

SENIOR CONSTABLE UPSTON

Q1 This is an electronic record of interview between Senior Constable David Upston at the Sydney Water Police, on Tuesday the 13th of the 7th, 1999. And the time on my watch is now 11.30am. And the interview is to be conducted with Tony Mowbray. And Tony, for the purpose of the interview could you please state your full name?

A Tony Michael Mowbray.

Q2 And your date of birth?

A Is the first of October, 1955.

Q3 And your address?

A I live at 29 Tudor Street, Belmont, New South Wales, 2280.

Q4 And your occupation?

A I am a sales manager.

Q5 O.K. Tony as I explained to you prior to the interview I am making inquiries into the 1998 Sydney to Hobart Yacht Race for the coroner and in particular in relation to the six deaths.

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Q6 And I understand that you were a participant in the 1998 Sydney to Hobart Yacht Race?

A That's correct.

Q7 On your boat the -?

A Solo Globe Challenger.

Q8 O.K. How long have you been, how, how, long have you

owned Solo Globe?

A This particular boat I've owned for, I bought, purchased in June of 1998 but I had previously owned another Cole 43 of the same design in, which I purchased in 1993 and sold in 1995.

Q9 All right. And how long have you been sailing?

A I've been sailing virtually all of my life, since I can remember. Since I was, you know, 5 or 6 years old.

Q10 On various classes of yachts?

A Yes, I've sailed, I was born and raised at Lake Macquarie, in the Newcastle area. I've sailed, I've competed in, this was my 14th Sydney to Hobart Yacht Race. I've sailed the Tasman twice, from New Zealand to Australia. Sailed races all up and down the east coast of Australia and sailed dinghies. And also in 1994, myself and another fellow, Maurie Morgan, we sailed around Australia non stop, taking 54 days, so, spent a fair bit of time on boats.

Q11 O.K. And so you, you obviously very extensive sailing experience?

A Yes, I would regard myself as being very experienced.

Q12 O.K. And what was your position in last year's race?

A In terms of our boat?

Q13 As, as, no. I'll clarify that, as far as your crew and your crewing of yourself.

A O.K.

Q14 Where -?

A Well, I am the owner of the boat. I am the skipper of the boat and I am in control of the boat.

Q15 O.K. And how many crew did you have on board?

A In addition to myself there were seven other crew.

Q16 All right. And can you give me an idea of the style of the boat, the type of boat and the length of the boat?

A Sure. The boat, the design of the boat is a Cole, that's spelt C-O-L-E, Cole 43. It's 43 feet long. It was designed by Peter Cole, an Australian designer, in the late 1960's, '68, 1969 area and they were first started to be manufactured in 1970, '71. There's been about 20 of them approximately built. My boat was one of the last ones launched in 1984 and they are regarded, within Australia and, and elsewhere as being a very very solid stable seaworthy design. I, I sort of look at them as being like a battleship, you know, when the going gets tough they get going sort of thing. And they're, they have beautiful lines, they're highly regarded within Australian yachting circles.

Q17 And what's the vessel made of?

A It's made of fibreglass.

Q18 O.K.

A The hull is fibreglass with a balsa core and the deck is

fibreglass with a ply deck but it's essentially fibreglass.

Q19 O.K. And the crew that you took on this year's race, what sort of experience did they have?

A Well, we had a, we had a blend of experience. The most experienced person is a chap called Bob Snape, who is 66 years of age and was competing in his 23rd Sydney to Hobart Race and had sailed the Tasman on a number of occasions and has been sailing all of his life as well. The next most experienced I suppose was myself. We then had a core of people that had competed say, if you're using the Sydney to Hobart as a benchmark, had say, competed in three, four or five Sydney to Hobarts. And then at the lower end of the scale, and plus numerous coastal races up and down the east coast of Australia, races like the Sydney to Mooloolaba, which would be say, a 500 mile race. And then we had two people who had never competed in a Sydney to Hobart but had sailed extensively and were competent sailors and competent crew. So, we had a, a blend.

Q20 O.K. Did, were any of the, the crew suffer sea sickness at all?

A No.

Q21 Now, what category did you enter into the, into last year's race?

A In the handicapped categories, we entered in the performance handicap section, I think it's PHS, is, they refer to it.

Q22 O.K. And can you recall the stability index of your vessel?

A Yes. The, well, not giving you it precisely but the stability index, there's two factors that vary slightly, but the, there is an upper factor which, I'm not too sure what it converts back, but the upper one is in the low 150 degree area, 151 or 152 and the lower one converts back to about 148 degrees. And I understand, to give you some understanding of that, that if the boats that were either completely rolled 360 degrees or were knocked down and then came back up the same way, that we were the most stable boat of those boats.

Q23 So, in fact your vessel would be known as a stiff vessel?

A Yes, correct, quite correct.

Q24 O.K. Now, I understand that you were knocked down?

A We were.

Q25 O.K. I'll go into that a little bit later on. But what I'd like to do now is take you to the 27th of December in the afternoon where, after leaving Sydney Harbour, on the 26th - - -

A 26th.

Q25 - - - You continued on down the coast towards Hobart?

A Yes.

Q26 O.K. Now, can you please give me an indication of what occurred on the afternoon of the 27th of December?

A On the afternoon of the 27th of December, from midday onwards?

Q27 Yes, yep.

