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(10.35 am)

Closing Submissions by MR MEESON (continued)

MR JUSTICE DAVID STEEL: Good morning.

MR MEESON: Morning, sir. Before I continue, there is at AG10, page 164.1, a very short additional letter from Mr Stansfield, whose statement I read yesterday, referring to why he thinks that the water came on board the Ranger Cadmus through the fish chutes. It is addressed to the Treasury Solicitor and it says:

"On the Ranger Cadmus, sister ship to the Ranger Castor (Gaul), the duff and offal chutes were normally shut when the fish processing had been completed. Also the donkey (water hose) was also stopped. That's how it came to the conclusion that the water on the factory deck had come through the hatch on the trawl deck, eg trapped small fish.

"Thank you for replying to my first statement."

That is just a bit of supplementary information from Mr Stansfield.

Sir, the next topic that I wanted to consider was the question of lube oil pipe fractures and steering gear problems, because we know that these two matters may have caused difficulty on board the Gaul shortly before she was lost.

1 Dealing first of all with the question of lube oil
2 pipes. Chief Engineer Sim's personal notebook records
3 a number of occasions when a problem with the fracturing
4 of lube oil pipes on board the Gaul occurred prior to
5 her last voyage. The reference to his notebook is AG13,
6 tab 5, page 161.

7 There are a number of occasions that he refers to
8 between April and July 1973. In April he refers to
9 a stoppage lasting a total of nine hours. Then on
10 11th June there was another stoppage to repair split
11 pipes. On 29th June, the main engine was stopped again
12 for a weld split, and on 12th July, the main engine was
13 stopped again and this time some pressure pump discharge
14 pipe flange bolts had sheared and new joints had to be
15 made and fitted.

16 MR JUSTICE DAVID STEEL: Is that the occasion when he
17 adds, "How many more failures are there going to be"?

18 MR MEESON: I think that was. Sir, that is number 3, the
19 29th June entry, which is page 180 of tab 5 of AG13.

20 Sir, you will also recall Mr Scott describing to
21 this Inquiry on Day 5 at page 11 how Chief Engineer Sim
22 had claimed that on one voyage he had lost over
23 1,000 gallons of lube oil and on another 700-gallons.
24 Chief Engineer Sim was called to give evidence at the
25 original formal investigation and gave evidence about

1 the problems of fracturing lube oil pipes. He stated,
2 when examined by Mr Brice, that the pipes had split six
3 or seven times over the first voyage in January 1973 and
4 thereafter not less than five times per trip. That is
5 OFI Day 8, pages 27 to 28. He also went on to explain
6 how, when the repairs were being carried out to the
7 split pipe, the vessel would be stopped in the water all
8 of the time.

9 Mr McCombie explained to us here in evidence that
10 the loss of lube oil could cause the engine to seize.
11 However, there was no record showing that the engine had
12 ever shut down as a result of loss of lube oil. That
13 was Day 16, page 48. Indeed, the inference from the
14 notebook is not so much that the engine seized but that
15 on each occasion it was deliberately stopped so that
16 repairs could be carried out. His deposition supports
17 this, where he confirms that the engine was stopped for
18 repair, except on one occasion in the summer of 1973
19 when there was a failsafe shutdown activated by a loss
20 of lube oil pressure.

21 However, Mr Scott's evidence suggested that the
22 engine stopped on each occasion rather than being shut
23 down.

24 Mr Wileman was told by the crew of the Gaul that on
25 her first voyage she "would stop dead ... dead in the

1 water. No engines, no electricity, nothing, just dead
2 in the water". That was Day 8, page 54. And we have
3 the letter also now from Mr Powell at AG10, 165, who
4 thinks that those sudden stoppages may have been due to
5 teething problems.

6 Obviously it is more likely that Chief Engineer
7 Sim's direct evidence as to whether the engine stopped
8 itself or was stopped by the engineers is likely to be
9 more reliable than the evidence of Mr Scott, who is
10 recording only what he has been told by Mr Sim.

11 Chief Engineer Sim went on to estimate that when the
12 main engine did stop it took about five minutes in order
13 to change over to emergency propulsion. The reference
14 for that is AG9, page 257 in his deposition.

15 Skipper Suddaby was sceptical of Chief Engineer
16 Sim's account of the vessel's condition and you may
17 recall him saying he doubted whether the vessel would
18 have ever got out of the Humber if she had been in the
19 condition suggested by Mr Sim. He said that to this
20 Inquiry on Day 11 at page 86.

21 In any event, by the time of the last voyage in
22 January 1974, Chief Engineer Sim had asked for the pipe
23 to be replaced and he believed that it had in fact been
24 renewed. That was his evidence at the original inquiry
25 on Day 8.

1 Mr Sabberton confirmed this to this Inquiry on
2 Day 7, page 71, and as far as we are aware, up until the
3 time of the loss there was no reported problem on the
4 last voyage regarding lube oil fractures.

5 The fact that the propeller pitch was found at full
6 ahead is of course consistent with a sudden engine
7 failure occurring, and that could have occurred either
8 prior to sinking or during sinking. Therefore that does
9 not itself give further guidance in determining whether
10 the vessel lost power immediately prior to the sinking
11 and before having an opportunity to change over to
12 emergency propulsion, but it does suggest that the
13 engine was not deliberately stopped in order to carry
14 out repairs.

15 MR JUSTICE DAVID STEEL: I am not quite sure I follow that
16 because if they had deliberately stopped they would have
17 gone to zero pitch first.

18 MR MEESON: Exactly. If the engine had been stopped by the
19 engineers because they needed to carry out a repair then
20 the pitch would have gone back to zero. If, on the
21 other hand, it shuts down itself, then it may not do so.

22 If the vessel had lost propulsion, then we know that
23 she would have adopted a position with the bow away from
24 the wind and waves -- in other words with the wind and
25 waves on the port quarter -- placing her in a vulnerable

1 position. That appears from the Marin free drifting
2 experiments at AG8, page 23, at paragraph 6.3 of the
3 Marin report.

4 The steering gear. Obviously the Sperry automatic
5 steering gear was ordinarily used in bad weather to
6 steer the vessel, but we do know that during the last
7 voyage problems were reported with the steering gear.
8 So at about 1530 on 7th February, the chief engineer had
9 called Mr Underwood of Hellyer Brothers to report that
10 the Sperry automatic steering gear would not work in
11 automatic but the hand steering unit was working
12 correctly so that he could not steer off his master
13 compass. That was Day 3 of the original inquiry, pages
14 3 to.

15 4. Mr Underwood spoke with Sperry who in turn
16 advised the chief engineer he should check the power
17 circuit lines. The chief engineer said that he would do
18 that, and he took the office out of hours telephone
19 number for Sperry in the event that there were further
20 difficulties. The Gaul made no further contact with the
21 shore staff, nor did he contact Sperry direct. It was
22 therefore assumed that the problem had been resolved and
23 that there was no further difficulty.

24 MR JUSTICE DAVID STEEL: Going back to paragraph 109, so
25 I make sure I understand what you understand the

1 evidence to be, the report was the gear "would not work
2 in automatic, but that the hand steering unit was
3 working correctly ..."; that is the little hand tiller,
4 is it, as opposed to the wheel?

5 MR MEESON: Yes, the little tiller that we have heard about.

6 MR JUSTICE DAVID STEEL: "... hence he could not steer off
7 his master compass". I am not sure I am following that.
8 Why not? Is that a gyro?

9 MR MEESON: This was Mr Underwood being examined by Mr Brice
10 when he was asked:

11 "What was the nature of the fault?

12 "Answer: The nature of it was that the steering
13 unit would not work in automatic. The Sperry tiller
14 unit would work correctly, his hand steering unit would
15 work correctly, but he could not steer off his master
16 compass in automatic."

17 MR JUSTICE DAVID STEEL: Oh, in automatic. So it was not
18 that he could not use his master compass to steer with
19 the hand tiller?

20 MR MEESON: No.

21 MR JUSTICE DAVID STEEL: Okay.

22 MR MEESON: A number of witnesses did give evidence both at
23 this Inquiry and at the original inquiry to the effect
24 that the Gaul did indeed continue to experience problems
25 after 7th February. Sir, we have Mate McCarthy of the

1 Victory speaking to Mate Spurgeon on the night of
2 7th February, when Mate Spurgeon mentioned that the
3 automatic pilot was down and the Gaul was a "fucking cow
4 and a half to steer by hand", which was a reference,
5 I think --

6 MR JUSTICE DAVID STEEL: That is a puzzling observation. It
7 is not that difficult, one would have thought, to steer
8 with a hand tiller so that suggests they are in hand
9 steering.

10 MR MEESON: That suggests they are in completely manual hand
11 steering mode.

12 MR HOPPER: I think in answer to a question I raised, the
13 answer I was given was that if they would not steer with
14 the hand tiller, they would revert to the steering
15 wheel.

16 MR MEESON: Yes.

17 He spoke to Mate Spurgeon again between about
18 midnight and 0400 on 8th February but the steering gear
19 was not mentioned at that time.

20 Mate Patterson of the Chriscilla also recalled
21 a conversation with the Gaul at about 0130 on
22 8th February in which he was told by the Gaul that she
23 "was having a problem" with her steering and asked the
24 Chriscilla to give her "a couple of points". That was
25 at Day 4, page 105. Mate Patterson had no idea as to

1 what the problem was.

2 Skipper Barker of the Southella recounted in his
3 witness statement overhearing a conversation between the
4 Gaul and the Chriscilla at what he thought was about
5 lunchtime on 8th February in which the Gaul told
6 Chriscilla that she was fixing her steering. And on the
7 morning of 8th February, Skipper Madden of the Kelt
8 spoke to Skipper Nellist, who told him that he was
9 having problems with automatic steering gear on board
10 the Gaul. That is AG10, page 31.

11 So it does appear from all those references that
12 notwithstanding the fact that Sperry may not have been
13 contacted directly, that there was a problem with the
14 steering gear.

15 Another aspect is that, of course, we know that the
16 steering gear -- or the automatic pilot was missing from
17 its position on the wreck. Of course what we do not
18 know is whether that was as a result of it having been
19 taken off to be repaired or whether it was a result of
20 it having corroded -- I think it was on an aluminium
21 base -- over the 30-odd years that the wreck has been
22 there. It is a tantalising piece of evidence that does
23 not actually take us very much further on this question.

24 So to conclude on the question of lube oil
25 fractures, it is not at all clear that there was any

1 problem with lube oil fractures during this voyage.
2 Steering gear problems, there does seem to be
3 significant evidence that the Gaul was having problems
4 with her automatic steering. The relevance of that, or
5 the effect of that will be that if the vessel was in
6 hand steering, and if she was, as graphically described,
7 not the easiest of vessels to hold in hand steering,
8 then, of course, the likelihood of the vessel suffering
9 a broach or anything of that nature would be increased,
10 or the likelihood, rather, of the skipper or the mate,
11 or whoever is on the wheel, not being able to -- the
12 likelihood of that would be that she would be less able
13 to recover if the vessel did broach, and subsequently
14 maybe rolled.

15 MR JUSTICE DAVID STEEL: I remember the question Mr Hopper
16 has reminded us about and the answer but it puzzles me
17 that if there is a hand tiller available he would revert
18 to hand wheel to steer the vessel. Can we think of any
19 reason why one would abandon the tiller?

20 MR MEESON: Not if the tiller was working.

21 MR JUSTICE DAVID STEEL: So it suggests that if they are in
22 hand steering something has gone wrong with the entire
23 Sperry system?

24 MR MEESON: Yes. The other piece of evidence that I have
25 omitted is that at the original inquiry Mate Brayshaw

1 also recalled, on 8th February, that the Swanella was
2 having problems with her Sperry steering because it kept
3 getting knocked out by the pretty huge seas. That was
4 at the original inquiry Day 4, page 15. Whether that
5 would be a reason why the hand steering was used,
6 I would not have thought it was.

7 Sir, there is a page missing from my written
8 submissions. Page 64 will follow shortly.

9 MR JUSTICE DAVID STEEL: Mr Craven was just saying to me
10 that in his experience the Sperry steering system did
11 have this feature, that it tended to knock out in bad
12 weather, but you would expect, unless there was
13 something wrong with the entire Sperry system, that he
14 would revert to the tiller and not start taking up the
15 hand wheel. Anyway, there it is.

16 MR MEESON: It is another, again, tantalising piece of
17 evidence. It would obviously be consistent if the unit
18 had had to be removed, for example if the radio officer
19 or the electrician was trying to repair it, then that
20 might be a reason why the vessel was in hand steering.
21 Otherwise it does not really have a logical explanation,
22 I do not think.

23 MR HOPPER: Another piece of evidence that I have noted for
24 my own interest was the major overhaul of the steering
25 system in the in port period prior to this voyage, which

1 resulted in the entire system being dismantled and
2 reassembled, which caused Lloyd's some dismay because
3 I think they felt they should have been informed about
4 that.

5 MR MEESON: Yes. I have already mentioned, I think, that on
6 the wreck the autopilot was missing from its proper
7 place. It had been either deliberately removed and was
8 being mended, and in this connection it is the case that
9 a cylindrical object was observed in the radio room
10 during the 2002 survey which could possibly have been
11 the autopilot under repair, but, again, no positive
12 identification of that could be made. Alternatively, it
13 could have become detached or fallen away during the
14 sinking or in the 30 years since the sinking, as
15 I indicated earlier.

16 I mentioned the question of broaching in hand
17 steering. The other point is that, of course, if the
18 vessel was in hand steering and they were having
19 difficulty holding the vessel, then that might have been
20 a reason to have taken a decision to seek the lee of the
21 coast of Norway rather than stay out laid and dodging if
22 Skipper Nellist thought that from the weather forecast
23 he had received, that he was likely to be out there for
24 some period of time.

25 I referred, I think, earlier to the radio room where

1 the cylindrical object was found. I think I should have
2 referred to the radio workshop.

3 Sir, again for the record, Mr Hopper referred to the
4 repair carried out on the previous voyage. The
5 reference to that is OFI bundle 1, page 96, which is
6 a repair list of 12th September 1973.

7 Sir, freeing ports is another area which we have
8 heard evidence about, and in particular the question of
9 whether the freeing port area was in accordance with the
10 Rules of Lloyd's Register and whether it also complied
11 with the IMCO guidelines that had been issued by that
12 time.

13 Sir, you will recall that the conclusion of the
14 original investigation was that the freeing ports
15 complied with both the Lloyd's Register Rules and the
16 IMCO guidelines. However, considerable further
17 examination of this question has been done for this
18 Inquiry and those conclusions are called into doubt.

19 At the original investigation, the evidence was that
20 the freeing ports had an area of 48.6 square feet as
21 against Lloyd's Register Rule requirement of 47.2 square
22 feet. That was the subject of an experts' agreement at
23 AG9, page 87.

24 It currently remains the opinion of Lloyd's Register
25 that the freeing ports on the Gaul complied with their

1 rules, having an area of 49.29 square feet as against
2 a requirement of 28.44 square feet. That is at AG35.1,
3 pages 36 to 37.

4 However, Mr Tanton has considered the matter in some
5 detail, which is set out in AG15.8, and, based upon the
6 underwater video evidence, has concluded that the
7 freeing port areas were not all as shown on the plan
8 which had received class approval. He calculates the
9 area as being 18.33 square feet on the port side and
10 24.01 square feet on the starboard side, compared with
11 a rule requirement of 24.22 square feet on both sides.
12 He calculates the IMCO recommended area as being
13 36.44 square feet on both sides.

14 MR JUSTICE DAVID STEEL: Is this because his perception is
15 that, in a sense, the cut into the bulwark is actually
16 smaller than is on the plan?

17 MR MEESON: Sir, yes. I think what he says is that if one
18 examines the actual physical condition of the vessel, it
19 is not as per the plans which were originally approved
20 by Lloyd's on which presumably they base their
21 calculations.

22 MR JUSTICE DAVID STEEL: I am confused by that answer. He
23 says he looks at the underwater video evidence which
24 concludes the free port areas were not shown in the
25 plan, as I understand it.

1 MR MEESON: Yes.

2 MR JUSTICE DAVID STEEL: So that the builders did not follow
3 the plan, effectively?

4 MR MEESON: Yes.

5 MR JUSTICE DAVID STEEL: Yes, I understand, thank you.

6 MR MEESON: Sir, you will recall that the Lloyd's Register
7 Rule requirement is basically the 1966 convention, and
8 the IMCO recommendation results in a larger area.

9 It appears from this that the freeing port on the
10 starboard side was very marginally deficient; that is
11 24.01 square feet as against 24.22 square feet, which is
12 probably fairly de minimis. But on the port side there
13 was a substantial deficiency of 18.33 as against 24.22,
14 and plainly neither freeing port area met the IMCO
15 recommendations.

16 In practice, we suggest it was likely that the
17 freeing ports would have in fact been obstructed, as was
18 found to be the case on the Arab, which we have at the
19 OFI document 40, which is in bundle 2 of the OFI
20 documents at page 58 to 59. Such obstruction would, in
21 practice, probably have had a far greater effect than
22 any deficiency in area compared with the rule
23 requirement, particularly on the starboard side where
24 the deficiency was marginal. Of course, in many
25 respects it is the starboard side that we are looking

1 at.

