDR RUSH: Sir, the translation of Mr Linke's statement
4 was provided to us by Mr David Kennedy. Mr Kennedy was in
5 court this morning and has taken issue with some of the
6 translation of the account that was put before
7 LTCOL Whittaker.

8
9 I should say that the translation of that material was
10 undertaken on behalf of the Commission of Inquiry by a
11 university-qualified interpreter. The issues that
12 Mr Kennedy raised, on their face, may have some substance,
13 and we are going to have the account retranslated and what
14 we put up this morning rechecked by another
15 university-qualified interpreter. Hopefully, that will
16 deal with the matter that Mr Kennedy raised.

17
18 THE PRESIDENT: The main thing is to get it right.

19
20 CMDR RUSH: Indeed, yes.

21
22 MR KENNEDY: Excuse me. CMDR Rush said that "the
23 translations were provided by Mr Kennedy". He probably
24 meant --

25
26 CMDR RUSH: A German account of Mr Kennedy speaking in
27 German with Mr Linke. Mr Kennedy is correct.

28
29 The other matter, sir, is that Mr Kennedy asked me to
30 point out that he was referred to in evidence yesterday by
31 Mr Samuels as in some way being a person who supported the
32 theory of a Japanese submarine. He indicates that he never
33 has.

34
35 Sir, there are only a couple of matters that I wish to
36 deal with with LTCOL Whittaker. One of those, sir, is the
37 issue in relation to the white flag and evidence that is
38 relied upon by LTCOL Whittaker in relation to that.

39
40 Q. Sir, I am right in saying that you refer to a
41 submission that was made by Mr Andrew Clark to the
42 Parliamentary Inquiry?

43 A. Yes.

44
45 Q. That, sir, is at PINQ.SUBS.011.0097. This is the
46 account on the screen that you refer to, sir. Just so that
47 we understand it, Mr Clark indicates that he was a diver

1 stationed in Darwin in February 1942. In his submission to
2 the Parliamentary Inquiry, he indicated that at that time
3 in 1942, he was approached by a LEUT Petersen RANR, who
4 spoke to him and asked if he had lost a brother on the
5 *Sydney*. Is that correct?

6 A. Before I answer that question, your Honour, could
7 I please make a very short statement?

8
9 THE PRESIDENT: Q. About what?

10 A. About the Inquiry.

11
12 Q. To what purpose?

13 A. What I would like to say is that I believe that the
14 crux of this whole battle that we have been discussing here
15 today is that the Germans claim that the ships were sailing
16 on parallel courses, when *Kormoran* flew the German Ensign,
17 decamouflaged and opened fire.

18
19 I firmly believe that this is wrong, because the
20 instant that *Kormoran* started to decamouflage or display
21 the German Ensign, *Sydney* would have opened fire with eight
22 6 inch guns and could have fired certainly one salvo, and
23 possibly two salvos, before *Kormoran* could even bring one
24 of her 6 inch guns or 5.9 inch guns to bear.

25
26 I believe that this is the crux of the whole business.
27 The Germans' statement that they decamouflaged and opened
28 fire with guns and also a torpedo, I believe, is wrong. If
29 they had tried to do that, they would have been blown out
30 of the water before they got a shot away. That's the crux
31 of it.

32
33 THE PRESIDENT: That depends on a whole series of
34 circumstances, which I will be addressing in the report,
35 I can assure you.

36
37 CMDR RUSH: Q. Mr Whittaker, this is an account that was
38 put forward by Mr Clark to the Parliamentary Inquiry.

39 A. Yes, sir, I'm aware of that.

40
41 Q. It is an account that he says was relayed to him in
42 1942, and, as best you know of it, it is an account that he
43 had not mentioned to anyone prior to his correspondence --

44 A. Correct.

45
46 Q. -- to the Parliamentary Inquiry. It is in this
47 account that he refers in the third paragraph to the

1 Germans hoisting a white flag.

2

3

4 Then three paragraphs from the bottom of the first
5 page, he refers to *Kormoran's* lifeboats having machine guns
6 mounted in their bows; at the time *Centaur* took the
7 lifeboats into tow, they were told to throw all arms
8 overboard and only the wounded would be taken on board; and
9 after all arms were thrown overboard, the wounded were
10 taken on board and the saloon turned into a makeshift
11 hospital.

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The account also relies upon the machine guns being mounted on the bows, the ratings armed with rifles and the officers having revolvers at the time that the Germans were taken in tow by *Centaur*. Is that right?

