

Wednesday, 25th February 2004

1

2 (10.40 am)

3 MR MEESON: Sir, before Mr Saloman continues, could I just
4 mention two matters. Sir, as you are aware, and as
5 I should think everybody in this room is aware, reports
6 appeared in the press yesterday and on the television
7 about an anonymous statement allegedly given to the
8 Inquiry yesterday. Curiously, that statement, which
9 I think appeared on the front page of the
10 Yorkshire Post, was circulated in the media before any
11 attempt was made by anyone to give it to this Inquiry.
12 It appears to have come from a journalist,
13 a Mr Graham Smith, who failed to return a call from this
14 Inquiry until just now, and Mr O'Dea has spoken to him
15 but he has failed to provide any further information as
16 to where the statement has come from or who he got it
17 from or who it was made by.

18 Sir, I would just like to make a few points about
19 it. First of all, the theory that the Gaul was towed
20 backwards by a submarine is entirely inconsistent with
21 the facts as we know them; namely, that the port trawl
22 door was found on board in its usual position, the
23 starboard door was found with only 4 fathoms of warp
24 out, just under the counter of the stern, and the trawl
25 net itself was found stowed on board. So quite how it

1 can be suggested that a submarine could have towed the
2 vessel backwards if she did not have her trawl out is
3 a complete mystery.

4 The second point is that the wording of the
5 statement does not appear to be consistent in its
6 language by someone who was actually in the Royal Navy.

7 And thirdly, quite what a Polaris submarine, whose
8 purpose at that time was to provide an independent
9 nuclear deterrent, would have been doing in a shallow
10 area in the Barents Sea, where it could easily be
11 detected by Russian submarines, again, is a mystery.

12 Plainly, an anonymous hearsay statement is not
13 reliable evidence of anything, and the most likely
14 explanation for this statement is that it is either
15 a hoax or some publicity stunt. It is, I would suggest,
16 rather a pity that it has been taken up by the media
17 without any prior investigation, thought or application
18 of common sense, and particularly by media who plainly
19 have made no attempt to follow the evidence of this
20 Inquiry and to put two and two together.

21 Nevertheless, further investigations are being made,
22 first of all of Mr Graham Smith, to press him to give
23 some information as to the provenance of this statement,
24 and other investigations relevant to the theory are also
25 being carried out, notwithstanding that the theory seems

1 quite absurd and far-fetched.

2 The second point is a housekeeping matter, and this
3 is for the benefit of the families. That is that it
4 appears likely that the families' statements will be
5 made tomorrow, and I would simply ask that if anybody
6 who wishes to make a statement on behalf of the families
7 who has not already done so, could they please either
8 let Mr O'Dea, the Solicitor to the Inquiry, know or
9 speak to myself or Miss Cunningham or Mr Saloman or
10 Miss Hosking or Mr Munyard to identify themselves so
11 that we can plan the timetable for that.

12 MR JUSTICE DAVID STEEL: Yes, thank you. Vis-a-vis the
13 recent story that has been referred to in the media,
14 I am going to say no more for myself at the moment.

15 So far as the families are concerned, I look forward
16 to any contribution they have. I would welcome some
17 advice as to the most comfortable way in which they
18 might like to give these statements. It might be rather
19 daunting for them to sit in the witness box, for
20 instance. It occurred to me that they might prefer to
21 come much closer to the Tribunal on a rather more face
22 to face basis, perhaps sitting not far from the table
23 that you use.

24 MR MEESON: Sir, we had thought that they could sit in
25 Miss Cunningham's seat, which she would kindly vacate

1 for that purpose.

2 MR JUSTICE DAVID STEEL: I think that is probably very
3 sensible. Thank you.

4 Yes, Mr Saloman.

5 Closing Submissions by MR SALOMAN (continued)

6 MR SALOMAN: Sir, could we start with bundle 9, at page 126.

7 MR JUSTICE DAVID STEEL: I am sorry, I have just for the
8 moment mislaid the statements of the prior
9 investigation. Yes.

10 MR SALOMAN: At page 126 we have Skipper Hinchliffe's
11 statement about finding a half life raft container and
12 giving us other details about the 2nd March 1977. I am
13 going to start reading in the third main paragraph after
14 he has described hauling up the life raft half
15 container:

16 "The tow during which the life raft container was
17 picked up probably lasted about two and a half hours.
18 During the tow I passed about half a mile from position
19 72/04 north, 25/04 east at which position I understand
20 there is an obstruction. This obstruction was reported
21 by a Norwegian trawler who I understand lost his gear on
22 the obstruction and on retrieving the tow wires found
23 blue paint on them. On this particular tow I had passed
24 closer to the obstruction than previously because the
25 fish warranted it. The weather at the time was fine.

1 The depth of water was about 145 to 150 fathoms."

2 And at page 170 of the same bundle, reporting events
3 of the same day, is Skipper McCoid's statement. He
4 records the depth of water at the obstruction as
5 146 fathoms, and he adds this:

6 "As soon as I saw the obstruction I took a Decca
7 reading which gave the following coordinates ..."

8 And you see he gives those coordinates. He
9 continues:

10 "I knew that a Norwegian trawler had fouled an
11 obstruction in that area."

12 If we can put that bundle away, kindly, and take up
13 the main bundle we will be needing, which is bundle
14 AG34, page 5. On 28th March the senior nautical
15 surveyor Mr Batchelor writes a memo about the Marbella.
16 In the central paragraph he says:

17 "The obstruction on the seabed quoted has been known
18 to the trawler skippers for between one and two years.
19 Although Mr Hinchliffe states that he passed half a mile
20 from the known position of the obstruction he could have
21 been closer. His position fixing could not have been
22 absolutely accurate. He certainly passed closer to the
23 obstruction than he has previously as he was following
24 a shoal of fish."

25 And the note underneath from Miss Doyle is:

1 "You will be interested in this. It is rather more
2 relevant to the Gaul's believed position than I had
3 believed from the earlier story."

4 That was on 31st March.

5 On page 9, the Surveyor General himself expresses
6 himself on 4th April as "... satisfied that this
7 information is sufficient for us to mount a search for
8 the wreck of the Gaul". He estimates the chances as:

9 "... offering 50/50 success and it is therefore
10 a chance which we should not miss, having regard to our
11 need to 'lay the ghost' before we consider publishing
12 details of research we have done with models of the Gaul
13 operated in the towing tank at NMI Feltham and at sea in
14 Christchurch Bay."

15 Evidently, the Surveyor General considered the
16 information about the location of the wreck sufficient
17 to justify a search, and indeed a chance not to be
18 missed.

19 At page 11 all we need read of relevance is at
20 paragraph 4, where Mr Doyle, on 5th April, tells us that
21 although they are awaiting the laboratory's formal
22 report on the life raft container trawled up from the
23 bottom, he says this:

24 "... I must say it is beginning to look highly
25 likely that the Gaul has been located."

1 At pages 15 to 16, Captain Lusted's memo, he
2 summarises neatly in the first paragraph the three
3 crucial pieces of evidence: the echo sounder trace from
4 the Coriolanus, the life raft container trawled up by
5 the Marbella in the same position, and thirdly, the echo
6 sounder trace from the Rairo taken in November 1975 but,
7 as he points out, previously rejected as being that of
8 the Gaul on what appeared at the time to be good
9 grounds. He continues:

10 "This is an impressive body of evidence probably in
11 excess of the 50 per cent probability set as a criterion
12 by the Surveyor General in doc 7."

13 He then gives further detailed comments on the
14 accuracy of the positions.

15 Nothing happened subsequently, and before
16 Mr Clinton Davis made his decision, to undermine the
17 Department's belief that it had found the wreck of the
18 Gaul. In truth, the issue was not within the Department
19 whether they could find the Gaul at all, but it was
20 whether they had the will or inclination to do so.

21 If you look at page 69.3, you will find, neatly
22 expressed, the fundamental issue of the Department's
23 will. It is put in paragraph 3, in the last sentence:

24 "I think we now have sufficient indicators to
25 conclude that we do have a very good idea where the Gaul

1 is and it is a question of whether or not we wish to
2 prove it."

3 To conclude on the letters projecting that the size
4 of the search area was a real factor in the decision not
5 to search, which was made in late August 1977, there was
6 never any substance whatever at that time for believing
7 that was a factor which really militated against doing
8 it. It was an excuse introduced into the Department's
9 explanation in late August for refusing to support the
10 search in order to bolster it.

11 We turn to the next topic of not telling the
12 families. The Department did not tell the families the
13 simple truth that it had this knowledge. This was
14 disappointing because the families had a very specific
15 interest in knowing where their loved ones were and were
16 pressing the Department hard. We find, at page 92 of
17 the same bundle, 34, the concluding paragraph of
18 Mrs Doone's letter to the Department on 21st July 1977:

19 "As for the undersea search this will never happen
20 you don't know where to look."

21 Sir, you may think that was in the nature of
22 a deliberate challenge to the Department to either look
23 for the wreck or tell them that the wreck would not be
24 there anyway because the ship had been seized or for
25 some reason of that kind.