A O.K. Well, at, at midday I took the decision after discussion with two of my senior crew that we would reduce sail to the, well, at that stage at midday, we had our storm jib up, which was the smallest sail on the boat. And at that point in time we were, two things were occurring. We were coming to the crests of the waves and the wind strength at the top of the waves was so strong that the boat was being layed over to a certain point. And then combining that wind effect with the wave action, the boat was being layed over even more so that, at times, the top of the mast was in danger of, you know, going in the water which I felt was a, you know, not a desirable situation. So, at midday we, it was primarily my decision, but I did consult with two, my two senior crew, we, we took the storm jib off completely and we proceeded under what is called bare poles, so we had no sails up at all. We, the wind at midday was around about, I, I would estimate to be around about 50 to, you know, maybe 60 knots of wind and the sea state was starting to increase

in size and also starting to become a little bit confused but our mental state at that time, we were, you know, quite comfortable with it, you know, I had seen fairly severe conditions previously but I was comfortable with the sea state. We proceeded under bare poles and I was steering the boat until about quarter past 2.00 or thereabouts in the afternoon. At 2 o'clock we had a change of watch where were rotated, there were some, we had eight in the crew, four were down below and four were on deck and so we rotated and the four off watch came up on deck. And I spent probably 15 minutes tutoring my new helmsman, Glen Picasso, as to what the sea state was, what the wind was doing and, and so that he wouldn't just jump onto the wheel cold, if you like. So, after 15 minutes I was happy that he had an understanding of the conditions and I gave him the wheel. We were steering a, the wind was coming from a compass direction of around about 240 or 250 and we were steering a course that was roughly averaging I supposed to be around about, if you just let me think about this for a minute, it was around about 170 to 180. So we were angling up and over the waves at around about 60 or 70 degrees to their approach. Now, the boat was actually, well, even with no sail up, the boat we were sailing in a forward direction. It's very important that you maintain manoeuvrability in those sort of seas

and we had enough speed, we were actually doing three to four up to five knots and I, this might sound a bit hard to believe but, we were actually making forward progress at that sort of speed. At about quarter past 2.00 I went down below, I was happy that Glen had control of the boat. I wasn't, you know, overly concerned by the situation and at quarter past 2.00 I went down below. And I climbed into the port quarter berth which is the berth underneath the cockpit towards the aft end of the vessel. And I had my head facing forward or at the forward end and right at the back of my head is the navigation area where Bob Snape who was, who had taken or who I had given the primary role of navigating for the race and doing the radio communication work and listening in for weather forecasts. Bob is a navigator, he's won the navigating prize for the Sydney to Hobart on two previous occasions and he's a very accomplished navigator. So, I was laying in the bunk and Bob had started the radio schedule which started at 5 minutes past 2.00. And he had been recording the positions of other boats and I hopped into the bunk and just sat there with my, layed there with my eyes closed but listened to those reports starting to come through. I can't remember the absolute specifics of what was, what the communications were. I do recall a boat called Sword of Orion breaking into the radio schedule and informing

other yachts in the fleet that they were experiencing some pretty severe conditions. And, but apart from that I don't recall a lot of the specific conversation except to understand that it was getting pretty, pretty ordinary out there, pretty average, wind was increasing. The radio had, we, we had been asked by the radio relay vessel to leave our radios turned on in case individual vessels were required to render assistance to other yachts and we complied with that request and so, we were listening in. We didn't take an active role in any of the communications, I don't recall. We just were listening in. I didn't receive any indication from up on deck that conditions were deteriorating, you know, badly but apparently they did, they were deteriorating. And at 4.00, at approximately 4.00pm, on that afternoon of the 27th, a wave approached our boat and it, we made our way up and over it but it sat us back down on our haunches type of thing. It sat us back on our backside and it washed all of our speed off and so we lost our manoeuvrability. And at the same time that wave also slewed us around so that we were beam on to the next sea. And the next sea that was immediately following it was the one that, that, that, that sort of got us. And that sea hit us side on and took our boat from a vertical position and knocked us down to a position of about 150 degrees and

swept us down the face of that wave which the crew had since estimated to be about 60 feet high and, and swept us down the face of that wave in that inverted position for about 20 seconds. And then when the wave passed through the boat just popped back up again, we came back up quite quickly. That wave, our mast broke whilst we were under water. It broke off about 1.8 metres or 1.6 metres above deck level and also, whilst we were under water, a 6 mil perspex clear skylight, that was directly above the bunk that I was laying in which was around about a metre long, by 350 millimetres wide, that clear perspex skylight under the pressure of water just exploded and allowed, well I would say, tonnes of water to penetrate our boat down below. That water just exploded into the navigation area and completely took out all of our radios. We had a notebook computer in the navigation table that was linked into the Satcom C navigation facility and it took out the computer, it took out our HF radio, our VHF radio, it took out mobile phones that were stored in the navigation table and, and, and any other form of, our GPS was taken out. And when the boat righted itself from a below decks point of view the water also filled, we had a substantial amount of water in the boat we were, we were somewhere between our knees and our ankles in water. And that water penetrated the starter motor for the motor and also, we

believe, allowed a certain amount of salt water to penetrate the diesel tank through the breather pipe and also disturbed all of the sludge in the filters for the diesel system and the motor did actually start later on which I'll perhaps refer to later on but it ran very it, it, then it stopped because all of these various problems. On deck when we came back up the right way again, the mast complete with all of it's rigging was laying out over the port quarter, towards the stern of the boat. The helmsman, who was Glen Picasso had been thrown into the water and had been trawled along behind the boat underwater whilst we'd been surfing down the face of this wave. He sustained broken ribs as we found out later, broken ribs, a broken bone in his wrist and a severe laceration to his head. Kier Enderby, who was on deck, broke ribs, was knocked unconscious reasonably briefly and was, when the boat came upright, his legs were pinned by the mast, his legs were sitting on top of the life rail, which is about a 4 or 5 mil stainless steel wire and the mast had pinned his leg, legs and as the boat was slowing riding up and down on the swells that mast was settling on his legs and he was, he was in a lot of agony and pain and his legs subsequently were O.K, but he was in a lot trouble at the time. Tony Perkis, who was another crew member on deck, broke his left leg, just below his kneecap