2 Furthermore, we know that the stern ramp gates were
3 open, that the vessel had a stern trim and would be
4 pitching, and so water would have been shed rapidly from
5 the trawl deck. It is therefore unlikely that the fact
6 that the freeing ports did not comply with the
7 Lloyd's Register Rule requirements had any causative
8 effect on this casualty.

9 Obviously, that said, freeing ports was an important
10 issue. And, sir, you will recall that as a result of
11 the work done at the original formal investigation, the
12 freeing ports were substantially increased on all the
13 sister vessels.

14 Sir, I then turn to consider whether the Gaul was
15 fishing at the time of her loss. The last report from
16 the Gaul was at 1030 on the morning of 8th February,
17 which we have at OFI bundle 1, page 115, and that report
18 said that she was laid and dodging. We now have other
19 copies of skippers' schedules showing exactly the same
20 thing. At that time, other vessels in the same area
21 were also laid and dodging and remained laid and dodging
22 until the morning of 10th February -- those who remained
23 in that area. The sea conditions were worsening rapidly
24 on 8th February and did not reach a peak until midday on
25 9th February, as we can see from the ocean weather

1 report at AG19, page 10.

2 So if Skipper Nellist had stopped fishing and was
3 dodging at 10.30 on 8th February, then it would make no
4 sense at all for him to have resumed fishing later when
5 the weather and sea was even worse. It is simply an
6 illogical thing to do.

7 According to Skipper Boughen of the Cordella, he had
8 overheard Mate Spurgeon telling someone by VHF that
9 Skipper Nellist had said that they -- in other words the
10 Gaul -- were "in for a long dodge" at about 0715 on the
11 morning of 8th February. That was on Day 6 of the
12 original inquiry at page 11. At that time the Gaul was
13 heading towards land on a course of about 140 to
14 150 degrees; again, Day 6 of the original inquiry,
15 page 23.

16 Experienced skippers and mates who were in the North
17 Cape Bank area during that storm and who have been asked
18 for an opinion as to whether the Gaul could have been
19 fishing in those conditions have each answered that
20 question negatively.

21 Skipper Suddaby commented that he did "not think she
22 was fishing for one minute", commenting that a freezer
23 trawler might fish in a force 8 or, on occasions, a bit
24 over that. He told us that here on Day 3.

25 Skipper Suddaby also went on to explain how fishing

1 in a storm would in any event reap only poor catches and
2 so there was little to be gained from taking such
3 a risk.

4 Mate Petty said that you would not take a risk and
5 fish in force 8. He went on to say that there was
6 nothing that he had seen about the wreck that suggested
7 to him that the vessel had been fishing at the time of
8 her loss.

9 Mate Patterson told us on Day 4 that in the
10 conditions experienced it was "definitely not safe to
11 fish".

12 Skipper Wharram remarked that even the top skippers
13 out of Hull were not fishing in those conditions and he
14 did not believe that the Gaul was fishing. By contrast
15 to Mate Petty, Skipper Wharram thought that one might
16 fish in a force 8, possibly force 9 but not force 10.

17 Skipper Keillor based his opinion that the Gaul was
18 not fishing on the fact that no other vessels were
19 fishing in those conditions.

20 Skipper Waller did not believe that the Gaul would
21 have been fishing at the time of her loss since in those
22 conditions it would have been "very dangerous for the
23 deck crew".

24 Skipper Madden commented that the weather was force
25 9 or 10 and it was "not fishing weather". He went on to

1 elaborate, stating that:

2 "... you can have winds of 9s or 10s, but if your
3 sea state is okay for fishing, okay. Sometimes you have
4 a 3 or 4 knot wind but you could have a bad sea swell.
5 It is different conditions. But that night was not
6 fishing weather."

7 Skipper Thresh also maintained his view that the
8 Gaul was not fishing at the time of her loss and did not
9 consider the fact that the ramp gates were open or the
10 net stores were open as undermining his opinion in any
11 way. That was Day 13 of this Inquiry, pages 120 to 125.

12 Sir, the relevance of those opinions are that the
13 evidence that has been given about Skipper Nellist is
14 that he was a sensible and cautious person, and he would
15 not be a person to have taken risks and done something
16 that other skippers in that area would not do.

17 The suggestion that the Gaul may have been fishing
18 has been based partly on the condition of the wreck as
19 found during the underwater surveys and partly on some
20 idea that the Gaul may have been proceeding to Malangan
21 and fished on the way during a lull in the weather.
22 However, given the location of the wreck the Gaul never
23 achieved any lee, nor did she reach the area where
24 vessels were still fishing. The wreck was found in the
25 same area as all the ships which were laid and dodging.

1 Sir, the idea that there was a lull in the weather
2 is an entirely eccentric idea based upon no evidence
3 whatsoever. All the evidence suggests that there was no
4 such lull in the weather. The eye of the storm passed
5 considerably to the south of where the vessels were, and
6 the evidence from Oceanweather shows that, far from
7 being a lull at any time, the weather continued to
8 worsen for a further 24 hours.

9 MR JUSTICE DAVID STEEL: I do not know that I actually
10 remember that suggestion. That emanates from where?

11 MR MEESON: It is a suggestion from the helpful Mr Hine.

12 MR JUSTICE DAVID STEEL: Thank you.

13 MR MEESON: As far as the condition of the wreck is
14 concerned, the net store would not have been open if the
15 vessel had been fishing because it would have presented
16 a hazard to those working on the starboard quarter, and
17 in any event would have been in the way of the trawl
18 wire.

19 Similarly, the fish hatches would only be open if
20 the cod ends were being tipped. Although a cod end was
21 indeed found draped over a wire on the A frame, this
22 does not appear to belong to the Gaul and is not
23 connected to the Gaul's tipping gilson wire. The Gaul's
24 working gear was on board and her port door found stowed
25 in the 1998 survey.

1 Sir, you will recall that the starboard door was
2 found during the 2002 survey.

3 A suggestion has been made that because
4 Mate Brayshaw claimed to have seen the Gaul's ramp gates
5 closed they must have been opened subsequently and that
6 the only reason to do this would have been for the
7 purpose of fishing. There are two difficulties with
8 this argument. First of all, the evidence of
9 Mate Brayshaw on this particular point is both thin and
10 unreliable. Secondly, there may well be other reasons
11 for opening the gates, for example to avoid them being
12 damaged by heavy seas as they had been on other
13 occasions or to dispose of rocks or other items from the
14 trawl deck or to carry out certain jobs on the trawl
15 deck whilst the vessel was laid and dodging.

16 Attention has also been focused on the position of
17 the switch for the Andanese lights on the bridge; that
18 is the switch on the bridge rather than the lights on
19 the bridge. One thing which is certain from the
20 underwater footage is that this switch was not at the
21 position for either hauling or come fast. It was either
22 in the off position or was set to shooting. We can see
23 that from AGP18 and 19, 20, and 21, where we can see
24 there that the most likely conclusion is that it is
25 actually pointing to off.

1 So there is in truth no evidence at all from which
2 it could be concluded that the Gaul was fishing at the
3 time of her loss.

4 MR JUSTICE DAVID STEEL: Before we move on, can we just
5 focus for a moment on another possibility, that work was
6 being done on deck with one of the items of trawl
7 equipment, the net store was open and the fish hatches
8 were open for the purpose of carrying out that work.
9 I.e. she was not fishing but she was engaged on work on
10 the deck. That seems to be another at least canvassed
11 possibility.

12 MR MEESON: It is a canvassed possibility. The difficulty
13 with that is that neither the fish hatches nor the net
14 store were properly secured in their open position. The
15 fish hatches did not have the locking pin in place, and
16 it would seem quite extraordinary, particularly if one
17 was working in bad weather where one could well expect,
18 for example, a wave to come up the trawl deck and hit
19 the fish hatches, not to have the locking pins in place,
20 because if the hydraulics failed and those hatches came
21 down -- as was indicated, I think, by Skipper Thresh
22 that had happened on a previous occasion fairly
23 recently, where a man had, I think he said, lost his arm
24 or something similar anyway, had been seriously injured
25 as a result of a fish hatch falling down because the

1 locking pins were not in place. So that seems to be
2 a rather unlikely event.

3 Similarly the net store hatch. If one had the net
4 store hatch open, one would have expected it to have
5 been secured in the open position with the pin, because
6 again that is quite a heavy hatch. I think somebody
7 said it has to be opened with the gilson wire or
8 something similar, and it is not, again, something that
9 one would want to risk injuring somebody by it being
10 struck by a wave or something similar.

11 The evidence really as to the condition of those
12 hatches we would submit suggests probably that work was
13 not being carried out and that there are other
14 explanations, as I indicated yesterday, as to how those
15 hatches came to be in that position --

16 MR JUSTICE DAVID STEEL: I suppose also this is a viable
17 scenario: one has got to contemplate sufficient water
18 coming through the fish hatches to endanger the vessel
19 without steps being taken to do something about it.

20 MR MEESON: Well yes. If it is relevant, then one has to
21 say, "Well, what is going to happen? How is the water
22 going to get through the fish hatches?" As I indicated
23 yesterday, in terms of rolling, they are not affected
24 until the vessel gets to 66 degrees. In terms of water
25 coming up the stern ramp, then obviously that could

1 happen, but the evidence is that that was not
2 a particular problem on board the vessel. It could have
3 been perhaps in certain circumstances, but one would
4 then need, really, rather a large amount of water to
5 come on board and then, as you say, one would have
6 thought that at that stage somebody would try and drop
7 the hatch or do something. It is difficult to see the
8 vessel being suddenly overwhelmed merely because she has
9 her fish hatches open. It could not be ruled out, but
10 it just seems rather unlikely.

11 MR JUSTICE DAVID STEEL: I suppose also one has to give some
12 consideration as to what would happen to the poor people
13 who were on deck at the time of her loss.

14 MR MEESON: Yes. Well, the fact that the mate, for example,
15 was found in the chart room, one might have expected
16 that, if that work was being carried out, it may well
17 have been the mate who would have been on deck
18 supervising it.

19 MR JUSTICE DAVID STEEL: We are not sure that we see that as
20 a likely requirement for what I call working on the
21 trawl.

22 MR MEESON: I think the only evidence that we have against
23 it, or positive evidence, is the absence of the securing
24 devices on the two hatches. Otherwise, it is something
25 that can be ruled out.

1 MR JUSTICE DAVID STEEL: Somebody will remind me, but
2 I think there were one or two mates and/or skippers who
3 said that the locking devices were not actually usually
4 used on the hatches.
5 MR MEESON: There were, yes.
6 MR JUSTICE DAVID STEEL: Presumably on the basis that it was
7 well understood that the hydraulic locks would prevent
8 anything going wrong.
9 MR MEESON: Yes. We think that might have been
10 Skipper Suddaby who said that they did not always use
11 the locking pins.
12 MR HOPPER: Do you not think the open net hatch is more
13 decisive in that argument, it is a much greater danger,
14 because there is nothing to stop that --
15 MR MEESON: The fish hatches have the hydraulics to stop
16 them, and it may well be that people say, "Well, we have
17 never had a problem with it, we will rely on the
18 hydraulics, we do not see what we need the locking pin
19 for with the fish hatches". It is rather more difficult
20 because if the net hatch got caught by a wave it could
21 be just slammed down and there would be nothing to stop
22 it at all.
23 I do not think it is something that could be ruled
24 out, but it just seems unlikely. If there were no other
25 explanation for how those hatches could have been open

1 on the seabed, then obviously that would be pushing one
2 towards the assumption that they must have been open on
3 deck. What was the reason for that? Well, if it was
4 not fishing then it must have had some work going on.
5 On the other hand, since we do have some explanations
6 for how both of those hatches could have been opened on
7 the seabed but closed on the surface, that is rather
8 different.

9 The one thing about the net hatch, of course, is
10 that it plainly was not secured in the closed position
11 either. If it was not visibly open then it had been
12 shut but not secured. That is, of course, entirely
13 consistent with the net having been put down and taken
14 out of it in the middle of the night, perhaps because we
15 know that she damaged a trawl the day before, it may
16 have been anticipated that it would have been used
17 shortly, or somebody may have simply forgotten to secure
18 it. That seems a more likely possibility than the
19 possibility that somebody would have opened it and not
20 secured it in the open position.

21 DR ALDWINCKLE: But, Mr Meeson, evidence was produced which
22 suggested that with gravitational forces reduced in
23 pitch, that it might have been opened by water on the
24 trawl deck, certainly if there was some obstruction in
25 the hatch.

1 MR MEESON: The net hatch?

2 DR ALDWINCKLE: The net hatch and the fish hatch.

3 MR MEESON: The net hatch was found completely open and
4 leaning back past the vertical. It is difficult to see
5 how it would have got there --

6 DR ALDWINCKLE: But have you dismissed that those hatches
7 would not have been opened by water on the trawl deck?

8 MR MEESON: I think it is necessary to distinguish between
9 the fish hatches and the net store hatch, because the
10 net store hatch opens in an aft direction and was found
11 vertical and leaning aft --

12 MR JUSTICE DAVID STEEL: I think, as I understand it, there
13 might be some way in which -- to use a colloquialism --
14 the water on the trawl deck could have hammered the fish
15 hatches open progressively because every time it lifted
16 it an inch it would stay there. But it is difficult to
17 envisage how the net hatch cover would be just thrown
18 right open from closed to completely open by presumably
19 just one wave -- one piece of water.

20 MR MEESON: Exactly. That is why I think one has to make
21 the distinction of fish hatches. One could envisage
22 they were not dogged down, that if they lift, as we know
23 from the hydraulics, they do not go back again. Again,
24 it is quite difficult to envisage them lifting to their
25 as found position, but of course they could have lifted

1 sufficiently to have allowed water from the trawl deck
2 to have gone onto the factory as a source of water in
3 the same way as was suggested happened on the
4 Ranger Cadmus where a starfish and a redfish had got
5 jammed so that the fish hatch was not on its rubber
6 seal. That is certainly a possibility.

7 MR JUSTICE DAVID STEEL: I rather got the impression from
8 the latest statement from -- I am terribly sorry, I have
9 forgotten his name.

10 MR MEESON: Mr Stansfield.

11 MR JUSTICE DAVID STEEL: -- that he rather inferred that the
12 fish hatch had got jammed on some fish because he
13 assumed the water on the factory deck and the chutes had
14 all been shut down or shut off.

15 MR MEESON: Yes.

16 MR JUSTICE DAVID STEEL: It was not clear to me he was now
17 actually saying he saw some fish stuck in the fish
18 hatches.

19 MR MEESON: No. In his first statement that is what he
20 said. I think his second statement was directed to the
21 question: well, could you be mistaken and could the
22 water have entered through the duff and offal chutes?
23 And he said, "No, because they were closed." That was
24 the practice, he said, on board that vessel the
25 Ranger Cadmus.

1 Sir, if that covers fishing and other operations,
2 I was about to turn to snagging on an underwater cable.

3 It has been suggested that the Gaul could have
4 snagged her starboard trawl door on a seabed cable and
5 during an effort to free the trawl door she pulled
6 herself over. This theory requires the following
7 combination of factors: first of all, that the Gaul was
8 fishing, which I have just dealt with; secondly, that
9 there was an underwater telecommunications cable there
10 to be snagged; thirdly, that the Gaul did in fact snag
11 her starboard trawl door under a cable; fourth, that the
12 Gaul was able to bring the cable to the surface; fifth,
13 that the Gaul was able to disconnect the port door and
14 stow it in its normal position; sixth, that the Gaul was
15 able to secure her working trawl around the net arena;
16 seventh, a decision was made to use a gilson wire to
17 hold the cable; and eighth, that a sufficient load could
18 be imparted through the gilson wire at the top of the
19 A frame to induce a significant heeling moment on the
20 vessel.

21 Without that combination of factors, this theory
22 simply does not work. So obviously if the Gaul was not
23 fishing she could not have snagged her starboard trawl
24 door, and there has to be a telecommunications cable in
25 the vicinity of the Gaul. This is something which is

1 highly doubtful, in the light of the evidence that has
2 been produced.

3 So considering whether there was an underwater
4 telecommunications cable, when the wreck was first
5 discovered in 1997 by Anglia TV and Mr Norman Fenton,
6 a wire was observed on the seabed close to the wreck.
7 On the raw black and white Anglia video footage that we
8 saw, this wire appears to run in a relatively straight
9 line and is followed by the ROV for a period of about
10 4 minutes and 45 seconds.

11 After that time it disappears. During that
12 sequence, another wire is also observed close by.
13 Unfortunately there is no navigational data available
14 from which the location of the wire can be deduced, and
15 even its direction is doubtful owing to the
16 unreliability of the magnetic compass headings recorded
17 on the video.

18 Sir, you will recall that there are occasions when,
19 although the ROV seems to be pointing in the same
20 direction, the magnetic compass on the heading varies
21 quite significantly.

22 The speed of the ROV used by Anglia TV is not known
23 and there is nothing available by which scale can be
24 gauged as regards the underwater wire. However, the ROV
25 appears to have been moving very slowly. If it was

1 progressing at say 1 kilometre per hour, which we
2 suggest would be an average sort of speed that one might
3 expect from an ROV, then if it followed a wire for as
4 long as six minutes it would only progress 100 metres.