1 Similarly, at page 98, Mrs Parker, on 30th July --
2 MR JUSTICE DAVID STEEL: Mrs Doone refers at the beginning
3 of that letter to having just received a copy of the
4 letter that Clinton Davis had written to Douglas Hoyle.
5 Is that another version of --
6 MR SALOMAN: The one at 107.
7 MR JUSTICE DAVID STEEL: It cannot be. 107, that is a later
8 date. There must be an earlier letter. What is it
9 referring to, do you know?
10 MR SALOMAN: Sir, my belief is that that particular
11 letter --
12 MR COOPER: Sir, my understanding is that the letter itself
13 is not in the papers, but if you turn to page 44, you
14 have the draft of a letter to Mr Hoyle.
15 MR JUSTICE DAVID STEEL: Thank you.
16 MR COOPER: What I understand is that this draft --
17 MR JUSTICE DAVID STEEL: I have it, yes.
18 MR SALOMAN: Sir, you will notice -- we perhaps ought to
19 look at this draft, which is significant. First of all,
20 the date when it was written. It is clearly written in
21 or about --
22 MR JUSTICE DAVID STEEL: It must be in June.
23 MR SALOMAN: -- mid-June. I will read the nub of the first
24 page:
25 "Mrs Doone regularly writes to officials of my

1 Department and on one occasion she wrote to the
2 Prime Minister. She is always given whatever
3 information can be provided. As an example I enclose
4 a copy of the most recent letter concerning the recovery
5 of the life raft container. You may recall I provided
6 James Johnson with a written answer on this aspect on
7 7th April."

8 And then he goes on about the yellow wallet but I do
9 not really need to say that. What is of particular
10 significance is that there is a passage in square
11 brackets on the next page. That square bracketed part
12 would have been particularly significant if there had
13 been evidence that the letter sent to Mr Hoyle in fact
14 contained it.

15 I will be addressing you later, sir, on the position
16 that arose in late 1980 when letters were sent to
17 Mrs Betts and Mrs Parker, and at that stage there is an
18 acknowledgment by the Department that the relevant
19 information relating to the Coriolanus had not been made
20 public in 1977. That is all I need say about that. We
21 will come on to it.

22 At page 98, there is a long letter but there is only
23 one line relevant to this issue. It is a third of the
24 way down the page, where she says to the Minister:

25 "We have noticed that you have not carried out this

1 search ..."

2 Suffice it to say that the context of her letter

3 makes clear that -- in fact, sir, I should also read the

4 two lines above that --

5 MR JUSTICE DAVID STEEL: I am actually not seeing where you

6 are reading.

7 MR SALOMAN: Sir, the first two lines appear about five

8 lines down:

9 "You all know that if the Gaul had sank you would

10 have mounted an undersea search ..."

11 Do you see that, sir?

12 MR JUSTICE DAVID STEEL: Yes.

13 MR SALOMAN: "... because you would never leave a trawler

14 with £12,000 worth of electronic equipment on the

15 seabed..."

16 And then three lines below that:

17 "We have noticed you have not carried out this

18 search ..."

19 MR JUSTICE DAVID STEEL: Yes.

20 MR SALOMAN: Sir, that was the context. It seems that the

21 Department also never informed the owners of the ship.

22 The owners should have been an interested party in the

23 search, at least in a general sense, and whether or not

24 their hull insurers had paid out. However, unlike the

25 families, who were audibly desperate for a search, the

1 owners' attitude to the idea of a search had been one of
2 stony silence, and that was in a letter read out to you
3 yesterday at page 124, where that stony silence --
4 sorry, it is at page 120, sir.

5 It is Mr Doyle, on 5th August. He says:

6 "I might say here that I have sounded the owners,
7 admittedly very obliquely, about their participating in
8 a search and this has been received with stony silence.
9 This attitude may be influenced by considerations
10 connected with the legal proceedings pending between
11 relatives and the owners but, whatever the explanation,
12 the owners have shown no interest."

13 That is an inference which we would suggest is
14 a correct one. The last thing in the world the owners
15 would have wanted was an inspection of the wreck to see
16 whether doors, hatch covers, or even duff and offal
17 chutes, might be open, making the ship not intact and
18 contradicting the court's fundamental assumption in its
19 1974 conclusion.

20 At the back of my submission bundle is an extract
21 from Mr Nicklin's book to which we need to resort for
22 the purpose because it helpfully contains quoted
23 a letter from Mrs Doone, sent two years later, in 1979,
24 on the subject of a search, written to the owners. It
25 is at page 46 of tab 4, a letter to Mrs Doone. I am

1 going to read just the first two paragraphs. It is from
2 Mr Nicklin's book, "The Loss of the Motor Trawler Gaul",
3 which was published in 1998:

4 "Early in 1979 there was an attempt in Hull to raise
5 the money to mount an underwater search for the wreck of
6 the Gaul and Mrs Sheila Doone, widow of Gaul's wireless
7 operator, and other dependants, wrote to
8 Hellyer Brothers on the 13th May 1979 asking the company
9 to make a donation towards this fund. On 18th May
10 Mr GA Hartley, a trawler manager employed by Hellyer,
11 replied as follows:

12 "'Dear Mrs Doone,
13 "'We are in receipt of your letter of the
14 13th May 1979 asking if we propose to contribute to the
15 fund organised to search for our missing vessel Gaul.
16 As you know, it is assumed Gaul lies in very deep water
17 in the Barents Sea, where the Royal Navy with all their
18 experience of locating underwater objects have declined
19 to search because of the extremely remote chance of
20 finding the vessel.

21 "'Under these circumstances we do not think any
22 useful purpose would be served by such a fund and would
23 respectfully decline to contribute.'"

24 From that, I suggest that there is at least an
25 inference that the owners may not have known themselves,

1 and certainly had not been told the position evidence
2 that the Department had.

3 On 25th November 1977, the Department of Trade
4 released the believed whereabouts of the Gaul to
5 a television company. I submit that it was very wrong
6 to do this without telling the families first, since the
7 families were personally concerned with their loved
8 ones' whereabouts. They should have been more important
9 to the Department than a television company.

10 In the years to come, the Department seemed content
11 for the families as a whole to remain in a state of
12 anxious ignorance as to the believed whereabouts of
13 their men. As we will see, it released information to
14 two individual relatives some three years later, in
15 September 1980, but the bulk of the families were left
16 in ignorance until 1997 when the wreck itself was found.

17 MR JUSTICE DAVID STEEL: We are coming back to that, are we?

18 MR SALOMAN: Yes, indeed, sir. I will come back to that
19 when I deal with 1980 to 1981.

20 Locating the Gaul would only confirm the OFI's
21 conclusion in 1974. That, sir, was the second reason
22 the government gave for not searching for the ship. In
23 short, it would simply confirm the conclusion of the
24 Court of Formal Inquiry, which it affected to believe
25 was well founded.

1 But, sir, the Department did not believe that the
2 Court of Formal Inquiry's conclusion was well founded.
3 Nor did it believe what it told Mr Holborn, one of the
4 family members, on 16th September of 1977, at page 172
5 of our bundle, that:

6 "All evidence available to the Department", and I am
7 reading the end of the main paragraph, "supports that
8 conclusion", and the conclusion there he mentions is
9 that she was overwhelmed by the sea, "and we do not feel
10 justified in making further inquiries."

11 And similarly on the previous page, to Mrs Steele,
12 again a letter from Mr Doyle, towards the end of the
13 main paragraph:

14 "All the evidence we have tends to confirm the
15 findings of the Court of Formal Investigation and
16 I regret to tell you that the Department does not feel
17 justified in altering the decision not to make an
18 underwater search."

19 MR JUSTICE DAVID STEEL: I am not quite sure of the context
20 of those letters. Had Mrs Steele and Mr Holborn been
21 corresponding with the Department at all?

22 MR SALOMAN: Yes, sir.

23 MR JUSTICE DAVID STEEL: There had been a recent letter.

24 Where are their letters or do we not have them?

25 MR SALOMAN: Yes, we do, sir. We have various letters.

1 Some were letters, some were telephone calls, sent in
2 the aftermath of the decision of 22nd August --

3 MR JUSTICE DAVID STEEL: I need to see the context. As
4 I understand it, this is an attack really on the bona
5 fides of the Department. It would be one thing for
6 a response of that kind to a letter saying, "You know
7 perfectly well the Russians have this ship" to
8 reply, "We think the Inquiry was correct that it sank";
9 quite another if the correspondence said, "You ought to
10 look for this vessel because it sunk".

11 MR SALOMAN: Absolutely right. I quite see that, sir.

12 Mrs Steele's letter is at page 151, and I read out
13 the first part of it yesterday. It is one which
14 starts, "To say we were shocked and disgusted over your
15 decision not to make a search for the Gaul is ..."

16 MR JUSTICE DAVID STEEL: The relevant television programme
17 is the 1976 one, is it?

18 MR SALOMAN: No, sir. The reference to the television
19 programme is to a television programme which was not
20 actually produced at that stage, or broadcast at that
21 stage.

22 MR JUSTICE DAVID STEEL: I did not realise there was
23 a television programme between 1976 and 1997.

24 MR SALOMAN: There was a television programme in 1975.

25 MR JUSTICE DAVID STEEL: Yes, I have seen that.

1 MR SALOMAN: There was no television programme in 1976, and
2 to the best of my knowledge there was none in 1977.
3 Mrs Steele is expressing her shock at the decision not
4 to search.