and required a, a quite a bad head wound that required ten stitches later on. And Keith Malloy, the fourth person on deck was, was washed we think and hit his back on a winch or something like that and suffered extremely bad bruising to the lower back, right buttock and right thigh. All crew were clipped on with safety harnesses. Now the, and the, and the crew generally down below didn't suffer any injuries. I struggled to the hatch, threw it back, we had the hatch, the storm boards in and the hatch closed of course but we still had a lot of water come in around the hatch area as well as the broken skylight that allowed water to penetrate. I, I felt the most important thing for us to do at that point in time was to disengage the broken mast and get it away from the boat because whilst it was there it had a danger of punching a hole in the side of the hull or whatever. And at that point in time we were in a very critical situation. We had a lot of water down below, the boat had slewed around so that the port quarter was now facing the oncoming waves. Glen Picasso, that was in the water, hit the, the deck of the boat was virtually level, flush with the water level. So, he really just had to pull himself, float himself onto the hull. The bow was riding quite high but we had very little free board and another really bad wave like that at that point in time we, I feel, I felt then, and I still

feel now that it would have really, quite probably have finished us off. Now, there was a vessel that was in company with us and I just recall this now, it was a vessel called Pippin which is a Far 37, a black boat. And that vessel was in company with us, had been generally in company with us throughout the race. We were sailing at similar speeds. I, I'm not too sure whether Pippin actually saw us, I think Pippin actually saw the incident where we were put under but in any event they realised that we had a problem and Pippin was sailing with a storm jib on and Pippin turned around and sailed back towards us and by the time that I had got to the mast area, because we had our injured crew, but I, my priority was to rid the boat of the mast and, by the time I got to the mast area I looked up and we were facing at that stage, we were probably facing 050 or 040 on the compass and Pippin was bearing about 9 degrees off my port side so, Pippin was probably sitting, bearing about 320 or 330 I suppose, magnetic. And I looked across to Pippin which was about, I'd be guesstimating at 100 metres or so from us. Conditions at this stage had deteriorated quite badly. We had about 80 knots of wind or more and the sea state was huge and confused and I describe them as like clips of water moving at us. I looked across to Pippin and I, I could see three men I think it was sitting in the cockpit

of Pippin and I, I put my arms up, both of my arms, I don't know how you'd describe it, as if to say, look what the heck can you do for us, like we're in deep trouble here but, but I really strongly felt that Pippin had to look after themselves because they had taken a risk to deviate from course to come to try and to see what they could do for us, which was great. I fully appreciated that but as I'm looking at Pippin they were actually picked up by a wave at the top of their mast just about went in the water and the three men in the cockpit were nearly thrown into the water. So, I looked at them as if to say, look guys, don't worry about me or us, you look after yourselves, like, get out of here. And Pippin got the message and did that. Which is what I wanted them to do.

Q28

M'mm.

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I have since spoken to the owner of Pippin on the telephone and I've met him in person and we, we certainly have a good understanding, we, we know what each other felt at that time. We, myself with the assistance of Dave Marshall, Dave Cook and Keith Malloy, the four of us managed to detach the mast. We estimate that it took somewhere between 10 to 15 minutes to detach. The injured crew that were in the cockpit were trying to bail the cockpit out because the self drainers were, you

know, it wasn't draining quickly enough and Bob Snape was still down below and he had commenced bailing down below. I sent a message down to Bob. We had two EPIRBs on board the boat and we had a second one by chance. And I sent a message down to Bob to let both EPIRBs off because I felt we were in a lot of trouble. At that point in time I really was wondering how we were going to get out of it like this. I just, I, I really thought we were, we had our backs to the wall. So, between 10 to 15 minutes to detach the mast and we let that slide over the side. So, we let the mast, the boom, a brand new main sail and go over the side. It didn't puncture the hull or anything like that so we had a, we still had a very sound hull and a very sound deck. Like I said, my boat I regard as a battleship and it certainly proved itself. Bob had let off both EPIRBs. He had attempted to make some radio calls and, and found that both radios were, were taken out with water. I went back down below again and I found that my second priority was to make to sure that the boat was as empty as we could so I assisted Bob in bailing out the rest of the water which was a combination of bilge pumps and saucepans and buckets and things of that nature. I then felt that we were going to have a, a fairly long night of it. And I managed to dig around, all of my gear was wet and I managed to dig around

in someone's bag and I found some halfway dry clothing and I put that on. Put my wet weather gear back on and I went back up on deck and we managed to get Kier Enderby and Glen Picasso with the broken ribs down below onto sail bags on the floor. Tony Perkis, who had the broken leg although, at that stage we weren't fully aware as to how badly it was broken, said that he felt that he couldn't get below and that he wanted to sit in the cockpit. And so at around about quarter to, about 5 o'clock or thereabouts. And of course we felt confident that Pippin would advise of our situation as well, we had two EPIRBs going, so I felt that, you know, things would somehow or another unfold. I commenced steering the boat at about 5 o'clock and I steered the boat that was on a course that was about 060, 060 degrees. And that course was, was with the wind and the waves directly at our stern it was not a choice, it's not a, it's not a thing I would have done by choice, but we discussed various options and I'm a great believer at looking at what your options are and then trying to ascertain the best one and then running down that track. I talked and I thought about options and I talked to the other crew about options and we looked at you know rigging some sort of a sea anchor off the bow to put the bow into the waves, et cetera, but the conditions were just so bad, we had like white out type conditions

and a sea state that was just phenomenal and I really felt to do that would have been, with our boat, would have been sort of like suicidal. So, we took that option of running with the wind and the waves. We didn't have to rig a sea anchor out to stern. If you have a mast in your boat you've got a lot of windage and the wind will drive you along and surf you down the front of some waves generally speaking too fast. Now, we didn't have to worry about rigging a sea anchor because with no mast we had no great windage and so the boat was doing, through the water, the speedo was still working I remember and we were doing somewhere on average between two and a half and four knots through the water. We managed, someone managed to get the motor started. And it ran for a little while and then stopped and then you could start it again and it would stop and that's symptomatic of, you know, air or - - -

Q29 Mm.