5 A visual comparison of the two wires seen in the raw
6 Anglia TV footage suggests that they are very similar
7 and exhibit similar characteristics. It is therefore
8 difficult to see why one should be said to be
9 a deliberately laid telecommunications cable and the
10 other a trawl wire.

11 Wires were also seen during the 1998 MAIB survey and
12 one was picked up by the manipulator of the ROV. During
13 that operation, sir, you will recall that what at first
14 sight appeared to be a larger diameter wire was shown to
15 be much smaller when the rust scale and other deposits
16 fell off it as it was moved. The wire appeared to
17 exhibit similar characteristics to the wire seen in the
18 1997 footage; that is it appeared to run in a straight
19 line, appeared to be about the same size and bridged
20 depressions in the seabed without sagging.

21 During the 2002 survey samples were cut from wires
22 and brought back. On inspection, those wires are
23 clearly old trawl wires. However, when seen on the
24 underwater video, they too appear to be about the same
25 size as the wires observed in 1997 and 1998, they too

1 run in a straight line for some distance, and they too
2 bridge depressions. From the video footage it is not
3 possible to distinguish them except when features such
4 as a splice or a kink become visible.

5 MR JUSTICE DAVID STEEL: Can I just get your assistance on
6 one or two matters. In the Fenton video, the Channel 4
7 video -- the Anglia TV video, as you say, there was
8 a period in which for a few minutes a wire is followed,
9 and during the course of that another wire comes in, as
10 you might say, from the left. You say they are pretty
11 much the same. And then the camera loses the wire and
12 then in due course what is said to be the same wire is
13 seen again, this time in much closer proximity to the
14 wreck.

15 I have been looking at Mr Fenton's diagram, which
16 I felt was quite helpful, in bundle 10.4, page 4, and
17 I was wondering whether I am reading too much into this,
18 or others have. This, as I understand it, is his
19 assessment of the track of the ROV, which comes up with
20 the cable after what is called "period 1".

21 MR MEESON: Yes.

22 MR JUSTICE DAVID STEEL: It follows the cable for periods 2
23 and 3, which, as I understand it, is broadly the four
24 minute track.

25 MR MEESON: Yes.

1 MR JUSTICE DAVID STEEL: The ROV then goes to starboard and
2 loses sight of the cables during periods 4 and 5, and
3 then comes back across the cable -- I am not sure we see
4 anything there, but maybe I am wrong -- having swung
5 around to port, then comes up to the north again and
6 discovers the cable in period 7. Period 7 is shown in,
7 as I understand it, slightly larger scale over the page.
8 And then she follows the cable for a short distance and
9 then diverts off to the ship which is on her starboard
10 side.

11 I confess I had some difficulty in seeing how one
12 could assume that the cable which is lost sight of at
13 the end of period 3 is the same cable as is found either
14 in period 6 or 7. Is there any material to support the
15 proposition that the same cable runs, swings sort of
16 slowly to starboard and then kinks substantially to
17 port, to happen to meet up with the camera later?

18 MR MEESON: Sir, no, I do not think there is. If this is
19 supposed to be the period 2/period 3, where we have the
20 cable running in a straight line, if that ran in
21 a straight line, one would never see it again --

22 MR JUSTICE DAVID STEEL: If that was a telecommunication
23 cable, it would continue broadly in that direction, on
24 this theory, to Soroya Island, as I understand it.

25 MR MEESON: Yes, and would pass some considerable distance

1 from the wreck.

2 MR JUSTICE DAVID STEEL: It also occurred to me that if
3 there is a cable in the vicinity of period 7, that is
4 much closer to the cable identified in the MAIB survey,
5 which runs broadly north-east/south-west in proximity to
6 the stem of the vessel, and is pictured running
7 underneath what appears to be a large rope.

8 MR MEESON: Yes.

9 MR JUSTICE DAVID STEEL: If and to the extent the MAIB
10 report was able to pick up by chance the same cable, as
11 they thought they did, it is that cable which is the
12 same, which is not the cable which was, in a sense,
13 identified as the telecommunications cable in the four
14 minute run.

15 MR MEESON: Absolutely.

16 MR JUSTICE DAVID STEEL: That must be right, must it?

17 MR MEESON: Yes, I think that must be right, because they
18 must be two different cables because they, according to
19 this sketch, at least run parallel to each other but
20 would be some distance apart.

21 MR JUSTICE DAVID STEEL: Just one other point on this topic.
22 Could we just look at bundle AG4, in the folder at the
23 back of it. This is, as I understand it, the 2002
24 survey showing where the samples were removed from,
25 amongst other things.

1 MR MEESON: Yes.

2 MR JUSTICE DAVID STEEL: Maybe I am misreading this. The
3 green line is a cable, is it?

4 MR MEESON: No.

5 MR JUSTICE DAVID STEEL: It is just the track of the ROV.

6 MR MEESON: The green line is the track of the ROV.

7 MR JUSTICE DAVID STEEL: So where the cable cuts at points 2
8 and 3, and the cable cuts at point 1, is that said to be
9 the same cable, or was it just two or three isolated
10 samples? Do you follow my drift?

11 MR MEESON: Yes, I do.

12 MR JUSTICE DAVID STEEL: It goes on up and at the top of the
13 green line it says, "No tension in cable", and I was
14 left with the impression that the machine was following
15 one continuous cable.

16 MR MEESON: That was my understanding as well.

17 MR JUSTICE DAVID STEEL: Okay. That is a cable which, on
18 any view, for a substantial period of distance -- I am
19 not sure what the scale is here. So you have 20 seconds
20 of latitude, it runs in almost a straight line.

21 MR MEESON: Yes.

22 MR JUSTICE DAVID STEEL: This is a cable which is manifestly
23 not the telecommunications cable.

24 MR MEESON: Absolutely.

25 MR JUSTICE DAVID STEEL: Or possibly a second one, or even

1 a third one, I suppose. Yet it is lying straight, and
2 the samples which are removed are samples of standard
3 trawl warp.

4 MR MEESON: Yes.

5 MR HOPPER: Can I add another thought to the cable issue.

6 The only reason for presuming there is a cable there by
7 the Long/Hine theory is that the cable was hauled to the
8 surface and in that process it capsized the vessel. The
9 depth of water was 280 metres. In fact, if you hauled
10 a cable to the surface, something like 800, 900 or
11 1,000 metres of that cable would have been lifted off
12 the seabed in a catenary, and if then released at the
13 surface would hardly go back into the straight line in
14 which it had been laid. In fact people involved in
15 cable laying, it actually forms quite a lot of coils and
16 bends and loops on the seabed.

17 The probability, therefore, of the ship drifting
18 down exactly the line of the cable before sinking and
19 coming to a straight bit seems to be rather remote. In
20 other words, one would be starting to look at that cable
21 as a disturbed cable and would therefore see far more
22 evidence of entanglement with the Gaul's fishing gear
23 than in a straight line.

24 MR MEESON: I am sure that must be correct. What I was
25 trying to address was the evidence that has been put

1 forward.

2 We heard from Mr Peck, the cable consultant, who was
3 engaged in rather curious circumstances to report on
4 whether the cables seen on the video footage were
5 communications cables. He was not instructed by or on
6 behalf of any of the parties to this Inquiry. Mr Hine,
7 a retired solicitor, who has taken it upon himself to
8 advance theories as to the cause of the loss of the Gaul
9 and write statements arguing the case for such theories,
10 which we have at AG10.2, apparently telephoned Mr Peck
11 and subsequently instructed him in writing. In his
12 letter of instruction he explained that he was preparing
13 a statement in support of the snagging theory.

14 Mr Peck prepared a report for Mr Hine that we have
15 at AG10.3, in which he stated that on the 1997 TV
16 programme, the shots of the cable "definitely appear to
17 be a telecommunications cable. It is clearly under
18 tension, appears to be deliberately laid in a straight
19 line". That is AG10.3, page 1, paragraph 1.1.

20 At this stage, Mr Peck had not seen the raw Anglia
21 footage; he had only seen the short clip which had been
22 broadcast on the TV programme. During his oral evidence
23 he said that had he only seen this clip he would not
24 have had cause to make a definitive statement, that was
25 his evidence on Day 17 at page 13. Nevertheless, that

1 was precisely what he had done in his report.

2 When giving oral evidence Mr Peck admitted that he
3 had not given expert evidence before and that he was
4 unaware of the rules of court about giving evidence as
5 an expert witness. His report contains comment and
6 speculation about matters that are plainly beyond the
7 boundaries of his expertise. In his oral evidence he
8 was unable to provide any cogent or coherent explanation
9 for his opinion that one cable was a communications
10 cable whereas another was not. The only thing to which
11 he was able to point was that it ran in a straight line
12 over "a substantial distance", which he then said would
13 have to be more than 200 metres, although he was unable
14 to define it further. That was Day 17, page 56.

15 His reasoning is plainly flawed in two material
16 respects. First, he does not know how long the length
17 of wire he saw on the video was, so he is unable to say
18 whether it ran over a substantial distance of in excess
19 of 200 metres; and secondly, he does not know by
20 comparison what the potential length of a lost trawl
21 wire could be.

22 The evidence of Mr Thresh was that in the depth of
23 water where the Gaul lay one would use about
24 1,000 metres of trawl warp. That was his evidence on
25 Day 16, page 128.

1 When pressed about the fact that another wire, which
2 we know to be a trawl wire, exhibited the same
3 characteristics as the wire he considered to be
4 a communications cable, in that it bridged hollows under
5 tension, Mr Peck was forced to argue that this was
6 because the trawl wire was "pinned down on either side
7 under sediment". That was Day 17, page 57. With
8 respect, this was one of his more absurd comments, but
9 not the only one. When asked why he offered the opinion
10 that SOSUS cables were laid across the Barents Sea, he
11 referred to a fictional author Tom Clancy for support.
12 That was on Day 17, page 62. The truth is that of
13 course Mr Peck knows nothing about the Barents Sea and
14 nothing about SOSUS cables, as he said on Day 17,
15 page 63.

16 By contrast, direct evidence has been obtained from
17 the relevant part of the Royal Navy with knowledge of
18 military cables, who have stated that there is "no UK or
19 US intelligence related cabling in the position at which
20 the wreck of the MV Gaul was found". That is AG10,
21 page 122. Captain Rondorf of the US Navy Commander of
22 Undersea Surveillance has examined the video of the
23 cable and stated that it is not a SOSUS cable. That is
24 AG10.4, tab 5, page 56.

25 Frankly, Mr Peck's evidence was of no assistance at

1 all. It is clear that there is simply no evidence that
2 any of the wires seen around the wreck of the Gaul were
3 anything other than trawl wires. The fact that a lost
4 trawl wire could be as much as 1,000 metres in length
5 demonstrates that the length for which any wire is
6 followed along the seabed would not be significant
7 unless it were to be followed for a distance of longer
8 than 1,000 metres. If the ROV were travelling at
9 1 kilometre per hour, that would take an hour. In fact,
10 in the 1997 footage, shown on Day 17 of this Inquiry,
11 the cable was only followed for about 4 minutes and
12 45 seconds before it went out of sight. Again, assuming
13 a speed of 1 kilometre per hour, the ROV followed the
14 cable for less than 100 metres.

15 Sir, as you have pointed out, the other cables that
16 we have seen, which we know to be trawl wires, also
17 appear to have run in a straight line. If one drops
18 a substantial length of heavy trawl wire, why would it
19 not run in a straight line?

20 That is whether there was a cable. The other
21 question is: could snagging a cable actually have caused
22 the loss anyway? A fishing expert, Mr Eric Long, has
23 described an operation by which the vessel is lost as
24 a result of an attempt to free the starboard trawl door
25 from an underwater cable. It contemplates the use of

1 a gilson wire from a block at the top of the A frame.
2 The winch which would be used for this operation is
3 a 5-tonne winch. That appears from Mr Long's -- or
4 Mr Hine's interpretation of Mr Long's evidence at
5 AG10.2, page 6. Accordingly, if one is using a 5 tonne
6 winch, a load that can be imparted would be 5 tonnes.

7 Even if a horizontal load is applied to the ship of
8 5 tonnes, acting from the top of the A frame, the effect
9 on the ship is to induce a heel of only 3 to 4 degrees.
10 That is the evidence that we had on Day 15, pages 73 to
11 74. That is a horizontal pull from the top of the
12 A frame, which is obviously something that one simply
13 cannot in fact part. The pull, if one assumes that it
14 is not horizontal but is, say, 45 degrees, then the
15 overturning moment would be halved so that the resulting
16 heel would be only 1.5 to 2 degrees.

17 It follows from this that even if the Gaul had been
18 fishing and even if she had snagged an underwater cable,
19 she simply would not have been endangered.

20 We have also heard a lot of evidence about whether
21 anybody would use a gilson wire. The evidence suggests
22 that it would have been most unlikely that either
23 Skipper Nellist or Mate Spurgeon would have chosen to
24 seek to free the trawl door in the manner suggested by
25 Mr Long. From his CV, at AG10.2, page 49, it is clear

1 that Mr Long has no relevant experience. He has not
2 worked on large stern trawlers and his experience is
3 limited to smaller vessels.

4 Skipper Thresh explained how one would go about
5 clearing a fouled door on Day 13, and also in AG disk 8,
6 where his little video demonstration is contained.

7 Other skippers and mates called to give evidence to
8 the Inquiry expressed quite clearly that they would have
9 used a stopper chain or something of that nature, but
10 definitely would not have used a gilson.

11 Mate Petty said he would never do it that way and
12 has only ever used a stopper chain.

13 Skipper Suddaby said he would have used a stopper
14 chain. He went so far as to say that he would have used
15 the gilson wire only if he "wanted to sink a ship". He
16 would not have transferred the weight of a cable to the
17 top of a mast.

18 Mate Patterson would not even consider using the
19 gilson wire; the cable would simply be too heavy. He
20 considered the use of the stopper or dog chain to be
21 "standard practice".

22 Skipper Wharram said it was "ludicrous" or
23 "absolutely ridiculous" to even mention using the gilson
24 wire.

25 Skipper Wileman explained how he used the stopper

1 chain to clear a cable when he snagged his vessel and he
2 said he would not use the gilson wire because it would
3 not be strong enough.

4 Only one skipper -- that was Skipper Madden -- said
5 that it was an option, but even he said that it would
6 depend upon the circumstances. It is therefore most
7 unlikely that a gilson wire would have been used in the
8 unlikely event that the vessel had actually snagged some
9 form of cable.

10 Sir, I do not know if that is an appropriate moment
11 to have a break for the transcript writers.

12 MR JUSTICE DAVID STEEL: Yes, thank you.

13 (11.50 am)

14 (A short break)

15 (12.38 pm)

16 MR JUSTICE DAVID STEEL: Sorry to keep you waiting. I am
17 afraid I had not realised that we were expected in and
18 nobody came to pick us up. It is entirely my fault,
19 I am sorry.

20 MR MEESON: Sir, I have put on your desk some print-outs
21 from the database for the survey. The first two pages
22 relate to Centurion 101 and the next one relates to the
23 Tiger. This is with reference to the chart that we
24 looked at of the ROV. You, sir, asked the question, was
25 the ROV following the cable or the wire, or whatever it

1 was doing. The answer to that from this database seems
2 to be yes. And this gives you some sort of idea of what
3 it is seeing at any one time.

4 MR JUSTICE DAVID STEEL: Oh, I see it now. You pick it up,
5 do you, about halfway down:

6 "Cable over pockmark ... vessel moved ... continuing
7 survey of cable ... cable buried ... loop of cable
8 visible ... continuing to track buried cable ... change
9 of direction of cable ..."

10 MR MEESON: That is the first two. And then the second one
11 is the Tiger, and those relate to the different colours
12 on the chart.

13 MR JUSTICE DAVID STEEL: How do I know which is the green?

14 MR COOPER: Sir, there is a schedule on the side of the
15 chart. The green is the Tiger.

16 MR JUSTICE DAVID STEEL: Oh, I see. So green is Tiger,
17 thank you. So that is the long run north south and
18 south north at any rate?

19 MR MEESON: Yes.

20 MR JUSTICE DAVID STEEL: Thank you very much indeed.

21 MR MEESON: The other thing was you asked about the
22 reference to locking pins on the fish hatches. Two
23 references. Mr Wharram on Day 7, page 161, said he
24 would most certainly have expected them to be in, but
25 Skipper Suddaby on Day 11, page 100 to 101, said, first

1 of all, that it was something he would leave to the
2 mate's judgment because he would be a better judge of
3 that. And then when he was pressed as to whether he
4 would expect the safety pins to be in, then he said no,
5 he would not really because he did not think there was
6 any particular need for them because he had never had
7 any trouble with the hydraulics on the Gaul.

8 MR JUSTICE DAVID STEEL: Yes, thank you. I think you
9 earlier mentioned that it might be significant that the
10 hatches were not fully open. On the face of it, I would
11 have expected that if the button had been pressed it
12 would open, full stop. Therefore the fact they are not
13 fully open is somewhat more indicative of
14 a non-hydraulic opening.