5 MR JUSTICE DAVID STEEL: I have got that letter now, thank
6 you.

7 MR SALOMAN: And Mr or Mrs -- it is unclear which --
8 Holborn, his letter was at page 159. His letter is in
9 some ways particularly pertinent, and the most pertinent
10 part really -- well, perhaps I should read from --

11 MR JUSTICE DAVID STEEL: It is the second page.

12 MR SALOMAN: -- from the second page:

13 "If you don't agree to a search on the grounds to
14 allay the suspicions regarding the Russian sinking one
15 would be justified to determine what went wrong
16 regarding the stability or the gear aboard the ship, it
17 would be justified surely to save more lives in the
18 future. You and your Government may have let our
19 fishing industry become nearly extinct but a few ships
20 still sail out of Hull with men and lives aboard and we
21 still have a merchant navy."

22 That is the relevant part, sir. Sir, he is, if
23 I may say so, hitting head-on the point that the cause
24 of the loss of the Gaul was central, and even on the
25 basis that this was a marine accident. We have seen the

1 answer that he is given.

2 Mr Brice opened the original Court of Formal
3 Investigation hearing on the following basis, and
4 I quote:

5 "I have already stated that it is the view of the
6 Department that this ship would not have capsized unless
7 there was a combination of excess free surface water on
8 the trawl deck and on the main deck in the factory
9 spaces. If water was allowed to enter the factory
10 spaces it could either have been from an internal or
11 external source or both."

12 After the 1974 Inquiry, in 1975 investigations were
13 commissioned by the Department to be performed by the
14 National Maritime Institute into why the Gaul should
15 have sunk.

16 We need to look at bundle 33, page 172. This, sir,
17 is a memorandum of the Department's Mr Walmsley, sent to
18 Mr Archer and the Surveyor General on 22nd April 1975,
19 which considers whether the BBC's Midweek programme
20 should be allowed access to the National Physics
21 Laboratory (NPL) tank tests -- they are in the nature of
22 a predecessor to the NMI -- and permission to film them.
23 Mr Walmsley was supportive, and he was supportive, sir,
24 precisely on the ground that the Department had never
25 subscribed to the Court of Formal Investigation's

1 conclusion, and publicising the tank tests would prove
2 that the Department was still seeking the answer to the
3 Gaul's mystery. As he put:

4 "We still do not think the Gaul could have been
5 overwhelmed had she remained intact and evidence in
6 support of our belief is apparently [and this is only in
7 1975] beginning to emerge from the follow-up research on
8 the effect of the freeing ports now being conducted ...
9 we are still striving to solve the mystery ourselves."

10 That is that.

11 In the same bundle, at page 25 of section 33.1, at
12 the back, we have now moved onwards to 9th October 1975,
13 just before the "This Week" television programme is
14 broadcast. Mr Walmsley, again, discusses this
15 forthcoming programme at the bottom of the page, and
16 after saying that it will concentrate on the lifebuoy in
17 the first four lines, he says this:

18 "It will also cast doubt on the theory favoured by
19 the Court of Formal Investigation that the vessel was
20 overwhelmed by the sea (a doubt which the Department
21 happens to share) on the grounds that a vessel with the
22 Gaul's inherent stability would require a virtually
23 unimaginable sea to overwhelm it, and that all the other
24 vessels in that area managed to survive."

25 In 1976, NMI conducts experiments in the Solent, and

1 then later still, between November 1976 and spring 1977,
2 it conducts further experiments there on a model in
3 suitable weather conditions. Those experiments
4 supported the view that the Gaul was indeed essentially
5 stable.

6 Their conclusion, in a nutshell, following the 1976
7 and 1977 experiments, was that water on the trawl deck
8 would not have caused her to capsize. It would not be
9 sufficient to cause her to capsize. And so we come to
10 the position on 15th June 1977, on which day the
11 National Maritime Institute's sixth interim report has
12 been produced. The Treasury Solicitor at my request has
13 done all he can to actually locate a copy of that
14 report. However, we helpfully have Mr Nicklin's
15 citation from him at tab 4 of our submissions bundle --

16 MR JUSTICE DAVID STEEL: I am sorry, I am not quite familiar
17 with the terminology here. The NMI had been conducting
18 experiments and model tests through to the early part of
19 1977; what, they had been producing interim reports
20 throughout?

21 MR SALOMAN: Sir, that is what I infer from Mr Nicklin's
22 book. He obviously had the report itself. Nobody else
23 appears to be able to find it, and Mr Nicklin's records,
24 sadly, sir, disappeared when he passed away, which is
25 a great shame.

1 MR JUSTICE DAVID STEEL: I understand. But the paper in
2 AG20 is not the final report; that is a report to the
3 Naval Architects Institution, is it?

4 MR SALOMAN: That is absolutely right, and that is why --
5 that paper of 1980 is the product of all the reports.

6 MR JUSTICE DAVID STEEL: I understand.

7 MR SALOMAN: -- and is a bit later in the day.

8 At page 57, at tab 4 -- page 57, that is, of
9 Mr Nicklin's book, sir -- we have his description of the
10 tests that have been carried out by the National
11 Maritime Institute, formally the Ship Division NPL, at
12 the request of the Department of Trade, made originally
13 in March 1975. The nub of it, sir, is in the middle of
14 the page:

15 "The following text is derived from Interim Report
16 6", and you see his reference to there being interim
17 reports in the previous sentence, "which also summarises
18 the five previous interim reports, and was delivered to
19 the Department of Trade on 15th June 1977. To avoid any
20 possible distortion of the reports' conclusions I give
21 large parts verbatim."

22 Well, we do not need to look at the large parts
23 verbatim, but we do need to look at page 61. He has
24 given a lengthy citation obviously from the report about
25 the effect of the experiments, including the experiments

1 of March 1977. In the middle of the page he tells us
2 that:

3 "Both of the above flooding experiments demonstrated
4 that with water already on the factory deck" --

5 MR JUSTICE DAVID STEEL: I am very sorry, where are you?

6 MR SALOMAN: I am about a third of the way down, sir.

7 MR JUSTICE DAVID STEEL: Oh, I see.

8 MR SALOMAN: "... that with water already on the factory
9 deck, causing the vessel to list to starboard, water in
10 substantial quantities would reach the trawl deck and
11 enter the access door to the factory deck. Furthermore
12 when the total quantity of water on the factory deck
13 approached 180 tonnes the vessel would list to over
14 70 degrees and would be most severely endangered. As
15 a result the vessel would undoubtedly capsize after
16 admitting more floodwater from the openings on the
17 starboard side and as progressive flooding took place
18 throughout the ship.

19 "On the Gaul nearly all the openings, such as the
20 access door to the factory deck, the ventilators and the
21 rubbish chutes were all positioned on the starboard
22 side."

23 He then goes on with details, and I do not need to
24 read them. At the foot of the page:

25 "Insofar as the experiments made" --

1 MR JUSTICE DAVID STEEL: In this book it is difficult to
2 know which is quotation and which is the author.

3 MR SALOMAN: I think you can infer, sir, that the slightly
4 smaller print face in the section that I have just read
5 from --

6 MR JUSTICE DAVID STEEL: So this is the author?

7 MR SALOMAN: No, sir, it is the report.

8 MR JUSTICE DAVID STEEL: Sorry, no, what you are about to
9 read is the author?

10 MR SALOMAN: Precisely.

11 "Insofar as the experiments made in this
12 investigation represent realistic conditions [and then
13 he says the rest in capital letters] it would appear
14 that the loss of stability caused by water on the trawl
15 deck would not be sufficient on its own to cause
16 capsize. The most serious loss of stability, and one
17 that would be sufficient to cause the Gaul to capsize
18 and founder, is that of considerable amounts of water
19 present simultaneously on the trawl and factory decks.
20 This condition might arise from the result of
21 a combination of flooding from the processing pumps on
22 the factory deck and from water flooding through the
23 access door on the starboard side of the trawl deck."

24 And then his punchline:

25 "It is perfectly clear that this report completely

1 destroys the findings of the Official Inquiry into the
2 casualty that 'Gaul capsized and foundered due to taking
3 a succession of heavy seas on her trawl deck ...'. Gaul
4 could not have capsized and foundered on account of
5 water on her decks, no matter how much, unless her
6 watertight integrity had been breached and a large
7 quantity of water had entered her hull.

8 "What is not so clear is why the Department of
9 Trade, having commissioned the report, declined to make
10 its findings public. The NMI report which contained
11 evidence that rendered the findings of its own official
12 inquiry invalid has never been published. And
13 publication may have made a great deal of difference to
14 the lives of a lot of people."

15 Sir, that is Mr Nicklin's book.

16 MR JUSTICE DAVID STEEL: Can I just check that that passage
17 at the bottom of 61 and the top of 62 is -- it is not
18 easy. The book is written in a way in which there are
19 no quotation marks and the spacing and the justification
20 is the same for anything. There is a slightly enlarged
21 type --

22 MR SALOMAN: That is true, sir.

23 MR JUSTICE DAVID STEEL: So we are certain, are we, that the
24 passage at the bottom of 61 is the author and not the
25 report?

1 MR SALOMAN: Well, I cannot be certain because we have not
2 got the report, which we have been asking to be found.
3 But I would confidently submit that the paragraph at the
4 bottom of page 61 in particular with its section in
5 capital letters is the author Mr Nicklin.