A - - - whatever. Now, I, when the motor was running for a while, I actually ran it in gear, thinking that it might give me that little bit more manoeuvrability. But in actual fact later on when the motor stopped and we had no access to it again, it was better without it. So, that was sort of a blessing in disguise in some respects. We had Tony Perkis, who remained in the cockpit all night and then Bob Snape and Kier Enderby and Glen Picasso stayed

down below, Bob was looking after them and then Keith Molloy, Dave Cook and Dave Marshall tended to rotate though I can't remember exactly the procedure but they would, at, at no time did we ever have anything less than three people on deck and a lot of the time four of us on deck in total. We had a, we had a ship, a commercial ship approached us from behind late that afternoon, evening. And that ship came down from behind as I say from astern. And it sort of stopped and I'm estimating somewhere, you know, a couple of hundred metres behind us and it just sat there and it, we, I honestly didn't know what they'd be able to do because in those conditions to try and rescue us or take us off, I really felt that it just wasn't practical. But this ship hovered there for some time. I don't know the name of the ship. We of course are in a bit of a shell shocked state and we're thinking, we had no radios, we couldn't communicate so, we're thinking, what do we do. The ship then, we had, we had got flares out and the ship then turned to port and headed off, I would guesstimate headed off in a position, in, in a direction that would be approximately on the compass would be probably say about 340, something like that and maybe 33, 320. And as it was turning it became apparent to us it was leaving, we fired off a red parachute flare, like to say well, you know, hey. But they, they just, they left

and that, you know, we just lived with that, that's O.K. Also, that evening before it got dark a fixed wing aircraft flew over us I recall. I don't recall and I, I'm telling this as if the fixed wing came later than the ship, it may have been in the other order and once again, the fixed wing flew over as I seem to recall for a relatively short period of time and then departed the scene. We spent the whole night till about, about 6.30 the following morning in, in those conditions. We, we, the whole night we experienced 80 knots of wind on average and my crew and myself have jointly estimated the sea state to be approximately 60 feet high. Some were bigger, approximately 60 feet. We were, we were smashed if you want to call it that a lot of times during that night. We were never ever rolled to that sort of position again. The boat was quite unstable without a mast. It was like a bobbing cork to a certain degree but we never, we had a number of waves that broke over us and surfed us down the front of waves that were just horrific waves but the boat and the deck and the hull and everything just stayed together wonderfully. I and my crew spent that period of time in constant fear of our life. We felt that even though we, every wave that we encountered that we got through it, we felt that there could be one lurking next that would, that would put us under or finish it off. And

for example we had one wave that just literally threw us down the face of the wave and broke on us and threw us down the face of the wave. We surfed down the face of the wave at this incredible speed. My boat weighs about 8 and a half tonne. As I say, it's 43 feet long and we had this one wave that broke over us and I was standing up steering and it just completely engulfed the boat in white water and I was only my chest up was clear of the water. My crew that were sitting in front of me in the cockpit were completely underwater and the whole boat was submerged under water and all I could see was, was just the top of the stainless steel push at the front of the boat as we were hurtling down the face of the wave. And I'm, I felt that that was the one that would finish us off, I'm sorry.

Q30 No, you're right. Do you want to take a break?

A No, it's O.K. I felt that that wave, that when we got to the bottom of that wave that we would, that is the bow would dig in and the boat would cartwheel and we'd all be in the ocean and that would be it. But it managed to, the bow managed with her buoyancy to, to rise to the occasion and we managed to live to fight another one. About half past 6.00 in the morning, I, I had been steering all night and about half past 6.00 in the morning I noticed that we were, that the sea state started to

change. That we're getting a couple of little cross swells that I hadn't had all night. The wind, whereas I had previously been able, I'd been, I'd had to steer 060, I could now get on occasions up to 050 or 040 with the winds still at my stern. So, things were starting to change and it was showing indications that it was, and, and also the wind was starting to abate and you know, from 80 knots back to maybe 60 sort of knots. My crew were just throughout that night were just, just so, so good. The guys in the cockpit, I was getting very tired, I was starting to hallucinate at times and I was very very tired and they, they kept me the pace with motivational stuff and talking to me and telling me where waves were coming and, you know, where I should steer and all that sort of stuff, you know, and they were just tremendous. No one of the crew, not, not one crew took a back seat if you like, in terms of working as a unit to try and survive. And so about 6.30 I started to think in the back of my mind that maybe we might just survive this. That, and then from 6.30 through to till about sort of I recall about 8.00 or 8.30 something like that, the conditions, you know, basically were back to about 60 knots, it's daylight, the sea state's changing and they're no longer dead set cliffs of water, they're, they're a little bit more friendly if you like. Still under

anyone's terms they were still, you know, pretty - - -

Q31 Yeah.

A - - - pretty amazing seas. And I, I recall, so for that period of time from say 6.30 through till about 8.00, 8.30 I decided that maybe, you know, that it was going to be O.K, that we were gunna actually get out of it. Whereas for that previous period of time I, I really felt that death was just one wave away.

Q32 Mm.

Q33 About 8.30, I think it was, in the morning we heard the sound of a chopper, a helicopter and it was out on our starboard side bearing probably if we were steering 040 it was bearing probably about 140 or 150. And we let off in succession I recall two red parachute flares, neither of which the helicopter sighted. We let off a hand held orange smoke flare which it didn't sight and then the second orange hand held smoke it sighted and it, and it came to us. That helicopter was a red and white helicopter and I understand that it may have been part of the Victorian Air Ambulance group or organisation. It went into a hover position facing the oncoming waves and wind just slightly off our starboard side. And the chap who was at the door of the helicopter, with hand signals we communicated in a variety of ways and he indicated to me that he wanted all of the crew in the water, that he

wanted me to abandon the boat. And I indicated to him that I didn't want to abandon my boat at that point. I would add that throughout the night if I had have been able to get off my boat reasonably safely I would have gone that night but at this stage I figured it's, the worst is passed. I had spoken to my crew throughout the night and when opportunity presented it and I had said to my crew that in the event that some sort of a rescue vehicle arrived, that it was each individual crews position as far as I was concerned to make the decision to go or stay. It's not for me to tell them what to do if that opportunity presents itself. And that's something that I felt very strongly about and I still do and it's not something that I'd ever thought about before - - -

Q34 Yeah.