15 MR MEESON: Yes.

16 MR JUSTICE DAVID STEEL: Thank you.

17 MR MEESON: Sir, I was then going to leave that aspect and
18 turn to the question of what I have described as
19 improbable loss scenarios.

20 MR JUSTICE DAVID STEEL: So far as the fishing theory is
21 concerned -- or the snagging theory is concerned, there
22 is a considerable body of evidence from Mr Thresh about
23 how a skipper might attempt to release himself from
24 a cable and thus never get cable to the bulwark, and
25 some difficulty in seeing how the winch could actually

1 maintain a load sufficient to raise the
2 telecommunications cable as far as the bulwark without
3 actually losing gear or just paying out again.

4 MR MEESON: Well, although it would be initially raised to
5 the surface, of course, on the trawl winch, which has
6 greater --

7 MR JUSTICE DAVID STEEL: Yes, I was still thinking that the
8 trawl winch -- how much strain can that take, 20 tonnes?

9 MR MEESON: 20 or something similar.

10 MR JUSTICE DAVID STEEL: It is not a lot in relation to
11 1,000 metres of cable.

12 MR MEESON: But even if it did, one is still left with this
13 5 tonnes. Really, whichever way you approach that
14 theory, it fails at almost every hurdle.

15 MR JUSTICE DAVID STEEL: So far as the cable is concerned,
16 it seems to be common ground it cannot be
17 a telecommunications cable as such because there is no
18 call for much telephone cover in Bear Island. So if it
19 is something else, it is a SOSUS cable, and there is no
20 evidence to suggest that any SOSUS cable was laid as
21 early as February 1974 by anybody.

22 MR MEESON: We have investigated commercial cables, and
23 there was no record of any commercial cable in that
24 area. And so if it is a telecommunications type cable,
25 then it is not recorded on any database of cables.

1 MR JUSTICE DAVID STEEL: And we had the evidence from SIS
2 and the Ministry of Defence in relation to that. Such
3 evidence has suggested that no SOSUS cables were laid
4 until 1974 at all, and it is rather a surprising place
5 to lay one.

6 MR MEESON: It is really, because in fact, in the direction
7 suggested by Mr Fenton, if it starts at a particular
8 island, Soroya Island, then disappears into the middle
9 of the sea and stops for some reason --

10 MR JUSTICE DAVID STEEL: One would have expected it to run
11 north-west.

12 MR MEESON: One would have expected it to run for sufficient
13 distance so that submarines could not go round the end
14 of it.

15 MR JUSTICE DAVID STEEL: Okay, thank you.

16 MR MEESON: Improbable loss scenarios. The fishing/snagging
17 theory comes into that category, but there are also
18 a large number of other possible loss scenarios which
19 are considered to be so unlikely that they can
20 effectively be ruled out.

21 The first one of those is fire, because there was no
22 evidence of any fire on board. There was no fire or
23 smoke damage observed on the wreck and the only
24 blackening that was discovered underneath the crew
25 escape hatch cover was analysed and found to be oil

1 based and not a combustion product. The report on that
2 is at AG17. In addition, the fire appliances observed
3 on the wreck all appeared in their proper positions,
4 although the engine room of course could not be seen.
5 Furthermore, one would have expected some call to have
6 been made if there had been a fire.

7 Collision. Similarly, had the vessel been involved
8 in a surface collision then there would have been
9 visible damage to the wreck, but no collision damage was
10 observed. The bow damage did not have the
11 characteristics of collision damage and in any event
12 could not have caused the loss because it was above the
13 water line and the collision bulkhead was intact. Had
14 the vessel suffered a collision with an underwater
15 object such as a submarine, it would have had to have
16 occurred in that part of the vessel which cannot be seen
17 because it is beneath the silt as no damage was observed
18 elsewhere.

19 However, the experts are agreed that had the vessel
20 been struck from underneath by, for example, a submarine
21 or something similar, the double bottom tanks would have
22 had to have been ruptured through the tank tops in order
23 to have sunk the vessel, because obviously if one simply
24 filled the double bottom tanks with liquid such as water
25 when they had previously contained oil, it would not

1 have had any effect at all. And if the double bottom
2 tanks had been ruptured through the tank tops then oil
3 would have risen out of these tanks and would have been
4 seen in the wreck, because it would have contaminated
5 the wreck.

6 In addition, it is most likely that there would have
7 been some other evidence of damage elsewhere on the
8 wreck in terms of transferred damage.

9 Explosion, missile, torpedo or mine. There is
10 simply no evidence of any explosion or other damage
11 consistent with the vessel having been struck by a mine,
12 hit by a missile or struck by a torpedo.

13 Icing. There were no reports of icing in the area
14 at the time.

15 Cargo shift. There is no evidence of cargo shift
16 and the Gaul did not have much cargo in the way of fish
17 on board at the time anyway.

18 Structural failure. There was no evidence of
19 structural failure. The wreck was found in one piece on
20 the seabed.

21 Grounding. Well, there is not any ground to ground
22 on.

23 Snagging a seabed cable. That has been considered
24 and can also be ruled out.

25 There are some other possibilities which are

1 extremely implausible but probably technically cannot
2 really be ruled out on the evidence. The first of these
3 is scuttling. There is no evidence that the vessel was
4 deliberately cast away. It would be an extraordinary
5 event to have attempted during the storm. Obviously it
6 would not have been done by the crew themselves, so not
7 scuttling in the Commercial Court sense of an owner
8 claiming on an insurance policy.

9 The fact that four of the crew were found in four
10 different places on board suggests that some foreign
11 power intervened to be rather unlikely, because one
12 might have expected them not to have been in places such
13 as the mess room or the chart room if some foreign power
14 had boarded the vessel and deliberately sunk the vessel;
15 one would have expected them to have been probably in
16 the same place.

17 Although it is thought a scuttled vessel might sink
18 more upright, there is no positive evidence available to
19 exclude the possibility in theory. We suggest that the
20 idea that the vessel was scuttled is an entirely absurd
21 suggestion.

22 Gas escape. The possibility of a sudden escape of
23 gas from the seabed, that can effectively be ruled out
24 because for such an escape to have caused the ship to
25 sink would have required a substantial sudden release,

1 and there is no evidence from the seabed that such an
2 escape took place in 1974. There are pockmarks on the
3 seabed but these are most likely to have been formed by
4 icebergs, according to the British Geological Survey
5 report that we have at AG21, page 72. Nevertheless, the
6 formal conclusion of Dr Judd, who is the expert on these
7 matters, was that although unlikely, the possibility
8 cannot be disproved on the evidence available. So
9 again, the chances of that actually being the cause are
10 remote in the extreme.

11 The third is large breaking waves. Model tests
12 carried out by BMT suggest that the Gaul could have been
13 knocked down if she was struck by a large steep breaking
14 wave in excess of about 14 metres. That is at AG2,
15 tab 5, page 30. However, their tests showed that the
16 vessel would recover from a knockdown and would be
17 required to be struck by a group of waves so that she
18 was held down for a sufficient period of time for
19 substantial quantities of water to ingress through the
20 duff and offal chutes, the open factory access door and
21 ventilators. This is an unlikely occurrence and one
22 would have expected to see damage to the vessel
23 consistent with having been struck by one or more
24 breaking waves, but there is no such damage.

25 Machinery failure. The fact that the propeller

1 pitch was discovered to be at the full ahead position is
2 evidence that it was in the full ahead position
3 immediately prior to the loss. Had the engines been
4 stopped voluntarily then the pitch would have returned
5 to zero. It is therefore unlikely that there was
6 a steering gear failure as the crew could have been
7 expected to have stopped the engines voluntarily.

8 Then, finally, being overwhelmed with the fish
9 hatches open. The question of whether the vessel was
10 fishing has been considered already and it is therefore
11 inconceivable that the vessel was actually fishing so
12 that she had her fish hatches open because she was
13 emptying her cod end. On the other hand, although
14 extremely unlikely that the fish hatches were opened
15 intentionally by the crew for some other reason, as we
16 discussed earlier today, it cannot be entirely ruled
17 out. And so, although extremely improbable, it cannot
18 be entirely ruled out that the fish hatches opened
19 involuntarily due to a short-circuit.

20 Again, the other improbability is getting sufficient
21 water in in sufficient time to endanger the vessel.

22 Those are matters which, we would submit, cannot be
23 entirely ruled out but are so improbable as to be not
24 really significant.

25 I then turn to consider the probable loss scenario.

1 The investigation into the seakeeping and stability
2 characteristics of the Gaul shows that without water on
3 the factory deck the vessel is not endangered. The
4 experts' conclusion is that the most probable loss
5 scenario involves an accumulation of water on the
6 factory deck and the vessel suffering a roll to
7 starboard to a large angle as a result of which the crew
8 is disabled and a further large quantity of water enters
9 the vessel, decreasing her stability so that she is
10 effectively lost.

11 When analysing the most probable loss scenario, it
12 is necessary to consider the importance of the Fredyn
13 results. There is a fundamental difference between, on
14 the one hand, the standard static analyses used by naval
15 architects in the context of design, such as metacentric
16 height (GM) and free surface moments, which are
17 applicable to an intact ship in an upright condition in
18 still water and, on the other hand, the forensic
19 investigation of a casualty which necessarily involves
20 the dynamic behaviour of a ship in a seaway with
21 openings permitting downflooding.

22 The dynamic analysis which is required in the
23 present case is complex and difficult and Fredyn
24 represents one of the most sophisticated simulation
25 models available as a means of investigating the dynamic

1 behaviour of the ship. On the basis of the information
2 then available, the model tests were carried out on the
3 assumption that the liver oil plant door was closed.
4 When it was discovered that this door was open, Fredyn
5 runs were performed on that basis. To this extent the
6 Fredyn run are probably more representative of the
7 likely behaviour of the ship.

8 However, Fredyn itself has important limitations in
9 that it does not give a proper indication of the
10 behaviour of the ship after rolling to angles of more
11 than about 40 degrees because in the Fredyn simulation
12 no allowance was made for ingress through additional
13 openings which would occur at large angles of heel, such
14 as the funnel vents and, at larger angles, the
15 accommodation. Flooding through these additional
16 openings would prevent recovery to a more upright
17 condition and thereby increase the rate of downflooding.

18 In practice, it is likely that once the ship had
19 been rolled to a large angle of say 40 degrees, she
20 would have effectively been lost, as suggested by
21 Mr Bowman on Day 18 at page 60.

22 It is obvious that Fredyn cannot tell us exactly
23 what happened to the ship but its significance is more
24 indicating what could have happened. It tells us that
25 it is possible that the vessel could have been lost in

1 a relatively short period of time. The further Fredyn
2 runs at a lower sea state of significant wave height of
3 7 metres show that even at this lower sea state the
4 vessel can suffer large roll angles and would be likely
5 to be lost. That is AG8.2.

6 There are two principle candidates for the way in
7 which water can accumulate on the factory deck. First,
8 through the open duff and offal chutes, and secondly
9 from internal sources. As far as the probabilities are
10 concerned, first of all, it is known for a fact that the
11 duff and offal chutes were open and model tests have
12 shown that water can ingress through those chutes if the
13 vessel is on a range of headings. On the other hand,
14 there is no ingress if the vessel is on other headings.

15 Secondly, it is not known whether any internal
16 source of water would have been left on. In
17 circumstances where all work in the factory had ceased
18 and the vessel was laid and dodging, it may be
19 considered to be unlikely as there would be no reason
20 for it. When the vessel is continuing to fish one can
21 imagine that the water to the machines may be left
22 running while waiting for the next haul, out of
23 convenience or even laziness. However, if the factory
24 has been shut down and is likely to remain so for some
25 time, there is no reason to leave the water running.

1 Nevertheless, it does remain a possibility that cannot
2 be excluded.

3 It is also not known whether the Turo pumps were on
4 or off. It is possible that they could have become
5 blocked, but that would have been likely to have
6 occurred at an early stage shortly after work had
7 ceased. Skipper Madden said that ordinarily they would
8 be switched off in bad weather, but it was left to the
9 mate and the factory managers and the engineers. That
10 was at original inquiry Day 2, page 56. Skipper Suddaby
11 gave evidence that the Turo pumps would be left on
12 24 hours a day if dodging. Plainly, there was no
13 uniform practice.

14 If water had been accumulating from an internal
15 source, it would have been doing so since about 0915 on
16 8th February and thus by the time the telegram was sent
17 at 1109 there would have been almost two hours
18 accumulation. Although it is possible that there was
19 a long, slow build-up of water, the longer the timescale
20 envisaged, the less likely it is that it was not
21 noticed.

22 Sir, we refer here to schedule B, a timeline, to try
23 and put into context in a consecutive way what was going
24 on on board the vessel and what may have been going on
25 on board the vessel. At schedule B, on the left-hand

1 side of the timeline, are entries which we actually know
2 about.

3 So, for example, it begins at 2330 on the 7th:

4 "Gaul reports skippers' sched 'paralysed'".

5 So all the entries on the left-hand side are entries
6 which are documented or we know for certain happened.
7 Entries on the right-hand side show what we do not know
8 for sure had happened. So, for example, at 0615 on
9 February 8th, it is thought that the filleting process
10 would have been completed, and at 0915 it is thought
11 that the factory deck would then have been cleared.
12 Obviously we do not know those matters for certain.

13 Similarly, at 1200 it is suggested that the mate and
14 the skipper may have changed watch, and the mate may
15 have checked his position before leaving the watch.
16 Again, we do not know that that would have been the
17 case.

18 Then finally, just by way of an example, with
19 reference to Experts 325, which perhaps we could have
20 up, this is just an example from one of the Fredyn runs
21 of what could have happened to the vessel. Sir, you may
22 recall this was the Fredyn run, the example that was run
23 through by Mr Bowman during his evidence.

24 Just by way of example, if, at 000, the vessel
25 adopts a course with quartering seas on the port beam,

1 then 11 minutes later, if she had met this sequence of
2 waves, then she would have had on board 17 tonnes of
3 water on the factory deck through the chutes, and would
4 have had effectively an average fixed angle of heel of
5 10 degrees. Two minutes later, water would have started
6 to enter the liver plant and the net store. And three
7 minutes later than that, the vessel would have had on
8 board 35 to 40 tonnes of water in the factory deck, the
9 liver plant and the net store.

10 And then, as we can see from this, very shortly
11 after that, at just over 1,000 seconds, she suffers
12 a roll initially to about 30 degrees and, as Mr Bowman
13 described, effectively broaching the vessel and causing
14 her then to come round beam on to the seas and then to
15 be rolled to 60 degrees. All of that happens in less
16 than 1,100 seconds from the time of turning on to that
17 course. So within a period of 20 minutes of coming onto
18 that course the vessel could be lost.

19 This is simply one example of a Fredyn run at
20 a speed of 6 knots. It is equally possible that the
21 vessel would not have suffered that fate so quickly.
22 But what all of those runs showed is that effectively
23 within an hour or so of coming onto that sort of course
24 the vessel could quite easily have been lost.

25 Sir, I do not know if that is an appropriate point

1 to break for lunch?

2 MR JUSTICE DAVID STEEL: Yes.

3 (1.03 pm)

4 (The short adjournment)

5 (2.05 pm)

6 MR MEESON: Sir, we had just been looking at the timeline in
7 schedule B. Now looking at the matter in the round --
8 this is concerning the source of water -- on the one
9 hand one has the known fact that the duff and offal
10 chutes were open and that water could ingress through
11 them if the vessel was on certain headings, as against
12 the speculation that the factory hands had left the
13 water supply running and the pumps had been blocked.
14 Although this latter possibility cannot be ruled out, it
15 is suggested that it is more likely that the factory was
16 shut down and the water supply to the machines switched
17 off and the Turo pumps switched off. It is therefore
18 more likely that the water entered the vessel through
19 the duff and offal chutes.

20 There is also the evidence from other casualties
21 that water can enter through such openings. Those are
22 the other casualties set out in AG38.

23 The experiments conducted in the present case show
24 that very significant amounts of water could ingress in
25 a short period of time. If Skipper Nellist had decided

1 to go to the lee, it is likely that he would have wanted
2 to get there as quickly as possible so that he could
3 commence fishing. He would be going downwind and would
4 be likely to have proceeded in excess of 6 knots and
5 more likely at, say, 12 knots. Polar diagrams plotting
6 the rate of ingress over 20 minutes and 30 minutes at
7 both 6 and 14 knots show that if the vessel was
8 proceeding at a speed in excess of 6 knots then large
9 amounts can come in very quickly indeed.

10 That is shown in AGP35, which is the 30 minute
11 exposure, the pink being 6 knots and the dark
12 blue/purple being 14 knots. One can see there that in
13 certain circumstances, in certain directions, one is
14 getting over 175 tonnes of water at 14 knots, for
15 example, in a 30 minute period, which is quite
16 a phenomenal rate of ingress.

17 The other one is AGP36, which shows a 20 minute
18 exposure, and even in that period of time there is not
19 such a discrepancy between the 6 knots and the 14 knots.
20 But, again, one can still get over 100 tonnes on certain
21 headings at the higher speeds, and even at the lower
22 speed there is almost touching 100 tonnes in a 20 minute
23 period.