6 MR JUSTICE DAVID STEEL: Okay.

7 MR SALOMAN: Now, sir, a brief word, following up on that
8 report, a report with great emphasis on the significance
9 of breaching, or possibly breaching, the watertight
10 integrity of the ship so that she may not have been
11 intact.

12 Technology. You will have noticed that, despite the
13 plethora of reasons and excuses for not searching for
14 the wreck of the Gaul, one potential excuse which was
15 not run was that there was no technology to record
16 features like watertight or open watertight doors and
17 hatches, if such were. There is good reason for that
18 excuse not to be taken because there were, in 1977, no
19 technological limitations on the Department's ability,
20 using relevant available technologies, to examine
21 a wreck in the area where Gaul was thought to be,
22 identify it and photograph it in such a way as to record
23 features like open watertight doors and hatches.

24 Sir, the basis for that submission appears in bundle
25 AG24, at page 35, paragraph 80.

1 Mr Roger Clarke, in his report, wholly correctly
2 considered the question of whether underwater technology
3 in the mid-1970s would have been adequate for the
4 purpose of carrying out what I might call a useful
5 inspection of the ship. That is not to say, of course,
6 for one moment that identifying the wreck of the Gaul
7 was not in itself wholly useful.

8 The technological issues are discussed in
9 paragraph 78, and the conclusions are expressed in
10 paragraph 80:

11 "I have also taken advice from an expert nominated
12 by the Society for Underwater Technology. I asked --

13 "(a) whether in 1974 it would have been practicable
14 ... using sonar or other available technologies, to
15 mount a search for a wreck, such as Gaul, on the bed of
16 the Barents Sea..."

17 Just pausing there, that is plainly envisaging
18 a somewhat more limited search and mission.

19 "(b) whether in 1977 it would have been practicable,
20 with relevant available technologies, to examine a wreck
21 in the area where Gaul was by then thought to be,
22 identify it, and photograph it in such a way as to
23 record features like open watertight doors and hatches,
24 such as were observed during the 1998 survey.

25 "The answer I was given to both questions was

1 'yes'."

2 Sir, you can put that bundle away and take up, if
3 you would, bundle 34. We will start with ULS Marine
4 Limited's letter at page 50. It is a proposal and
5 a quotation from ULS Marine to the Department of Trade,
6 provided on 23rd June 1977. It is a proposal for
7 a video inspection of the seabed and, as we will see in
8 a moment, of the vessel. It contemplates the use of
9 a submersible vessel, naturally. There are two passages
10 on the same topic of technology and the purposes and
11 intentions behind a search which I should mention.

12 At page 52, under the heading "Introduction", it is
13 paragraphs 1.3 to 5 which matter:

14 "1.3 Confirmation is required by means of
15 television and photographic records on the site of an
16 unreported wreck located [and he gives the position].

17 "1.4 Should this prove to be the Gaul
18 a comprehensive hull survey is required. The vessel is
19 said to be lying on its side, probably in an east-west
20 attitude.

21 "1.5 An unmanned submersible is considered to offer
22 the most cost effective solution, and this proposal
23 describes the USL Marine Cetus and the way it could be
24 deployed for the above purpose."

25 And then again at page 60, where we get to the

1 detail of how ULS propose to proceed. The nub of it is
2 at paragraphs 4.9 to 4.10:

3 "4.9 Eventually the hull will be located and it
4 will be possible to move along the hull, hopefully to
5 the bow, where the vessel name should be legible.

6 "4.10 Should the evidence show her to be the Gaul,
7 then the survey will continue until observers aboard
8 feel that sufficient useful data has been obtained."

9 Not only did the technology exist to reveal open
10 hatches and doors and so forth, but the Department's
11 appreciation of the fact that there was probably, in the
12 case of the Gaul, water on her factory deck appears
13 clear from a memorandum at bundle 34.1 page 21, which is
14 dated 12th May 1978 but is most relevant. It is right
15 to say, sir, putting this in the context of how the
16 reports were produced, we know that the full
17 consolidated report had come out in December 1977. That
18 is the context.

19 The last paragraph shows this comment by the
20 Department:

21 "Although the NMI ... agree with the view of the
22 Court ... that in the absence of any direct evidence the
23 cause of the loss must be conjectural, they have
24 expressed the view that the Gaul was quite capable of
25 encountering heavy seas from all directions and

1 therefore imply that it is unlikely the Gaul would have
2 capsized as a result of heavy seas striking her when
3 broadside on. My conclusions are the same as Mr Doyle's
4 that the NMI findings appear to confirm the opinion that
5 capsizal would not have occurred unless other factors
6 were involved such as the presence of water on the
7 factory deck. As such this view is [and this is the
8 important part] contrary to that expressed by the Court
9 which stated as its opinion that the Gaul capsized and
10 foundered due to being overwhelmed by a succession of
11 heavy seas but at the time the Court sat we did not of
12 course have the evidence of the tests since carried out
13 by NMI. In my view the Department's attitude ought to
14 be that we are now in a better position to know the
15 dynamic effects of the forces of the sea on the
16 stability of the Gaul and that we support the findings
17 of the NMI."

18 I will in a moment break, sir, with your permission.
19 But I would just like to round up this topic with one
20 reference. I submit that the excuse that a search --
21 and I quote -- "would only confirm the Court of Formal
22 Inquiry's well founded conclusion", and the excuse that
23 all the evidence available to the Department supported
24 the conclusion of the Court of Formal Inquiry was
25 manifestly bad and it should never have been made,

1 should never have been uttered.

2 The results of the NMI tests were known within the
3 Department by mid-1977, and indeed by the Surveyor
4 General himself, as appears perhaps tentatively but in
5 my submission sufficiently from his memorandum of
6 4th April 1977, at page 9 of bundle 34. We have read
7 that passage out already, sir, this morning, where you
8 see his reference to the need to:

9 "... 'lay the ghost' before we consider publishing
10 details of research we have done with models of the Gaul
11 operated in the towing tank at NMI Feltham and at
12 sea..."

13 A technical point might be taken that that
14 memorandum that we are looking at here was written two
15 months before the sixth interim report was actually
16 produced but the work had been done, the experiments had
17 been done. Here is a Surveyor General who is entirely
18 hands-on to the impact and course of those experiments
19 and, in my submission, this speaks for itself.

20 Sir, if that is a convenient moment

21 (11.45 am)

22 (A short break)

23 (12.10 pm)

24 MR SALOMAN: Sir, the government's third reason for not
25 searching was that an inspection -- and I quote --

1 "would not help us learn new lessons for safety at sea".
2 I do submit that that conclusion was nonsensical. The
3 NMI's research results were laden with implications for
4 the safety of stern trawlers at sea, quite apart from
5 implications for the likely cause of the loss of the
6 Gaul.

7 There are two references which touch on this. The
8 first is at page 122. Mr Doyle, on 5th August, has
9 expressed his conclusion, which you have had read to
10 you, that he does not feel they can justify expenditure
11 on the scale indicated "and therefore we should not
12 commission a search".

13 The Surveyor General's comments are in handwriting
14 at the top of that page:

15 "It would be helpful to the publication of research
16 on stability and adequacy of freeing port area of the
17 Gaul, which is now concluded at NMI, to have positive
18 identification of her on the seabed."

19 He goes on to say:

20 "However, it is not vitally necessary and I would
21 not dissent from the opinion expressed by Mr Doyle."

22 Well, we submit that it was very important evidence,
23 and the later reports, indeed all reports indicate the
24 implications for marine safety.

25 The other reference is at page 164. A part of this

1 has already been read to you by Mr Meeson. It is the
2 second memorandum at the bottom from Mr MacIver Robinson
3 which I wish to highlight, where he says, second line:

4 "However most evidence points to the Gaul being an
5 intact ship so we can give little guidance as to the
6 damage and I would expect small openings which may have
7 allowed the entry of water to the factory deck to be
8 indetectable."

9 Just pausing there, that is quite inconsistent with
10 the position on the technology available which we have
11 gathered from Mr Roger Clarke's report. And then:

12 "What would be significant would be confirmation
13 that the vessel was indeed an intact ship ..."

14 Precisely.

15 In conclusion, the third excuse about no safety
16 benefits was hollow and insubstantial.

17 The last excuse given was that of the considerable
18 cost of a search. The Department told the BBC that it
19 would cost £80,000 to £90,000. That figure went into
20 the public domain. Naturally, the families found the
21 cost explanation difficult to accept.

22 I have mentioned earlier in my opening, sir, the
23 practical and sensible suggestion for preliminary work
24 to be done by asking the skippers themselves to take
25 soundings in the area and record the position of the

1 wreck, their direction, speed of travel and send details
2 to the Department. This was considered by
3 Captain Lusted to be a cheap and effective preliminary
4 method of getting details. It was a proposal which was
5 not pursued. Pursuit of it might have showed some
6 earnest.

7 From June, commercial contractors were offering
8 their services in abundance. There was an offer from
9 the well-known firm of Risdon Beazley. They offered to
10 do the job for £50,000. There is no evidence that the
11 Department even bothered to respond to Risdon Beazley's
12 proposal before it took its decision not to search for
13 the wreck two months later.