A - - - It just came to my mind at that time. So, the helicopter arrived, there was a little bit of confusion. They managed to with great difficulty drop, drop us a handheld emergency VHF radio which was passed down below and Bob Snape communicated with the pilot. The, the eventuality of that situation was that Tony Perkis with the broken leg, Dave Marshall and Dave Cook one at a time jumped into the water and were taken into the helicopter and left five of us on board the boat. We, we had managed, Bob Snape had managed to find a second GPS unit

down below which was brand new and still in it's cellophane wrapped box and managed to get a couple of batteries that were in the box as well and fire up the GPS and so, so we actually I had been up on deck all night and I had no idea as to where we were but Bob managed to get a position and he tells me that at that point in time we were about 125 miles out from sea. We had started at 4 o'clock the previous afternoon about 30 miles out so we'd be blown about 95 miles out that night. The helicopter, we asked the helicopter what he would like us to do with the handheld VHF, would you like us to have, leave it turned on or turn if off, he said "Leave it on", so we did. Later on that, a number of things happened that day. The conditions abated quite, quite satisfactorily. I mean by late afternoon it was a walk in the park, it was - - -

Q35

Mm.

A

- - - gentle and, you know, we didn't have a problem. Later on I recall later on that morning or perhaps early in the afternoon we heard the ABC chopper calling us on this handheld VHF radio which we had left turned on. And as soon as we attempted to transmit to him the power dropped out. It had no battery power. So, we were once again in isolation. Not long after the, throughout the night and the early hours of the morning I had been when opportunity presented itself, I had thought about what to

do if and when we got through the other side of this black hole about trying to get ourselves back into land. And I had already started thinking about building a jury rig using our spinnaker poles on the boat. And Glen, who was injured down below, had already, had simultaneously been thinking about it, so, when the chopper disappeared and the conditions abated, we talked about it and compared notes and Glen managed to get back up on deck and steer the boat for me whilst myself and Keith Malloy built a jury rig using the two spinnaker poles. And we then hoisted our storm jib and our tri-sail in a fashion. And initially we couldn't make too much heading west back towards land because the seas were still quite big and we didn't want to sail beam on to the sea so we were sailing primarily north and I think in a 12 hour period we managed to get I think some distance north but only eight miles west. So we still had a fair bit of golf to play to get back into land.

Q36 M'mm.

A We sailed along that afternoon on the Monday afternoon which is the 28th. And sometime later in the afternoon an Orion search aircraft located us and it's did a, it did a number of passes over us. We held up a sign that said, "No radio, tow" and the Orion departed the scene. Left us on our own again. But that's O.K, we're sort of, you

know, hanging tough and we'll get there. Throughout that Monday Kier Enderby and Glen Picasso who both had broken ribs as I've referred to previously, they are both fairly mechanically minded and they decided that they might try and get the motor started. So, it's throughout predominantly the Monday afternoon when conditions were, as I say, abating quite pleasingly, they worked unbelievably on the motor. They found problem after problem after problem and one by one they worked through it with these broken ribs and in a lot of pain and it, when it got dark on the Monday evening we ceased working on it because we still had some battery power left and we decided that we wouldn't use our battery power, we would preserve that. So, we stopped working on it, didn't have any cabin lights on or anything like that. Just using the torch that we had. We, I'm just trying to think whether there was something else that happened on that afternoon I can't recall. That's right. At around about, I think around about sort of dusk on the Monday afternoon we decided that we would turn one of our EPIRBs off because we figured we didn't want both of them to go flat at the same time and so we turned one EPIRB off that Monday afternoon evening and we left one, what we thought was working through the night and then the next morning around about 6.00 or 6.30 we rotated them, we turned one off and

turned the other one on again. Well it would appear and we actually haven't, one of them was a fixed aerial while the other one was a flexible aerial. Now, the one with the fixed aerial has been bent, it hasn't been broken off but it was bent, and well, there was also water ingressed in one of them as well. And what we think is that one of them wasn't actually working at all and throughout that night we understand that the HMAS Newcastle or SAR in Canberra lost our EPIRB signal and, and then the next morning when we rotated them they got a signal back again. And it was shortly there after and I think it was around say, 7.00am that a, another search, another Orion located us. It's call sign was 251 and they located us and did a number of passes over us. Kier and, Kier and Glen had already actually started working on the motor again. It was daylight and they were fairly determined to try and get it started. The Orion search aircraft, after some period of time and some confusion from our boat as to actually what they were doing. They dropped a parcel in the water. We managed to drop our storm sails and we drifted over to this parcel and retrieved it and in that parcel were some satchels of water which we didn't really need but it was, thanks for the thought. And also, more importantly, a handheld VHF radio.

Q37 Tony, I'll stop you just there for the moment. The time

on my watch is now 12.12pm and this interview is temporarily suspended for a tape change.

INTERVIEW SUSPENDED

INTERVIEW RESUMED

SENIOR CONSTABLE UPSTON

Q38 All right. The time on my watch is now 12.14pm. The interview between Upston and Mowbray continues. Tony, just prior to the tape change you were explaining that the Orion flew over and dropped a parcel and you were drifting across to the parcel and you picked some items up. Would you like to continue from there?