24 If Skipper Nellist had become aware of the problem,
25 then it is suggested that he would be likely to have

1 sought to bring his ship round head to wind, which would
2 entail a port turn. This is consistent with the
3 evidence from the Kort nozzle and the controllable pitch
4 propeller. If he did this, this could result in
5 a sudden and severe roll to starboard, particularly if
6 the vessel were to encounter a large wave at the wrong
7 time during the moment of turning.

8 The only other scenario which appears to be
9 consistent with the hard to port turn would be that the
10 vessel was turning at the end of a leg when laid and
11 dodging. If this were the case, then assuming the
12 vessel was heading into the wind and then running
13 downwind and then upwind again, she would be unlikely to
14 be on any of the critical headings unless when running
15 downwind she had the weather on the quarter rather than
16 dead astern. Again, if the vessel were to encounter
17 a large wave at the moment of turning, a sudden and
18 large roll to starboard could result in tragic
19 consequences. That is what we suggest is the most
20 probable manner in which the vessel was lost.

21 One obvious question is: why did this happen to the
22 Gaul and why did it not happen to any of the sister
23 ships? The loss of the Gaul may well be attributable to
24 a convergence of factors and there are a large number of
25 variables which can account for the fact that this

1 accident occurred on the Gaul and not on other vessels.

2 First of all, the rate of ingress through the duff
3 and offal chutes is sensitive to sea state, heading and
4 speed. In many cases when the sea was too rough to fish
5 the vessel would be laid and dodging and may not have
6 come onto the critical headings at full speed or at
7 anything like that.

8 It is also possible that on the other vessels,
9 either the flaps were not seized in the open position
10 or, if they were, it is possible that the watertight
11 lids on the duff and offal chutes were secured closed.
12 If this were the case then the vessel would not have
13 been lost.

14 It is also possible in this case that -- we know,
15 for example, that on 7th February, in documents bundle
16 OFI bundle 1, page 113, that there is a reference from
17 the day before, 7th February, to there being a lot of
18 duffs, which is a reference which does not appear
19 elsewhere in the schedule for what the vessel has been
20 doing. If she had a lot of duffs on 7th February,
21 obviously then the duff chute at least would have been
22 open, and that may be a reason why it was secured -- or
23 the lid at least was secured open with the ligature.
24 Again, that is speculation, but it is a feature of the
25 evidence that there is that reference to a lot of duffs.

1 It may be that on other occasions the duff chute may
2 not have been used. For example, if one was fishing and
3 there were not any duffs, and the crew generally left
4 the lid down, then it might not be used at all.

5 Mate Petty gave evidence that sometimes one had lots of
6 duffs and sometimes one did not really have any at all;
7 it depended upon the fishing grounds and where one was.

8 The other question is the Turo pumps. If the Turo
9 pumps were on, then they could clear 90 tonnes in one
10 hour. If the rate of ingress was less than that, then
11 the ship is obviously not in any danger. However, it is
12 possible that on this occasion the pumps had been
13 switched off because work in the factory had ceased, or
14 they had become blocked, or that the rate of ingress
15 exceeded 90 tonnes per hour. 90 tonnes per hour is
16 equivalent to 30 tonnes in the 20 minute period, and the
17 polar plots we have just been looking at show that this
18 rate is exceeded for a large range of headings and
19 speed.

20 The risk of capsize is also affected by trim. Had
21 the Gaul's sister ships been caught in bad weather with
22 a different trim, carrying either more cargo -- in other
23 words fish -- or more fuel, then they would not have
24 been as vulnerable to capsize as the Gaul was.

25 It may also be that the Gaul was simply a victim of

1 unfortunate timing, in the sense that she encountered
2 a large wave at a point at which she was turning hard to
3 port. That unfortunate timing could bring about
4 disastrous and tragic consequences for the vessel being
5 rolled suddenly and severely to starboard.

6 There are many reasons why accidents happen, and
7 normally accidents happen not just because of one reason
8 but because of a combination of reasons. And it may be
9 that the combination of being in that sea state,
10 possibly on a particular heading, is not something that
11 any of the other sister ships encountered.

12 I was then going to turn to the separate issue of
13 spying. There is no evidence that either the Gaul or
14 any of her crew on board were involved in any activity
15 other than fishing. The circumstances in which trawlers
16 had been used for espionage activities are set out in
17 the Ministry of Defence note issued in March 1998 that
18 we have at AG10, pages 7 to 10. The evidence from the
19 Defence Intelligence Staff confirms the contents of this
20 note. We have the statement of Commander Clark at AG10,
21 page 3, and we have the evidence from Commander Peters
22 given to this Inquiry on Day 9, at pages 67 and
23 following. Both the Solicitor to this Inquiry,
24 Mr Laurance O'Dea, and Counsel to the Inquiry, myself,
25 have been given access to the MOD files upon which that

1 note was based, and can confirm that there is nothing in
2 those files to cast doubt on what is stated about the
3 Gaul and her crew in that Ministry of Defence note.

4 Exceptionally, this Inquiry has also heard evidence
5 from the Secret Intelligence Service, also known as MI6.
6 SIS was placed on a statutory footing by the
7 Intelligence Services Act 1994, which provides that:

8 "1(1) There shall continue to be a Secret
9 Intelligence Service ... under the authority of the
10 Secretary of State [that is the Foreign Secretary]; and,
11 subject to subsection (2) below, its functions shall be:

12 "(a) to obtain and provide information relating to
13 the actions or intentions of persons outside the British
14 Islands; and

15 "(b) to perform other tasks relating to the actions
16 or intentions of such persons.

17 "(2) The functions of the Intelligence Service are
18 exercisable only:

19 "(a) in the interests of national security, with
20 particular reference to the defence and foreign policies
21 of Her Majesty's Government ...; or

22 "(b) in the interests of the economic well-being of
23 the United Kingdom; or

24 "(c) in support of the prevention or detection of
25 serious crime."

1 The Chief of the Intelligence Service is given
2 particular duties, one of which is to ensure:

3 "(a) that there are arrangements for securing that
4 no information is obtained by the Intelligence Service
5 except insofar as necessary for the proper discharge of
6 its functions and [relevant to this Inquiry] that no
7 information is disclosed by it except so far as
8 necessary:

9 "(i) for that purpose;

10 "(ii) in the interests of national security;

11 "(iii) for the purpose of prevention or detection of
12 serious crime; or

13 "(iv) for the purpose of any criminal
14 proceedings..."

15 It is clear from section 2(2) of the Act that the
16 Secret Intelligence Service has a statutory obligation
17 to maintain the secrecy of the information that it
18 collects and that it is simply not permitted to disclose
19 such information save for one of the four purposes
20 expressly set out in the Act. Although it is permitted
21 to disclose information so far as necessary for the
22 purpose of any criminal proceedings, it cannot do so for
23 civil proceedings or for the purposes of a public
24 inquiry. The only relevant exception is if it is in the
25 interests of national security to do so.

1 Exceptionally in this case, the Secret Intelligence
2 Service have disclosed information to this Inquiry on
3 the ground of national security because, in their
4 opinion, it is important to correct misunderstandings
5 which have developed as to the work carried out by the
6 service in the 1960s and the work carried out by the
7 service in the 1960s was carried out for the purposes of
8 national security.

9 MR JUSTICE DAVID STEEL: There is a certain irony here. One
10 of the potential complaints that some of the relatives
11 have about what happened in 1974 is directed to the
12 information given by the Ministry of Defence or, more
13 accurately, the Minister of State for Defence in
14 August 1974, to the effect that not merely the Gaul but
15 the trawler fleet was not used in spying activities. Of
16 course the 1994 Act was not in force in 1974, but
17 assuming for the purposes of argument that the policy
18 was the same, or looking at it as if the Act was in
19 force, that answer, which is in one sense untrue, is
20 an answer which the Minister would have been obliged to
21 give, as I understand it, by virtue of this Act, i.e. he
22 would have been obliged to mislead, which I identify as
23 a certain irony.

24 MR MEESON: There is a irony and I suspect that the approach
25 of the Secret Intelligence Service prior to the 1994 Act

1 was probably even more restrictive. But I am coming on
2 to deal with --

3 MR JUSTICE DAVID STEEL: I am sure you are, but I do not
4 know whether the Secretary of State is in a position, in
5 a sense, to override the Chief's obligations or
6 responsibilities. Maybe he can.

7 MR MEESON: Well, I am not sure that the Act provides for
8 that.

9 MR JUSTICE DAVID STEEL: The executive discussion might well
10 be there, but there it is, it does seem to be slightly
11 strange.

12 MR MEESON: Well, it is strange. There is a two-fold
13 obligation: first of all, only to collect
14 intelligence -- in other words, not to collect
15 intelligence generally but only to collect intelligence
16 that is relevant to the statutory tasks -- and then
17 secondly, having collected that intelligence, only to
18 disclose it in those limited circumstances.

19 We are fortunate in this case that they were able to
20 disclose the information on the grounds of national
21 security, which, I would suggest, is quite a generous
22 interpretation by the Secret Intelligence Service of the
23 scope of national security, that they were able to
24 disclose it now.

25 MR JUSTICE DAVID STEEL: I agree.

1 MR MEESON: As explained by EB in his witness statements and
2 in his oral evidence, which was given on Day 9 to this
3 Inquiry, SIS researched their records thoroughly in the
4 manner that he explained. Again, SIS also gave access
5 to both Mr O'Dea, Solicitor to the Inquiry, and myself,
6 as Counsel, to their records, in order to enable us to
7 verify that his statement accurately reflected the
8 contents of their records. We are both satisfied that
9 they did indeed accurately reflect the contents of their
10 records.

11 It is abundantly clear from the evidence that the
12 Secret Intelligence Service were not involved in any
13 activities using trawlers in 1974 and that none of the
14 crew of the Gaul were SIS agents or contacts; there
15 being a difference between somebody who is perhaps an
16 agent in a formal sense and somebody who is merely
17 a contact. Nevertheless, as explained by EB, their
18 records show all the people who were contacts, and they
19 ran every single member of the Gaul through their
20 records and none of them were contacts of the service.

21 In addition, there is the direct evidence from
22 Mate Petty who sailed on the last voyage that there was
23 no one else on board the vessel other than the crew. In
24 giving oral evidence, he said:

25 "There was no mystery man aboard that vessel. That

1 vessel was never, ever engaged in spying. That is the
2 gospel truth."

3 That was Day 2, page 57. He also confirmed that the
4 vessel did not go to Portsmouth and did not pick up any
5 naval officer. That was on Day 2, page 63.

6 Skipper Suddaby, the regular skipper of the Gaul,
7 also gave evidence that the Gaul herself had never been
8 engaged in spying.

9 Part of the reason why the question of spying has
10 assumed such prominence over the years is that the then
11 Defence Minister William Rogers MP wrote to
12 John Prescott MP, James Johnson MP and Kevin McNamara MP
13 on 8th August 1974 stating:

14 "The British trawler fleet is not involved in any
15 way in intelligence gathering."

16 By the use of the present tense "is", that letter
17 correctly stated the position because in 1974 the
18 trawler fleet was not so engaged. However, although
19 being correct in that sense, it was interpreted by some,
20 and perhaps many, to constitute a denial that the
21 British trawler fleet "had" (past tense) been engaged in
22 such activities which was not correct and moreover was
23 known to those in Hull not to be correct.

24 If and insofar as Mr Rogers or anyone else in the
25 government went further than was stated in that letter

1 in any radio or television interview and suggested that
2 trawlers had not been used for spying, then they were
3 plainly wrong to have done so. It is, we suggest,
4 perhaps unfortunate that it was not made clearer at the
5 time that although trawlers had been used in the past,
6 such activity had ceased before 1974, although against
7 the background of the Cold War it is perhaps
8 understandable why the government of the day was not as
9 candid as it could have been. But nevertheless, it is
10 that rather precise technical use of the present tense
11 that I think has brought about much of the problems
12 around this issue in the present case.

13 Sir, that brings me on to the question of why no
14 search.

15 MR JUSTICE DAVID STEEL: Of course one of the problems that
16 has bedevilled this matter for over 30 years is that --
17 in a sense you are about to come on to it, but the
18 foundation for the problem was the challenge to the
19 formal investigation by the Fenton programmes in 1975,
20 on the basis that they had failed to grapple with the
21 life belt problem, and the assertion in the programmes,
22 which I have only just seen, that the only explanation
23 for the life belt and the plankton on it was that it had
24 been deliberately deposited as a ruse in the Cold War,
25 which gave some credence to some of the more troubled

1 concerns of the relatives.

2 It is perhaps important that we at some stage take
3 a grip of the risks that can be run when a large loss of
4 life is sustained and then people have fully
5 understandable expectations of some explanation of the
6 inexplicable, come up with some theories which may be,
7 at first impression, far-fetched, then find that their
8 theories are not only taken up but run with and approved
9 by television. It gives rise to serious difficulties in
10 the long term.

11 MR MEESON: That is absolutely true. The problem stemmed
12 from the fact that of course at the first inquiry -- two
13 things really. First of all, of course there was very
14 little evidence for the inquiry to go on, so they rather
15 inevitably really produced the result that the vessel
16 was overwhelmed by the sea, which is not in itself
17 really an explanation of anything. And secondly, as we
18 have seen from that letter, what was stated at the time
19 by the government in relation to the use of trawlers and
20 saying that they are not used for spying, which, again,
21 could have been technically correct but not really
22 according with people's own knowledge at the time that
23 trawlers had been used for spying.

24 The government did not say, "Well, they have been
25 used for spying but are no longer used for spying"; that

1 would have been the true and full picture. The
2 suggestion that the trawler fleet is not used for spying
3 I think to many people would -- people would not make
4 the distinction between something that is referring only
5 now to the present time rather than something that is
6 what they understood to be a denial that the trawler
7 fleet had ever been used. Having made that denial, you
8 are talking to people and saying, "We know it has, we
9 were all doing it." That is most unfortunate.

10 MR JUSTICE DAVID STEEL: It is the combination of what might
11 be called the half truth from the government with regard
12 to spying, although really we are saying -- or could
13 legitimately be saying they are no longer involved in
14 spying, taken with the theories that bubbled out of
15 suspicions that there was a half truth and therefore
16 something being hidden, taken to quite remarkable
17 extremes by television in order to make quite an
18 interesting programme about the latter stages of the
19 Cold War. It is quite an explosive mixture.

20 MR MEESON: It is an explosive mixture because it is
21 a fascinating topic for most people.

22 The other ingredient into all of this, which is what
23 we are really coming on to in the "why no search?"
24 section, is of course there was not a wreck either. So
25 one has a combination of no real explanation for how

1 a vessel such as the Gaul -- I mean, it is not a small
2 fishing vessel and, as we have seen, it was not actually
3 that easy to lose the vessel. It has to have a certain
4 combination of factors: no explanation being given, no
5 wreck being found, and then this half truth explanation
6 about spying. So people, not entirely unnaturally, are
7 hoping that maybe she has not been sunk, maybe she has
8 been taken somewhere else, maybe our men are still
9 alive. It is not an unreasonable hope to have in those
10 circumstances.

11 I think it is that, really, that, when we come on to
12 the "why no search?", the explanation for why no search,
13 I will be submitting is quite straightforward. Looked
14 at now, with the benefit of hindsight, it is not a very
15 satisfactory explanation from, if you like, an emotional
16 point of view, that nobody really focused on the fact of
17 how important finding the wreck would be to the
18 relatives, or at least some of the relatives.

19 MR JUSTICE DAVID STEEL: Again, there is a certain irony
20 here. The conclusion of Captain Maybury in his
21 preliminary inquiry would be not a worthwhile exercise
22 to embark on a formal investigation, but there was
23 simply not enough material to form a view, let alone to
24 make sensible recommendations for the future. Rather
25 presciently he said things might change if new

1 information was forthcoming.

2 I suppose it might be said, with the benefit of
3 hindsight, that whilst one usually would commend
4 a formal investigation that starts within six months of
5 the loss, the cost of a formal investigation with
6 limited material might -- the money might have been in
7 fact better spent on a search when the opportunity of
8 identifying where the vessel probably was emerged in due
9 course. But, again, that is, of course, with the
10 benefit of what we know now.

11 MR MEESON: Yes.

12 Sir, I then turn to consider the question of why was
13 no search made for the wreck.

14 It is clear from the documentation that by
15 April 1977 the Department -- that is the Department of
16 Trade -- was satisfied that the wreck of the Gaul had
17 probably been located. I give the reference there,
18 AG34, page 15. Their initial reaction was that it
19 should positively be identified by using a submersible.
20 That was their initial reaction. However, it appears
21 that at that time all that was really being contemplated
22 by the Department was a positive indication of the wreck
23 that they thought was the Gaul as actually being the
24 Gaul. The idea there was simply that it could then be
25 disproved that this idea that the vessel had not been

1 sunk was simply not the case, and that the vessel had
2 been sunk. However, even at this stage there was
3 a cautionary note being sounded about disproportionate
4 costs, and I refer there -- I think it is probably worth
5 perhaps looking at this -- to AG34, page 17.2.

6 MR JUSTICE DAVID STEEL: Thank you. I have looked at some
7 of the correspondence, but I have not tried to grapple
8 with the internal memoranda within the Department.