14 We know about ULS Marine's proposal. That was sent
15 on 23rd June, and indeed it was made somewhat more
16 attractive and competitive on 11th July, when they
17 offered to provide a somewhat cheaper mother vessel, the
18 Emerald. By that time, the Department had not even
19 bothered to reply to the detailed proposal that I read
20 out to you earlier this morning, which they had on their
21 desk for a while.

22 There was a response -- or reaction from ULS to the
23 news of the Department's decision in August not to
24 search, and that is at page 142. It is on 26th August:

25 "Mr Haydu Jones ... telephoned. He had been

1 discussing the decision not to mount a search for the
2 Gaul with his managing director and as a result ULS are
3 offering to carry out the search without charge to the
4 Department. The work could be undertaken in October."

5 Then there is discussion about the weather and
6 whether the season is right.

7 "ULS have work in the area due for completion in the
8 first week in October so the submersible would be on the
9 spot.

10 "Mr Haydu Jones understood from Captain Lusted that
11 we were interested in finding not only the whereabouts
12 of the ship but also the cause of the casualty."

13 So all the misinformation about not needing to
14 obtain further evidence about the cause of the casualty
15 because we already know, as given to the public, was
16 certainly not the view taken internally. So there we
17 are.

18 Then there is P&O Subsea. P&O Subsea have an
19 interest, sir, because Ranger Fishing Company was one of
20 its subsidiaries, or at least it was a subsidiary of the
21 P&O company group. On 23rd August, they rang the
22 Department to say that they would want to participate in
23 this search for the Gaul, which they have just heard is
24 not going to take place.

25 There is a conversation on 6th September with

1 Mr Eastaugh where Mr Eastaugh of P&O offers to conduct
2 the search for free.

3 Finally, there is the most expensive quote of the
4 lot from Vickers, who seem to be offering absolutely no
5 services that anybody else could not have provided for
6 £80,000 to £90,000. But it is fair to say that is for
7 a manned submersible. That figure, of course, was
8 plucked for presentation to the public.

9 The Department never told the families, or any of
10 the particular families who had been busy enough to
11 correspond with them, that they had actually received
12 proposals which involved charging no money for a search.

13 At page 123 --

14 MR JUSTICE DAVID STEEL: There is a slightly surprising
15 memorandum, I suppose I can call it, at page 135.

16 MR SALOMAN: Oh yes, I am coming to that, sir.

17 MR JUSTICE DAVID STEEL: You are coming to that?

18 MR SALOMAN: Oh yes.

19 MR JUSTICE DAVID STEEL: I thought you might.

20 MR SALOMAN: Yes.

21 Page 123, Mr Mansfield, from, it seems, the
22 Department of Prices and Consumer Protection, is getting
23 interested in this, and he is writing on 8th August to
24 Mr Doyle in the Marine Division to give him some
25 information:

1 "An additional point of which you may not be aware
2 is that to assist the development of submersibles, the
3 SMTRB" -- I am sorry to say I do not know what that
4 stands for but I have a suspicion it involves the Marine
5 Training and Research Board -- "jointly funded the
6 purchase of CONSUB I for IGS. Consequently I have an
7 understanding with DOI that we can make use of the
8 vehicle for other government purposes. It has a design
9 depth of 2,000 feet and, as it happens, it is scheduled
10 to operate in October ... [in the slopes] off the west
11 of Scotland."

12 They need a ship with reasonable station keeping
13 ability for the task.

14 "I do not know whether you are thinking of asking
15 the SMTRB to fund this investigation; safety research
16 and development and the development of methods of
17 investigation certainly fall within its terms of
18 reference. In any case, I would be extremely interested
19 to discuss the problem in more detail. Perhaps we could
20 arrange a meeting."

21 At page 7 of bundle 34.1, at the back,
22 Mrs Stockdale, on 19th August, before any decision of
23 the Minister has been published, has obviously received
24 Mr Mansfield's memorandum. She says:

25 "I understand the Minister is likely to make his

1 decision today [obviously he had not made the decision].
2 Do you think in the light of the letter from RR Div we
3 should halt matters in order to investigate RR's
4 proposals further."

5 This is discussed with the Surveyor General and
6 a short answer is that he decides that the decision of
7 the Minister should go ahead:

8 "The problem and expense of ..." something, it is
9 quite impossible to read; "of [procuring] a mother ship
10 remains, and whereas costs might be less than with
11 Vickers there are other disadvantages."

12 Sir, with respect, a problem of finding a mother
13 ship seems a singularly footling reason for not pursuing
14 this matter. So that is where it stood and the decision
15 went forward --

16 MR JUSTICE DAVID STEEL: I am sorry to interrupt. Before
17 I forget, your junior, together with Miss Cunningham,
18 has prepared a very helpful chronology. I do not know
19 to what extent all the documents that you are now
20 referring to are in that chronology. If they are not,
21 I would like the chronology brought up to date. We are
22 jumping about quite a lot and I am having some
23 difficulty in keeping an eye on the sequence. I would
24 be very grateful if they could perhaps liaise to bring
25 that up-to-date. I know Miss Cunningham is going to

1 insert some more material relating to the scheds.

2 MR SALOMAN: Certainly sir. Most of the references are in,
3 and those that are not will go in.

4 MR JUSTICE DAVID STEEL: Thank you.

5 MR SALOMAN: At page 110, we have the Department saying that
6 they have unused funds of £47,000, and I ought to read
7 what they say in paragraph 4:

8 "The Minister has, I believe, recently remarked that
9 unless there is a reasonable case for a search on marine
10 safety grounds we could not justify significant
11 expenditure. I would agree but I ought to perhaps
12 mention that within the SG's organisation we have two
13 headings where the allocations for the current financial
14 year are not wholly committed. The formal
15 investigation's heading has some £47,000 unused and,
16 even if a serious casualty occurred in the remainder of
17 the current financial year, we would probably not get
18 the bill until next year. There is also the Research
19 heading which is less quantifiable but I gather has few
20 thousand pounds available; we may be talking about
21 a total of £50,000. Whether or not it would be right to
22 divert such funds is for consideration would no doubt
23 depend on other priorities."

24 The point to be made is that there was, on any view,
25 a fund of £47,000. The consideration of deploying that

1 fund for this purpose was sufficiently pertinent for
2 Mr Doyle to consider it, but it is a proposal which
3 disappears in the wash.

4 And so, in conclusion, when the figures of £80,000
5 to £90,000 are released to the BBC in late August, we
6 await with interest the Department's reaction to that,
7 and we have it from Mrs Stockdale at page 135 to 136.
8 Suffice to read from the entry which seems to be
9 24th August but the hole puncher has rather unkindly
10 obliterated the number 4 and it may be the 25th:

11 "24th August 1977.

12 "am ... I rang the permanent undersecretary's office
13 to ask them to read me the text of the Minister's
14 letter -- there was no mention in it of the likely cost
15 of the operation. PUSS office could not account for the
16 non-receipt of the papers.

17 "I then rang the press office -- Miss Powell, who
18 said that she had been keeping in regular touch with the
19 permanent undersecretary's office and had been given
20 a copy of the letter to the MPs. She had accordingly
21 released the information to the press that there was to
22 be no search. She admitted that she had also released
23 details of the likely cost. When I asked her on whose
24 authority she said she thought it was all right 'because
25 it was in the Minister's brief' -- which she had

1 apparently read in the Minister's office. I said this
2 revelation was most unfortunate and could create serious
3 problems for us ..."

4 "I warned the permanent undersecretary's office
5 (Mr Cooke) that the press office had released the
6 information on costs."

7 As to why the revelation could create -- or would
8 create serious problems and awkward questions, I should
9 read, sir, perhaps the other passage first. It is on
10 the next page. Further on that day:

11 "Miss Le Grys and I between us rang all the firms
12 who had been interested in participating in the search
13 to tell them it would not take place. In several cases
14 the men involved were away so messages were left with
15 their secretaries or others ... so happily (at this
16 stage) no awkward questions were posed on the release of
17 the information about costs.

18 "I had had a very distressing telephone call from
19 Mrs Dudding, mother of one of the crew, who had heard
20 the news on Radio Humberside last evening -- she said
21 nothing about the actual cost -- but said no matter how
22 much it cost the search should be conducted to relieve
23 the minds of the relatives."

24 The serious problems that it might cause to the
25 Department, and the awkward questions that might be

1 asked, are, to a limited extent only, conjectural.

2 To the public, the figures of £80,000 to £90,000
3 would not have appeared excessive. There had been
4 a letter from Mrs Betts, which I gave you earlier
5 yesterday, which covered that aspect. It would be
6 a pittance to the Department, even despite the greater
7 value of those sums in 1974. The Department had anyway
8 received quotes other than the Vickers quote for £80,000
9 to £90,000 from other reputable contractors.

10 Mrs Stockdale will have been well aware that
11 Mr Mansfield's proposals and proposed meetings had not
12 been taken up in substance. The considerable cost
13 explanation was another pretext, no more tenable than
14 the other three that we have discussed.

15 It is fair to the Department to acknowledge that
16 they did mention internally another reason for not
17 searching for the Gaul. It was read out yesterday from
18 page 119 of the bundle, Mr Doyle's important memorandum
19 of 5th August:

20 "It is, I feel, a dubious proposition that finding
21 the Gaul would in fact offer solace to all the
22 relatives. Some of the next of kin may well be
23 unwilling ever to accept the loss of their families and
24 may not even want the fate of the Gaul confirmed beyond
25 any doubt or hope ...