A Yep. In that parcel there were two items. There was some satchels of fresh water which we didn't really need but it was very much appreciated and there was also more importantly a handheld VHF radio. We turned the radio on and I was able to have a conversation with the pilot of the Orion aircraft whose name is Paul Carpenter in the Royal Australia Air Force. And Paul informed us that the HMAS Newcastle was I think 36 miles from our position and had been directed towards us. Kier and Glen had been, as I said, working on the motor again since daylight. And when they've heard that the navy were, were approaching us they tripled their efforts to get the motor going for a number of reasons, I think at, they saw it as a challenge to get it going and I think there was also a concern that

the navy may, may order us to abandon the boat if we were, you know, not seen to be able to make our own way somehow. At this, this point in time we, we, we were at, in a position that was approximately 95 miles out from Ulladulla and 115 miles out from Eden if you triangulate those two lines we were, that's our approximately position. The conditions were that we had a, a northerly wind and only around about 10, 10 knots I suppose, 10 to 12 knots maybe and we were heading towards Ulladulla, I was trying to get the boat to Ulladulla. The HMAS Newcastle came over the horizon but about 10 minutes before they did, actually I think they were in sight, we could see them coming and Kier and Glen managed to actually get the motor going in the boat and so that when the navy arrived we had our jury rig up with our storm sails. We had the motoring gear and we were doing about five knots heading towards Ulladulla. Now, we were obviously unsure as to how long the motor would keep going but at least we had it going. And those two guys Glen Picasso and Kier Enderby should be commended on their efforts. The Newcastle arrived. They sent a young man and a young woman over in an inflatable dingy who came alongside. And the young man said to me that he was of the understanding that we were to depart the vessel, all the five people on board and I thanked him very much for

coming and sort of suggested to him that I really didn't want to leave my boat. And so he then communicated with the captain of the HMAS Newcastle, Commander Hamilton, and they asked me what it is that we would like for them to do and I said well would they mind taking Picasso and Enderby onboard the HMAS Newcastle because of their injuries we'd like to have them seen to. So they did that. That left Snape, myself and Keith Malloy onboard the boat. The HMAS Newcastle, the AVC chopper also arrived in the area and shot footage I understand. And the HMAS Newcastle informed us that a trawler had been dispatched from Eden to attempt to locate us at the request of our insurance company. And that this, this vessel had been, was heading towards us now and the name of that trawler was Rubicon. And so we, we, we were still heading towards Ulladulla doing 5 knots. Commander Hamilton informed me that the Rubicon was bringing up the rear doing 7 knots, but was 8 miles behind so at that stage it'd take 4 hours for him to find, get to us. And the HMAS Newcastle didn't really want to depart the scene until he was comfortable that we were O.K. He asked me to turn the boat around and head back out to sea again to rendezvous with the trawler. And I can tell you that that was one of the hardest things I've had to do for a while. I'd just spent a long time trying to get back in again and they're asking me to go

back out. But anyhow we did that. The, we rendezvoused with the Rubicon shortly there after. After some discussion in the middle of the ocean about where he was going to take me he, he won the day and I wanted to go to Ulladulla but he wanted to take me to Eden and so that's where we were taken. The HMAS Newcastle departed the scene when they were comfortable and went back to Sydney with Enderby and Picasso and we were given a tow line and towed to Eden. And I think the tow started about 1.00pm, on the Tuesday, the 29th of December and we were, we arrived in Eden at about 4.30am, on the Wednesday, the 30th of December, the next morning so it was about a, a what a 15 hour tow at 7 knots to get us into Eden. And that's, that's - - -

Q39 And that's it?

A Yeah. That's pretty much it.

Q40 O.K. Just a couple of questions. Did you attend the weather briefing at the CYC?

A I did.

Q41 Did you employ any other weather meteorologists to supply information to you?

A No, I did not.

Q42 O.K. Were you happy with the weather briefing that you received from the weather bureau at the CYCA?

A At the time, yes, yes, yes, I am. I mean at the time and

now I'm happy. I mean the weather briefing at the CYC to my mind is fairly typical of most weather briefings prior to yacht races. You walk away thinking, sometimes you'll get a weather forecast where they'll say dead set this is gunna happen and it does happen. But a lot of the time it's a bit of a lottery.

Q43 Right.

A And I thought, I've, I walked away thinking it's going to be a lottery. The one thing that did stick in my mind was the low pressure system that they talked about forming down somewhere in Bass Strait area and on the Sunday afternoon I thought, I think that low's out there somewhere.

Q44 Mm.

A And sure enough it was.

Q45 All right. With the, whilst you were on deck what do you feel that the, the mean wind speeds that you were experienced were?

A From when we were - - -

Q46 In, in the height of the storm?

A 80 knots plus.

Q47 All right. And you used - - -

A 80, the mean wind speed would, we figure would be a good 80 knots. It was a constant wind pressure. It was, it was unrelenting.

Q48 All right. And what type of wind instruments do you have on board to measure that?

A We have Navaco wind instruments. But remembering that we lost our mast - - -

Q49 Yeah.

A - - - at 4 o'clock so we had no way of measuring that. But after you've been out there a fair bit you get to know what 80 knots feels like and what 60 knots feels like and there were eight of us on board and we, you know, it was our collective feeling that 80 knots was. I've got a, a document here that is the response to the questionnaire that the Cruising Yacht Club of Australia sent out to all boats and I'm just trying to see if I can. Yes, the question is, "During the storm what was the average wind speed and direction recorded on your yacht?" And our collective answer on our boat was 80 plus knots, so - - -

Q50 Mm.

A - - - that's that was the all eight crew on board felt that.

Q51 O.K. Now, when you were pushed to the side by the wave and you, you said earlier that you didn't get to 180 degrees but you believe you may have gone up to 120 degrees?

A 150.

Q52 Sorry, 150 degrees.

A Yeah.