9 MR MEESON: In which case, it may be better to start with
10 page 15, which is a document which says:

11 "Have we found the Gaul? If so what courses of
12 action are open to us? An appraisal."

13 So that was where the initial reaction came
14 in: well, we should use a submersible to confirm this.

15 Then at 17.2, one has there a manuscript note where
16 what is said is:

17 "This is a reasonable assessment of the present
18 position. I would support the procedure outlined by the
19 senior surveyor before expensive equipment is utilised.
20 The Gaul has been missing a long time and won't
21 disappear in the near future if the echo is actually the
22 vessel itself."

23 Then there is a note there to the Surveyor General
24 from Mr Doyle of the Department saying:

25 "In view of your discussions in Hull about the Gaul

1 and the information at document 12 -- especially
2 paragraph 2 -- you may feel that we could dispense with
3 4(a) and ask the Ministry of Defence (Navy) if they
4 could (conveniently) help? I think there is something
5 to be said for 'laying the ghost' as soon as possible
6 but short of incurring disproportionate costs."

7 The main actor in all of this appears to be Mr Doyle
8 in the Department. So he is there saying, "Yes, we
9 could identify it but, you know, we do not want to spend
10 disproportionate costs on this."

11 By June of that year -- that is 1977 -- the
12 Department had information that a full photographic
13 survey could be undertaken and received a detailed and
14 costed proposal based on daily rates which worked out at
15 about £60,000 in 1977 money. There was also an offer to
16 do the job for a lump sum of £50,000. The Ministry of
17 Defence said that they were not able to assist and
18 pointed out, probably quite correctly, that testimony
19 from the Royal Navy was unlikely to persuade the
20 families.

21 It is clear from the files that these proposals to
22 carry out the work for £50,000 or £60,000 were taken
23 seriously by the Department, but they were subject to
24 making a submission to the Treasury for funds. We have
25 that at AG34, page 69.1, which is a note from

1 Miss Stockdale to Mr Doyle.

2 MR JUSTICE DAVID STEEL: Do we have a hierarchy for the
3 Board of Trade civil servants? I remember some of these
4 people, Captain Lusted is one of the inspectors and
5 surveyors, but Mr Doyle, I have no idea who that is.

6 MR MEESON: No. My assumption is that Mr Doyle comes
7 beneath people like Mr Archer and Captain Shone.

8 MR JUSTICE DAVID STEEL: Yes, you are probably right. In
9 due course I have no doubt we will get some help.

10 MR MEESON: I am sure Mr Cooper will be able to assist us.
11 What appears from this document is, they say:
12 "MOD say they can offer no assistance in identifying
13 the wreck, but we have propositions from two commercial
14 sources with very rough estimates of likely costs.
15 "If we were to go ahead with either of these
16 options, or one of the others suggested by MOD, there
17 would need to be detailed discussion and negotiation,
18 culminating in the drawing up in some kind of formal
19 contract.
20 "Captain Lusted has suggested the appointment of
21 a project officer who could be made available on a
22 full-time basis to carry the matter through to
23 conclusion. He also mentioned to me that the
24 Operational Research Unit of EM division might be able
25 to assist ... I therefore discussed this suggestion

1 tentatively with Mr McIndoe, consultant, of the OR unit.
2 He said that while the unit had no expertise on the kind
3 of operation envisaged, the assessment of likely
4 cost-effectiveness of various options was within the
5 unit's competence. But he said it would be well-nigh
6 impossible to provide such an assessment in time for
7 a contract to be placed within the next three or four
8 weeks, which is the timescale we must aim for if the
9 exercise is to be mounted in the long hours of daylight
10 and before the weather closes in for 1977.

11 "But it seems to me that it would be premature to
12 enter into any further discussion with commercial
13 sources until we have an agreement in principle that the
14 taxpayer should foot the bill. Marine Division have no
15 funds appropriate to the project and I doubt whether
16 this kind of thing could be funded by SMTRB [I am not
17 quite sure what that is] -- in any case the time element
18 would rule out a submission to that source. We are
19 left, therefore, with the option of seeking special
20 authority from the Treasury, via FEA.

21 "In making a submission to the Treasury we should
22 have to set out in some detail the likely degree of
23 success and the benefits we see from undertaking the
24 exercise. I suppose the latter [that is the benefits]
25 fall under two headings:

1 "(a) The immediate or long-term benefits to safety
2 of life at sea

3 "(b) The sociable benefits in setting at rest the
4 minds of the bereaved.

5 "In respect of (a) it may well be that we shall
6 learn nothing to add to what we have already learnt
7 about the construction and operation of stern trawlers,
8 but it would be for surveyors to provide a reasoned case
9 under this head for proceeding with the search. As for
10 (b) it is my own view that that small but vociferous
11 group of relatives would still not be satisfied. They
12 do not want to add RIP to the affair and identification
13 would merely lead to some wild notion that the Russians
14 had had the ship all along and had recently scuttled
15 her, or to further pressure for the wreck to be
16 raised -- I understand this would be a fantastically
17 expensive business.

18 "In discussing the case with the Surveyor General
19 yesterday, he was inclined first to see whether
20 Captain Bachelor at the [Marine Service Office] Hull
21 could sound out the owners with a view to their sweeping
22 the area with two trawlers and a wire in an attempt to
23 dislodge and bring up some wreckage which might
24 positively identify the ship. It might be the better
25 position. But if so we must tell the two firms very

1 soon of our withdrawal from the proposal."

2 Sir, that is the position there, and that is
3 Miss Stockdale. Really, the whole of the rest of the
4 consideration of the Department seems to proceed on
5 focusing on what is explained in 5(a) as the "immediate
6 or long-term benefits to safety of life at sea", and
7 really, if you like, discounting the question of the
8 "social benefits of setting at rest the minds of the
9 bereaved"; really, I think, on the basis probably of the
10 assessment that, well, even if we did find the wreck, it
11 would not actually satisfy some people, therefore there
12 is simply no point in taking that factor into account.
13 That might be a slightly harsh assessment on my part,
14 but that is how the documents appear.

15 Mr Doyle was plainly of the view that the
16 expenditure of £50,000 or more could not be justified.
17 He even thought that £25,000 would be too much to spend,
18 and therefore advised against an undersea search. We
19 see that from the next page at 69.3. This is his note
20 following on from what he had been told by
21 Miss Stockdale as sending that up to the Surveyor
22 General.

23 What he says is:

24 "Unfortunately the [Ministry of Defence] have
25 informed us that they have no suitable resources

1 available for mounting an underwater search for the
2 wreck of the Gaul. We have, on the other hand, received
3 two quotations from commercial operators which are
4 £50,000 and £60,000 respectively.

5 "I should perhaps mention that the Gaul is still
6 very much a live/emotional issue. I regularly receive
7 letters from relatives of the crew, there are a number
8 of legal actions about to commence for which we have
9 asked to supply documents and only last week Mr Trotter
10 MP wrote to the Minister on behalf of the widow of
11 a crew member suggesting that the Inquiry should be
12 reopened. No doubt in time the matter will fade into
13 obscurity but I think it is likely to go on for quite
14 a while yet.

15 "Central Dockyard Laboratory have now completed
16 their tests on the Gaul life raft container. Although
17 the report has not yet been received, I understand that
18 the laboratory's analysis of marine growth on the
19 container is consistent with it having been trawled up
20 from the immediate vicinity of the obstruction off the
21 North Cape Bank which we believe to be the Gaul.
22 I think we now have sufficient indicators to conclude
23 that we do have a very good idea where the Gaul is and
24 it is a question of whether or not we wish to prove it.

25 "In spite of current interest and the desirability

1 of finally laying the ghost of the Gaul, I cannot see
2 any justification for expending £50,000 plus on a
3 search. There will be no benefits in terms of marine
4 safety and it would be to some extent simply a case of
5 proving that the Court of Formal Investigation reached
6 the right conclusion. There is, I realise, an argument
7 on humanitarian grounds that we should put the minds of
8 the relatives at rest but, personally, I believe it is
9 questionable whether, short of actually salvaging the
10 Gaul, some of the relatives would ever be convinced.

11 "A further consideration is the weather situation.
12 I am advised that if a search is not mounted in August
13 we will have to wait a further 12 months for reasonably
14 favourable conditions. This does not allow us much time
15 for deciding what to do since the commercial operators
16 will need time to make their preparations. Thus, there
17 is no opportunity for 'shopping around' for a lower
18 offer. In any event, even if we were quoted say £25,000
19 it would still be a lot of money to find for this
20 exercise.

21 "My very reluctant conclusion therefore is that we
22 should not hire commercial operators to carry out an
23 undersea search. I doubt very much if the owners would
24 be prepared to pay, or even share, the cost but I have
25 not put it to them specifically. I imagine they would

1 wish to look at the situation in relation to their
2 present legal actions and time does not permit
3 a discussion on this point.

4 "You mentioned the possibility of our hiring two
5 trawlers to put a wire across the wreck in order to see
6 if further identifiable wreckage might be retrieved.
7 You will know better than I if this offers much hope of
8 securing further evidence but presumably we should need
9 to talk to the trawler owners both on the feasibility
10 and the cost of such an operation. Although this may
11 not tie us down so tightly to the weather considerations
12 but I should be grateful if we could have a word about
13 it as soon as possible."

14 That is Mr Doyle writing on 30th June 1977.

15 So that is Mr Doyle's view. Some further light is
16 shown upon the reasoning behind the view, which was that
17 nothing could be learned from the underwater survey
18 beyond confirming that it was the wreck of the Gaul,
19 therefore there was no marine safety argument to justify
20 expenditure, as set out at page 119 to 121, which is the
21 submission to the Minister who was ultimately to make
22 the decision.

23 What this says is:

24 "Search for the Gaul.

25 "Time is fast running out if we are to organise an

1 underwater search for the Gaul before the unfavourable
2 weather sets in. The purpose of this submission is to
3 seek a decision on whether or not a search should be
4 made.

5 "The Gaul is still a lively topic and I attach
6 a recent press report on the MOD (PE) laboratory
7 investigation into the condition of the Gaul's life raft
8 container. As you will see, Mr James Johnson, and no
9 doubt his fellow Hull MPs, are hoping that the
10 Department will decide to commission a search.
11 Mr Johnson's remarks, as reported, are in my opinion
12 a nicely judged balance between concern for his
13 constituents and realisation of the constraints upon the
14 Department. I personally doubt that a decision not
15 to mount a search would receive a really critical
16 response from the members in question, although there
17 would probably be some disappointment expressed.

18 "We have tried to recruit the aid of MOD (Navy) and,
19 through our Naval Attache in Oslo, the Royal Norwegian
20 Navy. We have made two attempts at the MOD but they
21 have confirmed, with regret, that they have no readily
22 available equipment to carry out the task. In any
23 event, they made the point that, like us, they need to
24 recover their costs, and they would certainly be no
25 cheaper than a commercial organisation. The Norwegian

1 Navy informed our Naval Attache that they had no
2 capability of an underwater search of the kind required.

3 "On the commercial side we have had three
4 quotations -- two in the region of £50,000 to £60,000
5 and the other, from Vickers Oceanic, of £80,000 to
6 £90,000. The Vickers' proposal strikes me as the most
7 'cost-effective' because I suspect the success factor is
8 very much higher; in using a manned submersible, they
9 will be in a stronger position to locate and film the
10 vessel, and to recover substantial pieces of the debris
11 to aid positive identification."

12 Sir, I pause there to note that what they are
13 looking at there is to recover debris to aid positive
14 identification. They are not talking there about
15 recovering debris to aid an understanding of why the
16 vessel sank.

17 "The other two quotes, using unmanned craft and film
18 equipment, are substantially cheaper but, in my layman's
19 opinion, also carry a greater all-round risk of failing
20 to accomplish the task. All of these quotations are,
21 however, qualified by the accuracy of the position we
22 have for the obstruction, the size of the search area
23 and weather conditions.

24 "I can think of no marine safety argument that would
25 justify our spending a sizeable amount of money on a

1 search. If the Gaul were in fact located it would
2 confirm the findings of the Court of Formal
3 Investigation only in the sense that the Gaul had in
4 fact sunk off the North Cape Bank. It would not
5 establish positively what caused the vessel to go down."

6 So, again, the thinking of the Department is that
7 the only purpose of carrying this out is to positively
8 identify this as being the wreck of the Gaul. There is
9 no sense in which the Department is contemplating that
10 they would learn anything about the cause of the loss
11 from carrying out an underwater survey. The note goes
12 on:

13 "The question in my opinion, therefore, becomes
14 whether a search should be mounted on 'humanitarian'
15 grounds alone; that is in the interests of the
16 relatives. I might say here that I have sounded the
17 owners, admittedly very obliquely, about their
18 participating in a search and this has been received
19 with stony silence. This attitude may be influenced by
20 considerations connected with the legal proceedings
21 pending between relatives and the owners but, whatever
22 the explanation, the owners have shown no interest.
23 Additionally, there is the point that fishermen in Hull
24 generally, and no doubt the owners, fully accept that
25 the Gaul was lost as concluded by the Court of Formal

1 Investigation.

2 "It is, I feel, a dubious proposition that finding
3 the Gaul would in fact offer solace to all the
4 relatives. Some of the next of kin may well be
5 unwilling ever to accept the loss of their families and
6 may not even want the fate of the Gaul confirmed beyond
7 any doubt or hope. No one can fail to have a great deal
8 of sympathy for the relatives but an argument in favour
9 of a search based solely on the grounds of removing
10 uncertainty and anxiety is not decisive enough for me.

11 "We must also admit the real possibility of failure.
12 Vickers Oceanic conceded that. We may run out of time
13 and not find the obstruction: or we may find that it is
14 not in fact the Gaul. We could thus wind up in
15 a situation where, having expended a great deal of
16 money, we would have succeeded only in re-awakening the
17 distress of the relatives in generating a new wave of
18 doubt and anguished correspondence about the crew being
19 taken by the Russians.

20 "All this, coupled with the fact that all the
21 evidence we have points to the validity of the findings
22 of the Court of Formal Investigation, leads me to
23 conclude that we should not mount an underwater search
24 for the Gaul."

25 That is Mr Doyle writing on 5th August 1977.

1 It is plain that the Minister acted upon that
2 advice, and there is no evidence at all to suggest that
3 the Minister's decision was taken on anything other than
4 the advice of the Department, as expressed in that
5 submission of Mr Doyle.

6 There is no evidence at all to suggest that the
7 Department's belief that an underwater survey would not
8 reveal anything beyond positive proof that the Gaul was
9 at the bottom of the sea was not its genuine belief.
10 The belief itself may be criticised, although given that
11 it has taken the intrusive 2002 survey to discover the
12 open duff and offal chutes, it may in fact have been
13 a correct belief at the time, but the reasoning is
14 nevertheless clear and genuine. There is no evidence
15 that there were any other reasons for the decision other
16 than those which were stated.

17 That is corroborated by the attitude of the
18 Department after the Minister's decision. For example,
19 the Department was fairly lukewarm to receiving video
20 footage from a search undertaken by a private firm on
21 its own initiative because they did not think it would
22 reveal anything in terms of marine safety. That is at
23 page 156. Some of these later points are really quite
24 revealing, in a sense.

25 Paragraph 3 of this note, again from Mr Doyle, this

1 time about a month later, in September, where there is
2 an approach by two companies indicating that they are
3 seriously considering looking for the Gaul on their own
4 initiative -- that is P&O Subsea and ULS Marine --
5 because they think it would present an "intriguing and
6 useful deep sea operational training exercise". Then at
7 paragraph 3 he says:

8 "I have made it quite clear to ULS and P&O that they
9 do not need the Department's permission -- formal or
10 informal -- to mount a search nor are the publicity
11 'rights' within our gift. The question of whether or
12 not they decide to proceed and what use they make of any
13 outcome must be a matter for their own commercial
14 judgment and discretion. On the other hand I do not see
15 any point in our adopting an entirely neutral stance.
16 Since the initiative came from the companies, and
17 subject to entering some very clear reservations, I have
18 agreed to see ULS (Mr Haydu Jones) on 19th September.
19 I have already said that we are not getting involved in
20 a commercial publicity stunt; there is a need to
21 consider sympathetically the feelings of the relatives
22 in contemplating the exploitation of a successful
23 search. It would also be necessary to keep the owners
24 of the Gaul informed. I propose to discuss these points
25 with Mr Jones.

1 "Presumably we would be interested to see the video
2 films of the wreckage if they became available, although
3 we do not think they would yield anything in terms of
4 marine safety. The two firms already have the position
5 of the Gaul as reported to us and ULS also have a copy
6 of the echo-sounder trace. Both firms understandably
7 accept that they are 'on their own' but I think we
8 should respond positively, if we can do so, to any
9 requests for information."

10 So there the Department does not actually seem
11 particularly interested in even having the results of
12 the search. They say, "Presumably we would be
13 interested to see the video ...".

14 If I turn just a few pages on to 164, there is an
15 even more stark indication of where the Department was
16 coming from with these ideas, because one has there
17 a specific request from a commercial firm as to what
18 they ought to look for on the wreck. So we have at the
19 top of the page, "Search for the Gaul":

20 "As you know, I am seeing Mr Haydu Jones of ILS on
21 19th September to discuss with him their plans to look
22 for the Gaul.