1 "We must also admit the real possibility of failure;
2 Vickers Oceanic conceded that ... We could thus wind up
3 in a situation where, having expended a great deal of
4 money, we would have succeeded only in reawakening the
5 distress of the relatives and generating a new wave of
6 doubt and anguished correspondence about the crew being
7 taken by the Russians."

8 That reasoning, in my submission, was misguided. In
9 the first place, there was no "real possibility of the
10 Department failing to locate the wreck". Vickers had in
11 fact guaranteed a 95 per cent chance -- their figure --
12 of locating the wreck; a fact that Mr Doyle himself knew
13 since it appeared in his memo to the Attorney General at
14 page 110.

15 MR JUSTICE DAVID STEEL: That is slightly circular. As

16 I understand it, that guarantee was on the basis of the
17 accuracy of the position of the wreck.

18 MR SALOMAN: Yes, sir, but the accuracy of the position of
19 the wreck was something that was a fact that in the
20 Department's thinking it had in the bank.

21 MR JUSTICE DAVID STEEL: And Vickers, as I understand, were
22 using a manned submarine.

23 MR SALOMAN: Which is a different point. Yes, sir.

24 The second and perhaps in some ways more important
25 point is that it was quite true to say that many

1 families believed that Gaul had been seized with her
2 crew by the Russians. There was a belief that she had
3 been spying. Yet the very families who held this belief
4 had been prominent in chastising the government for not
5 searching for the wreck. So it hardly seems to lie in
6 the mouth of the Department to say that those families
7 would not have welcomed a search for it, precisely to
8 disprove the theory that the Russians had seized their
9 men and that they were in some gulag .

10 We have a spate of references for that proposition.
11 This is obviously an earlier reference: Mrs Betts, at
12 page 242 of the other bundle, 33. This letter had been
13 prompted by the Rairo find. Ten lines down:

14 "... we are led to believe there is an uncharted
15 wreck off the North Cape of Norway which the Norwegians
16 think could be the Gaul. If this is so we the relatives
17 believe that you the Government should send underwater
18 cameras or even divers down to take photos from every
19 possible angle to find out what really happened..."

20 Well, sir, a sensible proposal. That is taken up by
21 another lady, Mrs Doone, in the same bundle at page 338.
22 Mrs Doone to the Department:

23 "Can you please tell me one piece of solid evidence
24 to say the Gaul sank. If there is any I do not know it,
25 maybe you do. As for the Inquiry we all feel the same

1 about that, all the court bothered about was the
2 weather. We know it was bad, but it was the same for
3 all the trawlers out there."

4 So this is a lady who is focusing on the cause of
5 the loss as well.

6 "If the court and yourself know the Gaul sank, why
7 has there never been any attempt to find it, according
8 to the TV and the newspapers, the exact spot where the
9 Gaul disappeared is known.

10 "Has that lady's story about the Gaul being escorted
11 into a Russian port ever been checked, according to her
12 it has not, and she is still sticking to the same story,
13 if it is made up why should she still say it is true.

14 "We will never accept it sank until we have more
15 evidence, which one day we will get, for we feel that it
16 is a cover-up job for something and someone will tell us
17 one day."

18 I do not think I need read this. It is on
19 30th March 1977 Countess Von Sievert requests that the
20 wreck be photographed or raised. That is the nub of her
21 letter to Mr Clinton Davis on 30th March 1977. We read
22 it at the bottom of the page and the top of the next.

23 MR JUSTICE DAVID STEEL: She perhaps was not the best
24 advocate.

25 MR SALOMAN: No, sir, but she was the first person, perhaps,

1 for the Department to think about in connection with its
2 explanation of not searching on the grounds that a lot
3 of families might still believe she was captured by the
4 Russians. In a sense, she was somebody whose theory, if
5 wrong, should be exposed to be wrong. It may be that
6 she has stuck more tenaciously than other ladies to the
7 belief in the Gaul's seizure, but that was not known at
8 the time to the Department, and her view, as you know
9 from the correspondence, was not alone, sir.

10 Finally, at page 98 to 99 of bundle 34, Mrs Parker
11 writes -- well, we have seen this letter this morning:

12 "... if the Gaul had sunk you would have mounted an
13 undersea search ..."

14 The government was also aware of the anxieties which
15 these rumours were causing. Certainly we have
16 Mrs O'Brien, at 33.1, spelling this out very clearly.
17 This is of course very early in the day in
18 November 1974, but it is on the Department's files. The
19 point she makes is that there is no evidence -- the ship
20 was "a good seaworthy ship" -- I am reading from
21 page 12:

22 "... and so it makes it far too hard to believe she
23 could have disappeared without a trace. I know the
24 weather conditions were bad but all the other ships of
25 the same class [also had it]...

1 "I hope someone soon will do something about it to
2 ease our minds. There are rumours about them being in
3 a foreign port. If only we knew one away or the other
4 our minds would be at rest."

5 Of course, the reactions to the announcement of the
6 decision showed what a live and emotional issue no
7 search was.

8 MR JUSTICE DAVID STEEL: What, in our documentation, is the
9 first reference to the rumour or theory that the vessel
10 might have been detained by the Russians? Where does
11 all start?

12 MR SALOMAN: Sir, that theory is held vigorously by the time
13 of the September 1974 Inquiry.

14 MR JUSTICE DAVID STEEL: I am fully aware of the outburst,
15 if I can call it that, at the beginning of the Inquiry.
16 So it is prior to the Inquiry itself. What is not quite
17 clear to me is when this theory or rumour first
18 blossomed.

19 MR SALOMAN: That is not absolutely clear from the
20 correspondence. However, we have attached in schedule A
21 some important references to the evolution of the
22 seizure and capture theory, sir.

23 MR JUSTICE DAVID STEEL: Where is that?

24 MR SALOMAN: That is at tab 2 of my bundle.

25 MR JUSTICE DAVID STEEL: Oh yes. The first reference I have

1 seen to it is bundle 33, page 31, when the Department is
2 already recording Mr McNamara's statement that there was
3 a possibility of the vessel being in Russian hands.

4 That is the earliest I can find.

5 MR SALOMAN: Yes, sir. If we can find anything more
6 explicit, we will include that in our materials. I can
7 say --

8 MR JUSTICE DAVID STEEL: I am interested, partly because
9 obviously this is something I must grapple with. But
10 the development of this theory or rumour ran, of course,
11 through the formal investigation, through the outcome of
12 it, which did not satisfy the relatives, probably
13 received a substantial boost for the 1975 television
14 programme and, in a sense, provides the background
15 against which one has to start looking at some of the
16 events in 1977.

17 So I am quite interested in where it all comes from
18 and when it all started. But it follows that it may be
19 that on the material that we have that is another rather
20 difficult search.

21 MR MEESON: Sir, we do have in bundle AG36 one of the
22 earlier entries of this issue in the press in the
23 Daily Mail for 8th August 1974, at tab 1, page 47, under
24 the heading "Spy Ships Storm over Naval Officers in
25 Trawlers", which was following the Minister's letter to

1 the Hull MPs that I referred to yesterday. It is almost
2 to the end of the tab.

3 MR JUSTICE DAVID STEEL: Yes, I have got that.

4 MR MEESON: In there --

5 MR JUSTICE DAVID STEEL: This is five months after the
6 document that I am looking at.

7 MR MEESON: Yes.

8 MR JUSTICE DAVID STEEL: Anyway, this is the first
9 indication in the press?

10 MR MEESON: As far as I can tell.

11 MR JUSTICE DAVID STEEL: Thank you very much. The letter
12 that that is referring to from Mr Judd to Mr Prescott we
13 have seen, have we? Is that the 8th August letter?

14 MR MEESON: Sir yes, that is the 8th August letter.

15 MR JUSTICE DAVID STEEL: So that same day. Thank you, that
16 is very helpful.

17 MR SALOMAN: You have already seen from materials I have
18 read to you the reasoning of the families, or some of
19 the families, in their letters, showing how suspicious
20 they found the failure to search. They thought that the
21 no search was bound up with a reason for Gaul's
22 disappearance.

23 Suppose she had been spying, it was thought, or
24 rigged for spying; would that not explain the possible
25 seizure of the ship and the crew by the Russians, and

1 the government of this country's apparent lack of
2 interest in searching for her? By similar reasoning, if
3 the Gaul had been seized with her crew by the Russians,
4 then a search would be absolutely pointless; there would
5 be nothing to find. So perhaps that was why the
6 government was not searching for her.

7 It must be mentioned that those were not the only
8 ways the failure to search for the wreck seemed to be
9 bound up with the way the Gaul might have been lost.
10 Later in time, in October 1975, the television company
11 had suggested the loss scenario of collision by a Soviet
12 submarine. Bundle 36, page 74. I will be reading, sir,
13 from the Thames TV extract in some detail when I get to
14 the collision theory, but it suffices to say that the
15 Department's desire was perhaps, in the minds of the
16 families, not to inflame West/East relations by finding
17 the wreck.