Q53 Can you recall the actual time that the vessel was over,
do you have an idea of how long - - -

A Oh - - -

Q53 - - - the vessel was over?

A - - - about, about 20 seconds.

Q54 O.K. So, it came back very quickly?

A Quite quickly.

Q55 O.K.

A Quite quickly.

Q56 And what do you account that for would you say?

A I would say that that's the, well the stability of the
boat.

Q57 Yeah.

A The boat's a very very stable boat. It's got, you know,
quite a substantial keel on it.

Q58 Yeah.

A And I think that the wave action when the wave had
finished with us the boat just bounced up like it should
do.

Q59 O.K. Now, with, when, when you were rolled and the water
came into the boat, the ingress of water, did, were the
batteries on the boat damaged at all or -?

A No.

Q60 Were they - - -

A But that, well subsequently the batteries were corroded and things like that, they were, they were, but they were in a, they were in a part of the boat under a bunk that was raised up from the normal bilge level of the floor. So, they were up fairly high relatively speaking.

Q61 M'mm.

A And no, they weren't damaged.

Q62 All right. What type of batteries are they? Are they dry cell batteries or are they a - - -

A They're a wet - - -

Q62 - - - wet battery?

A Wet acid battery.

Q63 O.K.

A Yeah. But I have taken note of some people since who were talking about gel batteries and I'm going to get some of those.

Q64 Right. Now, your harnesses and lanyards, are they all belong to you or the, or the - - -

A Yes.

Q64 - - - or boat?

A Yeah, the safety harnesses were the boat's equipment.

Q65 O.K.

A Yes.

Q66 And what brand are they?

A Um - - -

Q67 Do you recall?

A - - - I think they're Burke, I think.

Q68 All right.

A I'm fairly sure.

Q69 O.K. And, and how old were they?

A I don't know.

Q70 Right. Were they on the boat prior to you owning it?

A They were.

Q71 Right.

A They came with the boat. If I had to, if I had to estimate their age I would say that they would be, I'd say that they would be anywhere between 6 to 10 years old.

Q72 Right. Do you know if they comply with the Australia standard?

A They comply with, they certainly comply with the requirements for a category 1 safety certificate - - -

Q73 Right.

A - - - in terms of what those requirements are.

Q74 O.K.

A Or were at the time.

Q75 Yeah. All right. Would you be in a position at one stage to have one of the harnesses delivered to this place?

A Yes.

Q76 Where we could have a look at that?

A Yeah, no problems.

Q77 O.K.

A You can have the lot. Yeah.

Q78 The, now, the, what sort of life rafts do you have on board?

A We have one raft which is an eight man raft in a hard pack fibreglass case which is mounted on the deck just forward of the mast and I recall that it's an RFD raft but I may stand corrected on that, so I - - -

Q79 Right.

A - - - I would have to check.

Q80 Now, it was an eight man life raft?

A Yes.

Q81 And how many crew did you say you had?

A Eight.

Q82 Eight. You had eight so that was - - -

A Yeah.

Q82 - - - compatible - - -

A Yes.

Q82 - - - with what you needed?

A Yeah.

Q83 You didn't have any other rafts that -?

A No other raft.

Q84 Right.

A No.

Q85 O.K. Now, the life vests, was everyone wearing a life

vest on, on the boat?

A No.

Q86 Right. Do you have life vests for everybody - - -

A Yes.

Q86 - - - on board?

A Yes, yes.

Q87 And what type of life vests are those?

A They are the standard PFD's that you buy at the chandlers that might cost 20 or \$25 each with the - - -

Q88 Yeah.

A - - - the chunk of foam and the yellow covering on them.

Q89 O.K. And do you recall the brand of those?

A No.

Q90 No, O.K. Now, you mentioned earlier that your insurance company - - -

A May, may I just add there that - - -

Q91 Yes.

A - - - an interesting, something that I have reflected on since the event with, particularly with Bob Snape, who is, who I've known all of my life and sailed with all of my life and done a lot my sailing with and he's a very very senior man, the senior man on the boat, we've reflected on the fact that at the height of the problems neither of us thought to get life jackets out and put them on. I don't, I can't explain why. We were all had our safety harnesses

on but it, it, throughout that night, no one thought about getting a life jacket out and putting it on.

Q92 Mm.

A And I, I, that's, that's crazy.

Q93 Yeah. Do you think, do you think if you would have had a life vest - - -

A Yes.

Q93 - - - or as they call, you would be wearing those instead of - - -

A Yes.

Q93 - - - instead of the PFD bulky type?

A Yeah. Look the PFD bulky type are just not functional and practical.

Q94 Yeah.

A They're just as far as I'm concerned they're a waste of time in that sort of situation. Just, they should be in my opinion, should not be allowed.

Q95 Mm.

A There should be a better slimmer fitting more comfortable thing that you can wear all the time - - -

Q96 Right.

A - - - if, if you want to.

Q97 Right.

A Yeah. For sure.

Q98 And you know they are available?

A Yes, they are available. They're more expensive - - -

Q99 Yeah.

A - - - but hang the expense.

Q100 Yeah. O.K. Now, going back to, you mentioned your insurance company which sent the - - -

A Yes.

Q100 - - - trawler Rubicon out.

A Rubicon.

Q101 O.K.

A R-U-B-I-C-O-N.

Q102 Right. What, what's the, your insurance company?

A Well, the insurance company itself is a company called FAI Insurances and, but the it was my insurance broker that organised the vessel and that is a company called R&M, M for Mike, R&M Insurance Brokers, they are based in Newcastle. They organised the fishing vessel.

Q103 And has the trawler Rubicon been paid as far as you're aware of their -?

A Yes. He was paid. He was paid and I understand that he was paid, I understand he was paid about \$20,000 - - -

Q104 M'mm.

A - - - to, which I consider to be an exorbitant fee - - -
-

Q105 M'mm.