23 "When I talked about this with Mr Jones on the
24 telephone he asked whether, if they decided to go ahead,
25 there were any particular points concerning marine

1 safety that we would like to suggest they kept in mind
2 when surveying the wreckage. I replied that we had
3 rather discounted the possibility of learning anything
4 that would be helpful in terms of marine safety but
5 I would welcome your views on this question."

6 Then the Surveyor General, Mr MacIver Robinson,
7 responds:

8 "It would indeed be a bonus if we not only located
9 the Gaul but also established the cause of the loss.
10 However most evidence points to the Gaul being an intact
11 ship so we can give little guidance as to damage and
12 I would expect small openings which may have allowed the
13 entry of water to the factory deck to be undetectable.
14 The soundings also indicate that the wreck which we
15 suspect is the Gaul is lying on its side and silting
16 over, so I would doubt whether we can give Mr Jones of
17 ILS any firm guidance as to what to look for.

18 "What would be significant would be confirmation
19 that the vessel was indeed an intact ship/conversely
20 that substantial damage was evident as, perhaps, the
21 result of an explosion or contact with a mine."

22 So the Department there, short of some obvious, if
23 you like, gross structural damage, really has not got
24 any particular ideas in mind as to how an underwater
25 survey could have advanced its knowledge at all.

1 Then at page 178, a further example where they
2 informed P&O that they saw no returns in terms of marine
3 safety. Again, this is Mr Doyle later on in September.
4 He says:

5 "I saw Mr Eastaugh, General Manager of P&O Subsea
6 Limited, today to discuss his company's proposals to
7 search for the Gaul.

8 "The idea is very much a personal initiative by
9 Mr Eastaugh and I got the clear impression that
10 publicity was not uppermost in his mind. Mr Eastaugh's
11 background is apparently in the fishing industry and he
12 regards the Gaul mystery as a challenge and worthwhile
13 operation. He said the company would not take a final
14 decision until their feasibility study had been
15 completed. This would probably include an examination
16 of the sea conditions in the area and, he hoped, such
17 evidence as was available to confirm the position of the
18 Gaul. It was not possible, in Mr Eastaugh's opinion, to
19 mount a search before next spring as the weather was
20 deteriorating fast and the possibility of reasonable
21 diving conditions from October onwards was remote.

22 "In passing, Mr Eastaugh remarked that he had heard
23 (not from me) that ULS were contemplating a search. He
24 volunteered the opinion that ULS were not adequately
25 equipped nor sufficiently experienced to carry out

1 a successful search of this kind. He also thought they
2 would be ill advised to attempt it before next year.

3 "I confirmed to Mr Eastaugh that the Department had
4 no money to spend on a search for the Gaul, particularly
5 as we saw no return in terms of marine safety.
6 Nonetheless, like him, we would be pleased if the Gaul
7 were found if only to allay the anxieties of the
8 relatives. I said we would be willing to provide such
9 information as we had that would be helpful to him,
10 although we could not in any circumstances release the
11 preliminary inquiry report. Mr Eastaugh promised to
12 keep in touch with me on this matter and he may have
13 a word with the Surveyor General about it if he meets
14 him in Montrose on Monday."

15 And then, at page 243, there is a fourth example,
16 where the reason for not negotiating with a private firm
17 offering to take photographs for a fee was given as
18 being there is no justification for that expenditure.

19 On 243 there is a note from Miss Stockdale to
20 Mr Doyle:

21 "Gaul. The attached refers to an offer by a private
22 firm to take photos -- for a fee -- of what they believe
23 to be the Gaul.

24 "I think no action is called for. Do you agree?"

25 The response is:

1 "Tempted as I am to try and clear up one of the
2 great mysteries of the sea I cannot see how we could
3 justify the expenditure. If it turned out not to be the
4 Gaul I cannot contemplate the correspondence!"

5 It is clear from this that the Department was not
6 seeking to hide the position of the wreck as they
7 believed it to be. They provided it to ULS Marine
8 before the decision had been taken by the Minister, and
9 they provided it to P&O after the decision had been
10 taken. They also provided it to the investigative
11 journalist Mr Brian Haynes of Thames Television in
12 a document that we have at page 209. That is a document
13 dated 25th November 1977 to B Haynes Esq of "This Week",
14 Thames Television:

15 "Dear Mr Haynes,

16 "Gaul. Thank you for your letter of 14th November.

17 "The answers to the points you raised are:

18 "1. The reported position of the wreck which it is
19 thought might be the Gaul is:

20 "Decca; Red C 16.0, Green F 34.5, Finnmark Chain
21 (7E). This is equivalent to a geographical position of
22 72 degrees 04 minutes N, 25 degrees 03.5 minutes E. The
23 depth of water is 146 fathoms. The position is about
24 55 miles north by west of North Cape, some 30 miles
25 south south west from where the Gaul was last seen by

1 the Swanella."

2 Then they refer to the half life raft container
3 dredged up and some other information. Then it
4 finishes, in the final paragraph:

5 "Finally, should you wish to make use of this
6 information in any published or broadcast form, may
7 I ask you to be good enough to have a word with our
8 Press Office beforehand. As you will appreciate, even
9 after all this time, the Gaul remains a sensitive and
10 emotional issue."

11 That, again, is a letter from Mr Doyle. So it is
12 plain that in 1977 there is no secret about the
13 whereabouts of the wreck, and it is simply that the
14 Department really saw no point in spending any money in
15 going to look for it.

16 In September 1980, the Department wrote to Mrs Betts
17 and Mrs Parker, two of the relatives who regularly wrote
18 to the Department, informing them of the position of the
19 Gaul and seeking to put an end to the correspondence
20 with the Department. This is what has been referred to
21 as the "Stockdale letters", which we have at pages 252
22 and 259 of bundle AG34. They are in identical form.

23 The first is a letter to Mrs Betts, and this is the
24 letter which begins:

25 "My name is Peggy Stockdale. I am near to retiring

1 age and I work as a Senior Executive Officer in that
2 section of Marine Division which deals with the
3 investigation of ships casualties."

4 She goes on to make various points, particularly
5 that there is no evidence that the Gaul was a spy ship;
6 there is no evidence that the Russians had her.

7 And then at 255, she says this:

8 "We are certain that the Gaul lies on her side in
9 900 feet of water in a position 55 miles north by west
10 of North Cape, some 30 miles south south west from where
11 the Gaul was last seen by the Swanella. Our reasons for
12 being so sure of this is that at least two trawlers by
13 means of their echo-sounding equipment have detected
14 a large obstruction on the seabed there. At that point
15 the seabed is muddy and there are no rocks, so it was
16 reasonable to suppose that the obstruction was a ship.
17 The recordings when compared with a plan of the Gaul
18 seemed to match its shape.

19 "The position where these echo-soundings were taken
20 was the same as that where the Marbella trawled up half
21 a life raft container. We had the container examined by
22 experts and they concluded that it had been lying in
23 approximately 900 feet of water for some years.

24 "There then arose the question of whether
25 submersible craft, equipped with cameras, should be used

1 to dive down to the wreck. But after consulting the
2 naval authorities and the operators of submersibles the
3 Department decided against it. The reason for this was
4 not so much on costs (which would have been very high)
5 but simply because it would not have resulted in
6 anything more than being able to locate the ship and
7 take photographs. At that depth the photographs might
8 not necessarily have shown up the ship's name and
9 certainly would not have revealed why she foundered, so
10 we would not really have learned any more than we
11 already know. Nothing in the three years since that
12 decision was taken has caused us to change our minds
13 about this.

14 "So I am afraid there is no more I can tell you, but
15 I hope this rather long letter will help you to
16 understand the position from the viewpoint of the
17 Department of Trade."

18 It is clear, again, from that that this is entirely
19 consistent with the reasons given for the decision which
20 had been taken three years earlier, save to the extent
21 that where it says it is not so much about costs,
22 obviously there were some in the Department who seemed
23 to think that the costs were an important issue.

24 It is clear, therefore, that the reasons given for
25 why no underwater search had been mounted in the early

1 1980s was the same as why such search was not mounted in
2 1977. It was simply that the Department could see no
3 benefit in it in terms of marine safety.

4 The last bit, before providing some suggested --

5 MR HOPPER: If I could just make a small comment. I think
6 these letters and these documents you have read out
7 should be looked at in the context of the technology at
8 the time. I am quite sure you are doing that, but I am
9 aware from personal knowledge that the technology at
10 that time was very, very poor by comparison with what we
11 eventually had. I was involved in underwater work with
12 trying to look at trawls at that time, and the quality
13 of the results was really very, very poor. That may
14 well have been in the mind of the people making these
15 decisions.

16 MR MEESON: Yes. It is obvious from the Department's point
17 of view that they believed that the only thing that
18 would be discovered would be that this was the Gaul, and
19 they were looking at it in terms of positive
20 identification. Nobody was even contemplating, it seems
21 at that time, the sort of survey that was carried out in
22 1998 and was carried out again in 2002, of actually
23 carrying out a comprehensive survey to try and obtain
24 further evidence as to why the vessel sank.

25 As I said before, this matter has been thoroughly

1 investigated by Mr Roger Clarke in his report as to "why
2 no search?" and he has made certain recommendations
3 which have been accepted by the Department for the
4 future. The reason it was raised as a question in this
5 Inquiry was because of the suggestion that the reasons
6 given for that decision were somehow not the real
7 reasons of the Department.

8 In conclusion, it seems that there is no evidence
9 that the Department was giving anything other than its
10 genuine belief as to what they thought was a reason not
11 to carry out or spend the money to carry out an
12 underwater search.

13 To deal with one final point, although I do need to
14 mention briefly the question of recommendations --
15 although I may come back to that later -- a final issue
16 is the question of Radio Officer Doone.

17 Sir, as you are aware, there has been a suggestion
18 that Radio Officer Doone left the Gaul before she sank
19 and was seen in South Africa some years later. There
20 is, however, no evidence whatsoever that anyone left the
21 vessel before she was lost or escaped from the loss
22 itself. In fact, all the evidence points to the
23 contrary.

24 First of all, it is plain that Radio Officer Doone
25 was on board the Gaul when Mate Petty was on board and

1 he did not leave with him at Lodingen. The reference to
2 that is Day 2, page 64. Mr Oswald cannot remember
3 anyone being flown back from the Gaul at Tromso when
4 Mate Spurgeon joined. That was Day 4, page 102. And
5 finally, there must have been a radio officer on board
6 to send the private telegrams and send the skipper's
7 schedule. The reference to that is Day 19, pages 92 and
8 96.

9 We would therefore invite to you conclude that all
10 of the crew of the Gaul, including Radio Officer Doone,
11 were on board at the time of the loss and were lost with
12 the ship.

13 I do not know if that is an appropriate time for
14 a short break.

15 (3.15 pm)

(A short break)

17 (3.37 pm)

18 MR MEESON: Sir, the bundle does grow.

19 MR JUSTICE DAVID STEEL: It does.

20 MR MEESON: What I was intending to do, if that was
21 acceptable, was to come back and deal in a bit more
22 detail with the question of recommendations, perhaps in
23 reply. You will see where I have indicated. What I was
24 simply going to round off with now were my suggested
25 answers to the formal questions.

1 MR JUSTICE DAVID STEEL: Yes, I am perfectly happy with
2 that. I do not think that we at least as a core had
3 sought advice from your experts as to what they would
4 propose by way of recommendations. I am not quite
5 sure --

6 MR MEESON: There are some proposals at the back of the
7 experts' report in AG15.

8 MR JUSTICE DAVID STEEL: Yes, I follow. It may be that, if
9 we have any ideas of our own, we had better canvass
10 them. There is a certain difficulty about making
11 recommendations that emerge from a casualty some 30
12 years old when life has moved on a lot. Anyway, yes,
13 I am more than happy you should approach it in that way.

14 MR MEESON: So to round off, then, the formal questions, and
15 the following are my suggested answers. That is, first
16 of all, to the question: what was or were the probable
17 cause or causes of the loss of the Gaul?

18 It is suggested that there was an accumulation of
19 water on the factory deck, most probably through the
20 duff and offal chutes, but possibly from the internal
21 water supply to the factory machines, leading to the
22 vessel losing stability, being rolled heavily to
23 starboard and sinking through downflooding of internal
24 compartments.

25 Secondly: what possible causes can be eliminated by

1 the evidence which is now available?

2 The answer is fire, collision, explosion, missile
3 attack, torpedo attack, striking a mine, icing, cargo
4 shift, structural failure, grounding and snagging
5 a seabed cable.

6 What other possible causes remain open?

7 All other possible causes, although these are all
8 very unlikely.

9 Was the design and construction of the duff and
10 offal chutes satisfactory to prevent the ingress of
11 seawater onto the factory deck?

12 Answer: yes. The duff and offal chutes were fitted
13 with a self closing non-return flap and watertight
14 covers. Although the design of the non-return flap was
15 deficient, in that it was liable to seize over time and
16 had no real means whereby it could be maintained, proper
17 use of the watertight covers would prevent water
18 ingress.

19 At the time of the loss, were the duff and offal
20 chutes closed and secured so as to prevent ingress of
21 water onto the factory deck?

22 Answer: no.

23 When the vessel sailed from Hull on her last voyage,
24 were the closing arrangements of the duff and offal
25 chutes in a fit and proper condition to prevent the

1 ingress of seawater onto the factory deck?

2 Answer: probably not insofar as the self closing
3 non-return flap is concerned, which was probably seized
4 in the open position. Yes as far as the watertight
5 covers were concerned.

6 At the time of the loss, could the duff and offal
7 chutes have been closed to prevent seawater ingress onto
8 the factory deck?

9 Yes, there was no physical reason why the watertight
10 covers could not have been closed and secured.

11 Was the Gaul fishing at the time of her loss?

12 Answer: no.

13 What steps should be taken to avoid a similar loss
14 in the future? These were the matters that I was going
15 to address perhaps in a bit more detail in reply. But
16 these are the five that seemed to us to perhaps be
17 appropriate.

18 First of all, fitting of water level alarms in the
19 factory decks of trawlers; secondly, fitting of CCTV --
20 that is closed circuit television -- in the factory
21 decks of trawlers; thirdly, clearly instructions to
22 crews that openings in the ship's sides be secured
23 closed when not in use; fourthly, a warning light on the
24 bridge indicating that openings in the ship's side are
25 not closed; and five, education of fishing vessel

1 officers as to the importance of ensuring that no water
2 accumulates on the factory deck.

3 Since drafting those, some further information has
4 come to light which I have set out in appendices E, F
5 and G, and those are the matters that I want to consider
6 perhaps in reply.

7 Question 10: was the Gaul ever engaged in any
8 intelligence gathering or other clandestine activity
9 other than fishing?

10 Answer: no.

11 Were any of the crew on board the Gaul on her last
12 voyage engaged in any intelligence gathering or other
13 clandestine activity other than fishing during that
14 voyage?

15 Answer: no.

16 Why was no search made for the wreck of the Gaul in
17 the period 1977 to 1978 and in the period 1980 to 1981?

18 In both periods because in the opinion of the
19 Department of Trade there was no "marine safety
20 argument" in favour of carrying out an underwater search
21 for the wreck.

22 Those were my suggested answers to the questions,
23 and that brings me to the end of my closing. I will
24 come back and address the recommendations in reply and
25 perhaps any other miscellaneous matters that I may have

1 overlooked or may arise during the course of other
2 people's closings.

3 MR JUSTICE DAVID STEEL: Thank you Mr Meeson and
4 Miss Cunningham for all that work.

5 Closing Submissions by MR SALOMAN

6 MR SALOMAN: Sir, numerous theories have been considered
7 amongst the families in the last 30 years relating to
8 how the Gaul was lost. From the time of her loss, the
9 Gaul has been enveloped in mystery and in theories of
10 non-accidental disappearance both of the ship and of the
11 crew and of her possible involvement in espionage.

12 There was a 24 year period from 1974 up to 1997 when
13 no search was being made for her. The reason for this
14 was a decision of the government in 1977, disastrous in
15 its consequences, not to search for the wreck; and also
16 the maintenance of that decision by successive
17 governments in the many years which followed. As
18 a result, until 1997 there was no wreck to survey. The
19 families did not know where the ship was or where their
20 men were. Many of them were far from convinced that
21 they were lost in a marine accident. That was the
22 conclusion which had been reached by the Court of Formal
23 Inquiry in late 1974.

24 Many, too, were convinced that the government could
25 have found out what had happened to the ship and their

1 men, and indeed could have found the ship; and that it
2 was not doing so because either the ship and the crew
3 had been captured by the Soviets so that a search would
4 have been pointless, or else because it had some
5 sinister reason for not wanting to investigate the wreck
6 itself. There was, of course, another possibility which
7 the families appreciated: that the government simply did
8 not have the will to search for her, not caring, or
9 caring sufficiently, about the families' anguish.

10 Sir, I begin with the issue of why there was no
11 search for the Gaul, and I will explain why it is so
12 important and why I begin with it.

13 I told you in my opening that the decision of the
14 government not to search for her did cause the most
15 intense hurt and suffering to the families over three
16 decades. One relative's feelings expressed the views of
17 many when she said:

18 "It hurts me more why no search was made [for the
19 Gaul] ... than any other matter relating to the Gaul."