18 MR JUSTICE DAVID STEEL: This is a transcript of the "This
19 Week" programme 1 and 2, is it?

20 MR SALOMAN: Yes, sir. I would prefer just to indicate to
21 you that that transcript shows when this theory came
22 forth. I will read the detail of it when I deal with
23 the loss scenario of collision. The passages start at
24 page 76 and run until page 78, but they are much more
25 pertinent and I would rather read them when I deal with

1 collision because you will be interested, sir, in how
2 this theory of collision by a submarine ever saw the
3 light of day.

4 The Department must have known that locating the
5 Gaul on the seabed was the obvious and natural way for
6 it to dispose of these anxieties and uncertainties, and
7 if it had done so peace might in 1977 or soon afterwards
8 have been found.

9 Sir, the short of it is that there was no government
10 will to locate and inspect the Gaul. Mr Doyle had
11 touched on this issue of will by asking, or saying
12 that, "We now have sufficient indicators to conclude
13 that we have a good idea of where the Gaul is and it is
14 a question of whether or not we wish to prove it."
15 Well, the Department did not wish to prove it. It was
16 unwilling to pay apparently even relatively small sums
17 of money.

18 In the memorandum at 69.3 of bundle 34, the
19 Department had acknowledged that they might "shop
20 around" for a lower offer, but Mr Doyle adds:

21 "Even if we were quoted say £25,000 it would still
22 be a lot of money to find for this exercise."

23 One then asks why the government had this lack of
24 will. It was a lack of will to spend money that emerged
25 in a letter read to you yesterday by my learned friend

1 Mr Meeson, the letter sent to Mr Eastaugh -- or the
2 memorandum of the discussion with Mr Eastaugh, page 178.

3 In this statement:

4 "I confirmed to Mr Eastaugh that the Department had
5 no money to spend on a search for the Gaul, particularly
6 as we saw no return in terms of marine safety."

7 Why? Why the lack of will? In my submission, the
8 Department had a distinct desire that the findings of
9 the Court of Formal Investigation be left undisturbed,
10 and not to give credence to any notion that the Gaul
11 decision needed reinvestigating.

12 At a somewhat earlier stage, in June 1975, Mr Archer
13 had written, at page 187 -- this is written in the
14 context of Thames TV's proposed search for the Gaul.
15 About four lines down:

16 "While I do not think I would like to go so far as
17 directly opposing the proposal by Thames TV that they
18 should mount a search for the wreck of the Gaul,
19 I equally feel very doubtful indeed about giving any
20 kind of encouragement to this activity. Clearly the TV
21 company want to do it in order to add colour to the TV
22 programme they are proposing to make; and we know that
23 this programme has as one of its objectives to give the
24 impression that the public inquiry's findings do not
25 dispose of this matter."

1 Well, fair enough because that was the Department's
2 view too. It goes on:

3 "In my view, it would be unfortunate if the
4 Royal Navy were prepared, even on a full repayment
5 basis, to take part in a search for the wreck at the
6 request of the TV company. This would, I feel, tend to
7 give some kind of official seal of approval to the idea
8 that further investigation of the case is needed; and it
9 could well give rise to the suggestion that if the
10 Royal Navy were prepared to do this for a TV company,
11 why did not the Department of Trade call them in."

12 Returning to bundle 34.1, at page 18. On
13 2nd May 1978, Mr Doyle submits, sir, a memorandum. He
14 spells out the significance of the NMI report --

15 MR JUSTICE DAVID STEEL: This is version 6, is it?

16 MR SALOMAN: Yes, sir. It is, I believe, the consolidated
17 report which came out, according to our chronology, in
18 December 1977:

19 "Mr Paffett (Director NMI) has agreed with the
20 Surveyor General that the report can be released (in
21 full) and we are under increasing pressure from the
22 parties to civil litigation to provide copies."

23 He discusses in the second paragraph whether to
24 provide a foreword to the report, and thinks that they
25 should. But it raises the pertinent question of what

1 they say about the report itself.

2 "The really crucial areas, and those that will have
3 a direct bearing on the test case, are the conclusions
4 in the report juxtaposed with the views expressed during
5 the hearing by the Department and the subsequent
6 conclusions reached by the court. I think it is very
7 important that we reconsider our views in this
8 connection as soon as possible in the light of the
9 report.

10 "The points we need to consider are, I think ... "

11 And then the key paragraph is 3:

12 "The NMI findings seem to confirm the evidence first
13 given to the court by our surveyor (Mr Scott) but which,
14 on subsequent consideration, we modified."

15 That was modification to promote the idea that the
16 loss could occur by water on the trawl decks alone.

17 "Our second view was apparently that it was possible
18 for the Gaul to capsize merely through the combination
19 of a succession of very heavy seas and water laying on
20 the trawl deck."

21 On the next page:

22 "The court seemed to take the latter view adding
23 that, if the combination occurred broadside on, the
24 vessel would not have had sufficient righting ability to
25 survive. It seems to me that this could be the crucial

1 area in the test case and that we are almost certain to
2 be asked whether we now accept the NMI (and our own
3 initial) conclusion or the modified view which we put to
4 the court...

5 "As I read it, the court and the Department, at the
6 formal investigation reached a conclusion ..."

7 I do not think I need read this to you.

8 MR JUSTICE DAVID STEEL: I understand the reference to the
9 modification of Mr Scott's evidence. As I understand it
10 from my examination of the formal investigation,
11 Mr Scott's preferred view was that the vessel could not
12 sink without water on the factory deck, although he
13 contemplated it might be possible that she would be lost
14 simply as a result of water on the trawl deck. That was
15 the evidence which he gave in his proof and at the
16 Inquiry.

17 Whilst I would understand the suggestion that his
18 own examination of sister ships which had led him to
19 believe there might have been deficiencies in the duff
20 and offal chutes was not led, and thus the only source
21 of water that he could account for in the factory deck
22 must have been coming through the machinery or perhaps
23 through one of the doors, what I am not quite following
24 at the moment is the suggestion that his evidence had
25 been modified.

1 MR SALOMAN: Sir, my understanding of that passage is
2 this: the case of the Department was opened by Mr Brice
3 on the basis I read out this morning. It was put in
4 line with Mr Scott's opinion that it was a combination
5 of water on the trawl deck and on the factory deck.
6 That case was not pursued full-heartedly throughout the
7 Inquiry, and indeed there were interventions in the
8 course of the Inquiry, which we can certainly give you
9 the references for, where Mr Michael Thomas for the
10 owners wants clarification of the Department's case.
11 The case of the Department by the end of the Inquiry
12 was that the ship could have been lost by water on the
13 factory deck, and that modified view was put forward by
14 the Department at the case. Mr Scott's evidence, which
15 was given towards the end of the Inquiry, predictably
16 argued that there was probably water on the trawl deck
17 and the factory deck. That was his view. But by then
18 the Inquiry and the Department's case had moved on, and
19 the modified view, which was ultimately put to the court
20 for acceptance, was there was no evidence of this ship
21 being an intact ship; the assumption must be that she
22 was intact, and there is sufficient basis in the
23 stability --
24 MR JUSTICE DAVID STEEL: I might need some references.
25 Again, as I understand it, having read Mr Scott's

1 evidence at the OFI, he was, in a sense, slightly in
2 a corner because the evidence relating to his views of
3 the duff and offal chutes having not been led, he could
4 not, in a sense, pray that in aid as a possible source
5 of entry. He accepted, as I understand it, that,
6 although he had seen on a sister ship the factory door
7 cleats had not been in proper condition, that that was,
8 I think as you put it, possibly only attributable to
9 that ship alone, so that the only source of water must
10 have been the factory machinery. And he was then
11 cross-examined broadly along the lines that, how could
12 he account for the fact the vessel was still in a happy
13 condition at 11 o'clock if the water had been on since
14 6.15 in the morning. He did not seem to be, if I may
15 say so, prepared to grapple with that conundrum. He was
16 not prepared for it.

17 MR SALOMAN: He was not.

18 MR JUSTICE DAVID STEEL: And so the outcome, as I understand
19 it, was that there was not really any material which the
20 court had before it for a logical progression from an
21 intact ship to loss of watertight integrity on the
22 factory deck and water on the trawl deck. So water on
23 the trawl deck had to be the only explanation, and that
24 explanation was rendered the slightly more credible if
25 the trim of the vessel was not as the Board of Trade

1 assessment was but as the Yard assessment was.

2 I believe I have got that right.

3 MR SALOMAN: Absolutely right. There is just one detail
4 that aggravated Mr Scott's position at that Inquiry;
5 that he assumed that his preliminary investigation
6 report was known about by the court and by all the
7 parties. He was being pressed on a theory which
8 obviously did not accommodate what he had seen, or
9 claimed to have seen, on the sister ships. So that must
10 have made his experience of giving evidence particularly
11 difficult.

12 MR JUSTICE DAVID STEEL: Well I think he brought forward
13 a sense of grievance to this day. And I am right, am
14 I not, that the practice in those days -- perhaps you
15 are too young to remember -- was that the Department
16 regarded a preliminary inquiry report as covered by
17 Crown privilege, as it was then called, and therefore
18 was not a discloseable document?

19 MR SALOMAN: Sir, I have commissioned -- to use a favourite
20 expression -- some researches into that question, that
21 there does seem to be no compulsion on the Department to
22 disclose preliminary investigation reports. My
23 contracted out researches have not yielded anything
24 particularly solid on that issue.