A And I also understand that the reason that he insisted on

taking me back to Eden which was further to get me back to land and I didn't know this at the time but he was, he proved to be quite, he didn't want to talk about the matter really at sea but the reason he wanted to take me to Eden was that he had been engaged also to try and go out and find Sword of Orion. And so we got into Eden at half past 4.00. By 5 o'clock he had gone again. So, if he had have taken me to Ulladulla he would have put in, and he was on another \$20,000 to find Sword of Orion, I understand, because the insurance assessor who was handling my case was also handling the Sword of Orion.

Q106 Sword of Orion.

A Yeah. So, he didn't want to take me which I considered was safer to get me to land more quickly but -

Q107 Mm.

A He chose, he insisted on taking me to Eden so he'd get another bite of the cherry.

Q108 All right. Just one more question. Are any of your crew or were any of your crew paid to be on board your vessel?

A Were they paid by me?

Q109 Yes.

A No.

Q110 Were they paid by anybody?

A No.

Q111 Right. So there was no, there was no money exchanged or

there was no type of contract between any of the crew to sail in, in the Sydney to Hobart as far as you're - - -

A No, in actual, in actual fact they paid me. They contributed towards the cost because they're people that I know and they had approached me about participating in the Hobart race and I said that I really couldn't afford it. And so they suggested that they may contribute towards some of the costs. So between them they've put in money to help pay the entry fee and the insurance premium and things like that.

Q112 Yeah.

A Which then made it a more manageable thing. So, they paid me to be there.

Q113 Right.

A So.

Q114 But basically that wasn't to, for you to put money in your pocket it was - - -

A No.

Q115 It was to run the boat - - -

A Yeah.

Q115 - - - as them being competitors?

A Yes. Yeah, yeah.

Q116 Yeah.

A So they, you know, as I say we all of the people, we all knew, I knew all of the people. Some of them didn't know

each other but the majority did and yeah it was a way of us being able to participate.

Q117 O.K.

A Without, without that contribution I wouldn't have been able to participate in the race.

Q118 O.K. All right, Tony is there anything now that you feel that you'd be able to, to tell me on top of what you've already said that may assist in the inquiries?

A Well, from a safety point of view I've already mentioned life preservers and how the, the standard bulky ones are just not functional. I think things like handheld VHF radios in a waterproof container are, are essential equipment. I also feel that they should be operated with batteries like a D cell or a C cell rather than a battery that has to be plugged into some sort of a specialist charger whilst you are on land. I think that flares that we could probably had, you know, make use with more flares. There are some in terms of the, I think that EPIRBs, I think each yacht should have two EPIRBs and I also feel that at least one of those EPIRBs should be the 406 megahertz type rather than the more commonly, common one. I think that each yacht should definitely have a back up, you know, GPS system in a, a waterproof container. I think that, that things like life raft and emergency procedure drill courses should be initiated and

that crews, a percentage of the crew should be required to attend those courses as a prerequisite to a boat being able to participate in races. Because as an example, on our boat, no-one on our boat had ever been in a life raft. No one had ever ever inflated a life raft, as far as I'm aware, in any situation. I think that safety harnesses are an area that, are an area that, that can be looked at although I feel that there is probably no one single answer to, to the safety harness problem. And as an example, you know, there are different types of clips you can use. One has got a single action the other one has got a double action. Now, the single action can actually, in certain situations, can unclip itself but if you put a double action on and you've got someone trying to undo that who is not familiar with the action of a double action clip then it can be very confusing particularly in times of stress if you're under water and things like that. And also when you are clipping on or unclipping temporarily to clip onto another location, that is at a time when you are very vulnerable and I feel that there may be, like, I myself will instigate my own situation where I'll probably have a short strop and a long strop on my harness so that I can be always clipped on at any given point in time. And I think that, you know, crew members should be encouraged to wear, whether it be made

mandatory, I think it's just maybe an encouraged thing to wear, you know, inflatable type life jackets as we've discussed, a more comfortable type of arrangement. There are, I think, on the, I think the weather, I think in the Hobart race one of the things that, that, that I, I feel is a flaw was that we had a, our first radio schedule was at 8.00pm on the first night of the race, the 26th of December where we were given information for weather. The next radio schedule was at 3.00am on the morning of the 27th, where we were given further information. Now, from 3.00am on the morning of the 27th through to 2.00pm on the afternoon of the 27th, which is 11 hours we had no weather information. Now, people would say that you are free to listen in to a variety of weather, independent weather broadcasters and stations and proceed and, and pick up, to pick up weather information. And that's fine. People are free to do that. My argument is that a lot of boats don't. A lot of boats just rely upon the so-called mother ship which by it's very name infers some sort of a safety umbrella and that the mother ship or the relay vessel will give you all of the weather you need and I know there are boats out there that do that. So, here we are, we've got this 11 hour period from 3.00am through to 2.00pm where the conditions really started to deteriorate, where a lot of boats including, and we were one of those people, we

didn't pick up any weather external we just waited for the mother ship. So, I feel there needs to be a more thought put into how often those weather forecasts occur. And I have also read the report that the Cruising Yacht Club of Australia have, have put out about the event and in terms of most of their recommendations that they have put forward, I support those in respect of weather and other safety procedures. There, there is nothing that I disagree with. It will add a lot of expense to the sport but, you know, it's the old story what value do you place on a life.

Q119 Mm.

A So, I for, and I for one in the past have been, I've always complied with the safety regulations but I've never gone the extra mile if you like. I've never made sure that I've got extra flares or another EPIRB, but I tell you I will in future.

Q120 Mm.

A So -

Q121 Mm. O.K. All right. All right. Nothing else?

A I'm comfortable with that. I - - -

Q122

A I think I've given you enough to -

Q123 Yes. All right. The time on my watch is now 12.36pm.
This interview is now concluded.

INTERVIEW CONCLUDED