20 I will not read the several other letters that
21 I have given you reference for, at AG34/147, 149 and 159
22 from Mrs Amy O'Brien, Mrs Betts and Mr and Mrs Holborn.
23 They will be self-explanatory to you, sir.

24 There is also another letter which I would ask you
25 to note, and that is again from Mrs Betts, but it is

1 written at a much later stage in 1982, and I would wish
2 to refer to one extract of that letter at this stage.
3 This is a letter which Mrs Betts wrote on
4 14th January 1982. We are now some eight years after
5 the loss:

6 "First of all I would like to say I am pleased your
7 son and his friends have been found safe and well, as my
8 heart and prayers went out to you and your family when
9 I saw you on television because I knew what you must
10 have been going through. I and my family went through
11 the same experience eight years ago when my brother went
12 missing on the hull trawler Gaul 8th February 1974.
13 Your upsetment, I am pleased to say, had a happy ending,
14 but our torment is still going on as we still have no
15 proof of what happened that terrible day. I am writing
16 to ask you if you can please help in any way for us to
17 have peace of mind once and for all, by getting the
18 government to send divers or cameras down to take photos
19 of the wreck of the Gaul at different angles when the
20 weather is right, which will be June, July or August.
21 Please forgive me for writing at a time like this but as
22 a mother and also the rest of your family can now fully
23 understand our feelings and torment we are still going
24 through so Mrs Thatcher I am begging you to please try
25 and help us in any way you can. I know it will be

1 expensive for the government to do this, but we have
2 a fund going with £1,022 which we would gladly donate
3 towards the costs as long as we can have peace of mind
4 once and for all because we just cannot accept our
5 menfolk are dead without proof. I still think my
6 brother will ring me up or send me a letter one day.
7 But once I have proof he has gone I will also have
8 contentment and peace of mind."

9 That letter has the reference AG34, page 293.

10 The families had so much time during this period of
11 not searching to form their own beliefs as to how the
12 Gaul was lost, and many have felt that the decision not
13 to search was bound up with the very reasons for Gaul's
14 disappearance. The kind of beliefs they have held
15 include the following ones: that the Gaul was spying or
16 rigged for spying at the time; that she was seized with
17 her crew by the Russians; that she sunk in a collision
18 with a Russian submarine or a NATO submarine, or
19 a Russian or a NATO naval ship; that she was sunk by
20 a missile; that she was scuttled; that she snagged on
21 a mystery cable; or else was lost by some other cause
22 which the government, for some reason, did not want to
23 investigate over all these years.

24 Bound up with all these theories was the disturbing
25 thought that the government must have had its own

1 reasons, perhaps reasons of national security, for not
2 searching for her.

3 If you would be kind enough to look at page 151 of
4 bundle AG34, we have a letter from Jean Steele to
5 Mr Clinton Davis. It is undated but was sent about
6 1st September, shortly after his decision. It not only
7 demonstrates the general reaction of shock and
8 non-comprehension of the families at the decision which
9 was made not to search, but also a belief that the
10 government had something to hide.

11 I think it is sufficient if I read the passage which
12 begins -- in fact, I will not, I will read it all,
13 because it is reflective of the opinions as a whole:

14 "To say we were shocked and disgusted over your
15 decision not to make a search for the Gaul is to say the
16 least. How dare you count the cost in money and
17 a feeble excuse that a man may lose his life during such
18 a search, do you forget that there were 36 men on board
19 the Gaul when she went missing or don't they count for
20 anything."

21 I will carry on the reading three lines from the top
22 of page 152:

23 "From the very beginning when the Gaul first went
24 missing you have given repeated excuses for not having
25 an underwater search, is it because you are afraid of

1 what will be found, was that the reason why This Week
2 television programme was not shown as it was made, did
3 it come too near the truth of what really happened.
4 Well I am not asking, I am telling you there must be
5 a search, how can you expect our family and all the
6 other families concerned to go on living with all this
7 uncertainty never knowing what really happened, could
8 you live with it Mr Davis. I think now is the time to
9 do all you can to help us find some concrete evidence
10 and put our minds at rest once and for all."

11 The issue of the lack of a search is important
12 precisely because it played a part in forming the
13 beliefs which the families now hold. This profusion of
14 different beliefs and rumours as to what might have
15 happened, or did happen, has made a great deal of
16 families very anxious and unhappy people.

17 Well, the Gaul, of course, was found in 1997, but
18 the number of theories and rumours about her fate have
19 continued. The finding of the ship did not banish the
20 widely held belief previously mentioned that the Gaul
21 was not lost in an ordinary marine accident. Nor have
22 two major ROV surveys in 1998 and 2002 banished that
23 belief either. Beliefs within the group of ladies and
24 gentlemen who I represent are today still being
25 influenced, or even shaped, by speculation as to the

1 sort of reasons which the government might have had for
2 not searching. That is another reason why we
3 respectfully wish to look at the "why no search?" topic
4 first, at the outset.

5 You are already fully aware of the families' desire,
6 in the context of the case as a whole, that you, sir,
7 should determine the truth on all the loss theories
8 which have troubled them, however late in the day this
9 determination comes. All of their loss theories are
10 caught within the so-called loss scenarios in the joint
11 expert report, and we respectfully ask that you resolve
12 them in your report. We of course appreciate that it
13 may not be at all usual for a court of maritime inquiry
14 to be asked to, as it were, cover all theories; its
15 primary function is, for good reason, to determine the
16 cause of the loss in question. However, the Gaul
17 re-opened formal inquiry is not an ordinary inquiry, and
18 there are good reasons for asking that all possible
19 causes be covered.

20 We also echo the submission of Mr Meeson that you
21 make findings not only in your capacity as coroner in
22 relation to the four sets of identified human remains,
23 but as to whether all 36 crew members, as listed in the
24 crew list at bundle 1, tab 6, lost their lives on the
25 Gaul.

1 In relation to one particular member, Radio Operator
2 Doone, we will be asking you to consider the documentary
3 evidence. That, of course, as Mr Meeson has explained,
4 arises from an alleged sighting of him in South Africa.
5 We will ask you to make a specific finding as to whether
6 or not he, John Doone, lost his life on the Gaul.

7 The government gave four reasons for not searching
8 for the Gaul: first, the size of the search area, which
9 made it doubtful that a search would locate the wreck
10 and identify it as that of the Gaul; secondly, even if
11 it succeeded in locating the Gaul, the government said
12 that it would only confirm what the government believed
13 was the well founded view of the original Court of
14 Formal Investigation; thirdly, that finding the vessel
15 would not help them learn new lessons for marine safety;
16 and fourthly, and lastly, the "considerable cost"
17 involved in a search; the press office of the government
18 released figures of £80,000 to £90,000.

19 The two core letters in which the government's
20 reasons appear, sir, are, first, AG34/107. There are
21 three letters written to family MPs Prescott, Johnson
22 and McNamara on 1st August. There is shortly
23 afterwards, later in August, a follow-up letter from
24 Mr Clinton Davis, who wrote this one. You will be
25 aware, sir, that the families have seen none of this

1 correspondence, none of these materials. I will read
2 from the second paragraph:

3 "The laboratory" --

4 MR JUSTICE DAVID STEEL: I am sorry, when you say you
5 understand the family has seen none of this
6 correspondence -- this, of course, is a letter to
7 John Prescott. Are you saying that John Prescott --

8 MR SALOMAN: I am simply saying, sir, that I am reading out
9 a number of letters which the families may or may not
10 have seen at the time.

11 MR JUSTICE DAVID STEEL: But it is of some significance as
12 to whether they did, or might be. As I understand it,
13 this, of course, is a letter from John Prescott. As far
14 as I know, he and his colleagues may have copied the
15 letters to members of the families, I do not know.

16 MR SALOMAN: Sir, I follow entirely. It is entirely my
17 mistake. I am suggesting, by way of introducing all the
18 documents that I am going to put before you, that it
19 will be of interest to the families to see the materials
20 as a whole. This particular document may not have been
21 my best example because one can be tolerably sure that
22 the letters to the MPs will have had their contents
23 communicated, and I certainly work on that assumption.

24 "When I replied to your written question on
25 7th April about the recovery of part of a life raft

1 container from the trawler Gaul, I explained that the
2 container had been sent for examination to the MOD
3 Central Dockyard Laboratory. We have now received the
4 laboratory's report and I thought you would be
5 interested to know the outcome.

6 "The laboratory has concluded that the condition of
7 the container is consistent with it having been immersed
8 in the sea for several years in the area where we
9 believe the Gaul was lost in February 1974. You will
10 recollect that the container was recovered in the trawl
11 of the Marbella on 2nd March this year whilst fishing
12 off the North Cape Bank, north of Norway. In our view,
13 this conclusion, if anything, endorses the finding of
14 the Court of Formal Investigation which enquired into
15 the loss of Gaul.

16 "We are currently considering both the feasibility
17 and justification for an underwater search. There are
18 a number of factors to take into account here, however,
19 including the availability of suitable equipment, the
20 size of the search area, the cost and effort involved
21 and, not least, the timing and weather conditions. We
22 also have to consider the fact that a search, even if
23 successful, would probably contribute nothing in terms
24 of marine safety and could only confirm what we already
25 believe to be the well-founded view of the court. In

1 saying this, however, I do not in any way wish to give
2 the impression that we are unsympathetic to the anxiety
3 and distress which this matter has caused for the
4 relatives and next of kin of the crew of the Gaul.
5 I can assure you that all these considerations will be
6 very carefully weighed in reaching a decision."

7 Then the second core reference for the government's
8 decision is at page 127, sent on 22nd August to the same
9 three MPs:

10 "Dear John,

11 "I wrote to you on 1st August" -- this is a letter
12 to John Prescott MP -- "about the recovery of part of
13 a life raft container from the trawler Gaul and the
14 possibility of mounting an underwater search.

15 "In consultation with Naval authorities and the
16 operators of submersibles we have carefully considered
17 the case for mounting an underwater search in very deep
18 water. I have reached the conclusion that the
19 considerable cost involved would not be justified,
20 particularly as it would not be possible to do more than
21 locate the vessel and would not help to us learn new
22 lessons regarding safety at sea. I appreciate that
23 relatives of the crew of the Gaul would have preferred
24 me to have arrived at a different conclusion. I wish to
25 assure you that, while I did take this very important

1 factor into account, for the reasons which I have set
2 out above I felt that I should not authorise the
3 expenditure involved."

4 First, the size of the search area. This was relied
5 upon by the Department also in letters sent to the
6 families who were told, as Mrs Doone was told in
7 September of the same year, that the life raft container
8 was recovered in the broad area where it is believed the
9 Gaul was lost. We will look in a moment at the evidence
10 of what the Department knew about the whereabouts or
11 possible whereabouts of the Gaul, and you will read that
12 statement in that context.

13 There is another reference, page 107, which is
14 another letter -- I am sorry, it is page 40. Page 40
15 I will read to you. The date -- 13th June -- of this
16 letter to Mrs Doone is important because of the
17 knowledge that the government had as to the precise
18 location of the Gaul at the time, which we will shortly
19 demonstrate:

20 "Dear Mrs Doone,

21 "Thank you for your letter of 19th May about the
22 recovery of part of a life raft container ...

23 "The container was recovered by the Marbella on
24 2nd March whilst the vessel was fishing on the North
25 Cape Bank north of Norway in the broad area where it is

1 believed the Gaul was lost.

2 "At present the container is being examined by
3 a government laboratory and from this the history and
4 general location of the container since the Gaul
5 disappeared may be established...

6 "I cannot therefore tell you at this moment what
7 action, if any, the Department proposes to take."

8 Next, the government's knowledge of the location of
9 the Gaul. By April, sir, the Department knew that it
10 had matching co-ordinates for the position of a single
11 wreck of the size of the Gaul, thanks to the findings
12 and diligence of the trawlers Rairo, Marbella and
13 Coriolanus.

14 If you would be kind enough to look at bundle 33,
15 page 239. This concerns the trawler Rairo. It is
16 a letter from the Chief of Police at Hammerfest in
17 Norway, sent to Captain Newbury on 24th November 1975.
18 It encloses an echo sounder trace of a wreck which
19 Skipper Smaarvik has obtained. The trace is on the next
20 page.

21 There are handwritten notes which Skipper Smaarvik
22 has made on the document. He has indicated the depth as
23 141 fathoms, the length as 50 to 90 metres, and the
24 position 72 degrees 0.4 north, 25 degrees 0.05 east.
25 That came into the Department's hands.

1 At 231 of the same bundle is the report from the
2 Chief of Police in Hammerfest, and it contains the
3 skipper's statement. He describes how the Rairo dredged
4 up the remnants of a trawl which was also, as well as
5 the echo sounder trace, despatched to the English
6 authorities. The trawl was of the Granton type, but
7 proved not to be the Gaul's, for reasons which are set
8 out in a statement I shall not read by Mr Cyril Burt at
9 page 273 to 276.

10 Next, page 278. We have got to the stage where the
11 part trawl has not matched the Gaul's, and
12 Captain Newbury is submitting a report on 16th December
13 to which he annexes the echo sounder trace. He tells
14 the principal officer, halfway down:

15 "Affixed is a photocopy of the echo sounder trace
16 associated with this 'new' wreck."

17 The position coordinates are then given. He
18 continues:

19 "It is submitted that this position might be
20 recorded with the other unexplored 'new' wrecks reported
21 since the Gaul was lost. In view of the circumstances
22 attending this 'new' wreck, it is submitted that the
23 action already taken is sufficient for the time being,
24 and no further action is at present appropriate since it
25 is doubtful whether the 'find' is in fact associated

1 with the Gaul.

2 "The Norwegian authorities have been thanked for
3 their assistance. The whole incident was associated
4 with fairly extensive press reporting."

5 So what he is saying is that, well, we have
6 investigated this frightfully interesting trawl and it
7 does not match and there you have it. But in fairness
8 to that rather cynical analysis, he provides the echo
9 sounder trace to the principal officer.

10 Perhaps I should have said that a natural course
11 might have been to have that echo sounder trace
12 intelligently investigated and compared with the
13 characteristics of the Gaul for consistency. But what
14 is not in doubt is that, moving on in time to the spring
15 of 1977, there occurred two further highly significant
16 finds which matched up with Skipper Smaarvik's find on
17 the Rairo. There is the Marbella find first.
18 Bundle 33, page 376.

19 She picked up a white inflatable life raft container
20 which was actually marked "Ranger Fishing Co" in
21 position 72/03 degrees north, 25/04 degrees east.
22 Hellyers confirmed that the life raft container did
23 belong to the Gaul.

24 Page 377, at the next page, shows us the Coriolanus
25 find. An echo sounder trace was taken by the Coriolanus

1 coincidentally on the same day, 2nd March 1977. It was
2 signed by Skipper McCoid. He conscientiously passed it
3 to the skipper of the Marbella, since the skipper of the
4 Marbella was returning to port, for that skipper to give
5 it to the UK authorities. It was Skipper McCoid's
6 opinion that his echo sounder trace could indicate the
7 position of the wreck of the Gaul, and the memorandum
8 here shows that this was also the view of the Marbella's
9 skipper, Mr David Hinchcliffe, who reported as follows:

10 "Mr D Hinchcliffe ... said that about 9 months ago
11 a Norwegian trawler lost her gear owing to it fouling in
12 exactly this position and that the parted wires had blue
13 paint on them. He said that this had been reported in
14 the fishing press at the time."

15 The Gaul, of course, sir, had blue paint. He
16 continues:

17 "The trace is as received and presumably the various
18 notations were made on board at Coriolanus."

19 The echo sounder trace itself is on the following
20 pages, 378 to 379. It may assist to mark on that
21 document the reference 34/29, which show the results of
22 the government's analysis of the echo sounder trace,
23 which were obtained a little later, on 17th May 1977.

24 MR JUSTICE DAVID STEEL: We are going to take a break when
25 it is convenient. Your reference then was to the

1 analysis of the Coriolanus?

2 MR SALOMAN: Yes, indeed, sir.

3 MR JUSTICE DAVID STEEL: Which is in bundle 34, you say?

4 MR SALOMAN: It was, page 29. Perhaps if I can just read
5 you the guts of that document. It is a letter to
6 Captain Lusted from Kelvin Hughes Equipment. I am not
7 going to read all of it, though they are contents which
8 may have some materiality generally:

9 "The recording, which was made aboard the
10 Coriolanus, was photographed and expanded to ten times
11 the original size."

12 I am going to read the conclusions at page 30:

13 "The conclusions which may be drawn from this
14 analysis are --

15 "(a) The recording obtained aboard the Coriolanus
16 is not incompatible with that which would be obtained
17 from a vessel of the size of the Gaul.

18 "(b) The wreck is lying on its side.

19 "(c) The wreck has settled a few feet into the
20 seabed."

21 That is Kelvin Hughes.

22 MR JUSTICE DAVID STEEL: If that is convenient, we will take
23 a break now. Thank you very much. We will start again
24 at 10.15.

25 (4.20 pm)

1 (The court adjourned until 10.15 am
2 on Wednesday, 25th February 2004)
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