A. Well, that's what Clark said.

THE PRESIDENT: Q. It's a remarkable circumstance that nobody on *Centaur* ever mentioned that.

A. Yes, I'm surprised too.

Q. Then we have *Kormoran's* Captain ordering the two underwater torpedoes to be fired?

A. I beg your pardon, sir?

Q. It goes on and suggests that, at some point of time, the Captain of the *Kormoran* ordered that two underwater torpedoes be fired, hitting the *Sydney* under the bridge. Why would you fire two underwater torpedoes, both of which are fixed, one to port and one to starboard?

A. Well, they couldn't fire two torpedoes. That's wrong.

Q. Of course they couldn't. That's a nonsense.

A. Yes.

Q. "Hitting *Sydney* under the bridge" - we know that's wrong.

A. No, she hit forward of A turret.

THE PRESIDENT: This says "hitting *Sydney* under the bridge". Why anybody would rely upon this sort of material I can't imagine.

Yes, CMDR Rush.

CMDR RUSH: Q. There are two other matters, I think. One is that you are critical of Detmers because, you say,

1 he didn't give the location of the battle?

2 A. Correct.

3

4 Q. Is it not true to say that, when asked, he readily
5 gave the location of the battle?

6 A. The point is, sir, that he could have given the
7 location of the battle before they disembarked from
8 *Kormoran*, because they still had a serviceable radio, and
9 they could have put out a mayday call, which would have
10 been picked up by Australian stations and actioned, but
11 they didn't do it.

12

13 THE PRESIDENT: Q. The evidence is that the wirelesses
14 on the *Kormoran* were unserviceable; they were put out of
15 action.

16 A. But, sir, if I may, in the below-decks radio shack,
17 two decks down, the operator who was there said in evidence
18 that his radio transmitters were serviceable at the time
19 that they disembarked, which was well after the battle. So
20 I believe that *Kormoran* did have the capability of sending
21 out a mayday signal at that time.

22

23 THE PRESIDENT: What is the point of all this?

24

25 CMDR RUSH: Q. The point which you attempt to make in
26 the submission, is it not, LTCOL Whittaker, is that this
27 was a deliberate strategy of Detmers so that no survivors
28 would be picked up to expose what you have referred to
29 as the perfidy?

30 A. Yes, that would be so.

31

32 Q. My question was, when he was asked, he gave the
33 location of the battle?

34 A. Yes, sir. He gave that location nine days after the
35 battle, once he had been told that *Sydney* was missing with
36 all hands.

37

38 Q. Up until then, he didn't know that *Sydney* was missing
39 with all hands?

40 A. No, he didn't know that.

41

42 Q. The general area of the location of the battle was
43 also given in the Q signal?

44 A. I beg your pardon, sir?

45

46 Q. The general area of the location of the battle was
47 also given in the Q signal, which was sent at some stage

1 during the recognition procedure?

2 A. Well, I'm not sure that the Q signal said anything
3 about a battle.

4
5 Q. Well, take my word for it: it did. The Q signal had
6 bearings in relation to where the *Kormoran* was. Were you
7 aware of that?

8 A. Yes, but it was a pretty garbled signal and there is a
9 lot of disagreement as to exactly what it was. But at the
10 time that signal was sent, there had been no battle,
11 anyway.

12
13 CMDR RUSH: Sir, they are the matters.

14
15 CMDR RENWICK: I have nothing arising, sir.

16
17 THE PRESIDENT: Thank you. Thank you, LTCOL Whittaker.

18
19 <THE WITNESS WITHDREW

20
21 CMDR RUSH: I call Mr Eagles, sir.

22
23 <JAMES HENRY EAGLES, affirmed: [2.05pm]

24
25 <EXAMINATION BY CMDR RUSH:

26
27 CMDR RUSH: Q. Mr Eagles, would you state your full name
28 to the Commissioner, please?

29 A. James Henry Eagles.

30
31 Q. And your address?

32 A. [REDACTED]

33
34 Q. And your occupation?

35 A. Retired.

36
37 Q. Prior to retirement, what was your occupation?

38 A. Communications officer with the Department of Civil
39 Aviation.

40
41 Q. Prior to that, did you have service in the Royal
42 Australian Navy?

43 A. I did. Nine years.

44
45 Q. Can you detail to the Commissioner the years of
46 service and what work you performed in the Navy?

47 A. I was a radio operator.