25 However, what I say is simply this: that it was

1 always open to the Department to introduce all relevant
2 evidence, evidence it believed to be relevant, into the
3 framework of the 1974 Inquiry. The correspondence of
4 the Department, which we explored in evidence with
5 Mr Scott, was replete with acknowledgment of the
6 relevance, or potential relevance, of the condition of
7 the sister ships generally, and more pertinently to the
8 likely condition of the Gaul's closing appliances.
9 There is indeed a memo, an internal memo, from Mr Bell,
10 which we did not look at, which states the view of the
11 Department that Mr Scott's inference that the state of
12 the Kurd and/or the Kelt was relevant, or potentially
13 relevant, to the condition of the Gaul was a reasonable
14 inference to draw.

15 MR JUSTICE DAVID STEEL: I would quite like a reference to
16 that. I think perhaps we will take a break now. There
17 were some other points which have occurred to me which
18 we need to debate at some stage. Thank you very much.

19 (1.05 pm)

20 (The short adjournment)

21 (2.05 pm)

22 MR SALOMAN: Sir, I would like to give you three references
23 which remain from this morning. The consolidated NMI
24 report of December 1977 is the one at AG2, tabs 1 to 2.

25 MR JUSTICE DAVID STEEL: Thank you.

1 MR SALOMAN: There is a statement of Countess Von Sievert at
2 AG9, page 375, which is dated 26th February 1974:
3 "Until recently I have been living in Denmark at
4 Borg.
5 "On Monday 11th February or Tuesday 12th February
6 I heard on the BBC English radio that the motor trawler
7 Gaul was missing. On Thursday 14th February I received
8 a telegram from my mother in Hull saying that there was
9 though hope for my brother Albert on the Gaul. During
10 the evening some Danish people in Borg came to our house
11 and said the ship was not lost. They said they had
12 listened to the Danish Broadcasting Authority news and
13 it had said that the ship was not lost but was in
14 a Russian port. It also said the Russians probably
15 boarded the vessel very shortly after the last radio
16 call from the ship. We went to the police (Danish) who
17 told us not to worry because it had been done several
18 times with other foreign ships and it usually takes
19 three weeks before the crew are released but not to
20 worry because the crew are well taken care of by the
21 Russians. If the ship has been proved to be spying the
22 Russians will keep it and fly the crew home to their own
23 country. If the ship is not a spy ship it will still
24 take three weeks and the crew are put back on board the
25 ship and sent home."

1 I simply, sir, give you references too to her oral
2 evidence: OFI Day 5, 2 to 4, and her husband
3 Count Sievert's evidence in the same transcript, pages 4
4 to 5. The latter references are already in our schedule
5 but not the first.

6 MR JUSTICE DAVID STEEL: So that is the earliest record, as
7 you understand it?

8 MR SALOMAN: That is the earliest record, but we are going
9 to check thoroughly for further letters in the bundle,
10 because that is what you have asked for, to a belief
11 that the Gaul was spying -- I mean the first documentary
12 record.

13 MR JUSTICE DAVID STEEL: As I recollect it, the
14 cross-examination -- I do not know -- was along the
15 lines that no record can be found of any broadcast of
16 the kind that she referred to.

17 MR SALOMAN: Quite right.

18 MR JUSTICE DAVID STEEL: Thank you.

19 MR SALOMAN: Sir, lastly, AG11.1, page 52 is the memorandum
20 of Mr Bell. It will go into our chronology. He says:

21 "It is reasonable to assume that the state of
22 maintenance of the hatches and doors were similar to
23 that on the sister ships."

24 I mentioned the existence of such a document this
25 morning.

1 If I may resume --

2 MR JUSTICE DAVID STEEL: Sorry, while it occurs to me, the
3 Fredyn simulation results reveal how sensitive the
4 outcome is to changes in trim. Another feature of
5 Mr Scott's evidence at the formal investigation was his
6 reconsideration of the static stability of the Gaul by
7 reference to an alternative trim, suggested by the
8 owners, which involved more substantial quantities of
9 fish and fishmeal on the vessel.

10 I am not quite sure I am asking the right person,
11 but at some stage I think I would benefit and my
12 assessors would benefit from some short paper just to
13 help us through the history of the development of those
14 issues at the formal investigation. I have to say that
15 in some respects I am slightly puzzled as to what the
16 point was all about, although it left, if I may say so,
17 an obviously slightly bad taste in the mouth of
18 Mr Scott.

19 Equally, there is this strange manifestation of
20 a substantial amount of fishmeal, which would suggest
21 a substantial catch, presumably of fish that were
22 inedible, that I do not know whether any comparison has
23 been done with the number of baskets that are reported
24 on the scheds or where these figures could ever come
25 from.

1 Sorry, I have not explained myself very well.

2 MR MEESON: Sir, this work has largely been done. I am not
3 sure we have completed the comparison of the baskets --

4 MR JUSTICE DAVID STEEL: Maybe I mentioned it before. I am
5 very sorry if I have.

6 MR MEESON: I think you did mention it yesterday.

7 MR JUSTICE DAVID STEEL: A day is a long time in this case.
8 Thank you.

9 MR SALOMAN: The submission I was making before we adjourned
10 was that the reason for the Department's lack of will,
11 as reflected by the huge materials we have, was
12 a distinct desire that the findings of the CFI be left
13 undisturbed and not to give credence to any notion that
14 the Gaul decision needed reinvestigating.

15 We were on a document at page 18 of bundle 34.1. We
16 had got to page 19. You will note against the passage
17 that has been read to you, but I should re-read:

18 "It seems to me that this could be the crucial area
19 in the test case and that we are almost certain to be
20 asked whether we now accept the NMI (and our own
21 initial) conclusion or the modified view which we put to
22 the court. I think it is inevitable that we, and
23 perhaps NMI will be asked to give expert evidence in
24 court on this aspect."

25 There is a letter X in the margin next to it.

1 At top of page 18 we see comments by the Surveyor
2 General on this memo:

3 "I haven't seen the report but my first reaction is
4 against adding a foreword or commentary. Can it not be
5 represented as the result of a piece of research by NMI
6 for which another Department is responsible? I would
7 hope he might avoid X. Anything which would appear to
8 challenge the outcome of the inquiry would be
9 embarrassing."

10 I do not think I need to read Y, sir. That is
11 clear.

12 Then at page 50, as you see, time has moved on to
13 17th January 1980. Dr Morrell's paper has not been
14 delivered to the RINA meeting but it has been produced
15 and reviewed by the Department. Mr MacIver Robinson
16 writes to Mr Doyle:

17 "I propose to clear Dr Morrell's paper for
18 submission to RINA and subsequent printing for the RINA
19 spring meeting in April. Before I do so I would like to
20 be certain on some issues viz:-

21 "1. Do we have any obligation to the Court of
22 Formal Investigation to submit to the Commissioner and
23 the Assessors copies of the full report and copies of
24 the abridged report?"

25 I do not think I need to go into details of the

1 abridged report but the question is clear.

2 Mr Doyle's response appears on the next page, on
3 30th January 1980:

4 "On the points you raise, firstly I do not think we
5 are under an obligation to make a report to the Court of
6 Formal Investigation. The fact that we have largely
7 carried out the recommendations of the court would seem
8 to me to be sufficient."

9 It is quite clear that Mr Doyle was answering the
10 question put to him, namely whether there was an
11 obligation, and he said there was not an obligation to
12 put the NMI report, with all its opinions and
13 conclusions, before the original CFI, Court of Formal
14 Inquiry.

15 Whatever its obligations, and we have no particular
16 submission about that, it is clear that the Department
17 did not want the RINA paper, or indeed, more accurately,
18 I should say, the NMI report, to be sent to the
19 Commissioner of Wrecks, Mr Sheen QC, as he then was.

20 The inference to be drawn from comment X is that the
21 Department wished to avoid any risk that the
22 Commissioner of Wrecks might reopen or recommend to the
23 appropriate Minister the reopening of a formal
24 investigation; or, alternatively, that is the inference
25 you draw from this memorandum I am reading you now.

1 It is also quite clear that one construction of the
2 comment at X, sir, is that the Surveyor General did not
3 want the issue of the Department's views on the NMI
4 debated in the test case, as distinct from going back to
5 the Court of Formal Investigation. I accept that
6 entirely. But in those memoranda that we have just
7 reviewed, you have a reluctance to avoid the Department
8 really having to say what it thinks about the NMI report
9 in either of those two potential legal forums.

10 I submit that the same mind-set informed the
11 Department's decision not to search for the wreck;
12 a desire to leave matters where they were and not to ply
13 further money on the Gaul, and not to reopen the views
14 concluded by the Court of Formal Inquiry, even if the
15 Department's own views were inconsistent with them.

16 1980 to 1981. Really, we can proceed quite swiftly
17 here, sir. The families say that by that time the
18 positive reasons for making a search were as strong or
19 even stronger than they had been in 1977. The
20 government's excuses for not searching for her had been,
21 if that was possible, even more exposed as threadbare.

22 There had also been another useful confirmation of
23 the location of the Gaul from the vessel Kasjford. I do
24 not think it is a helpful way of spending time to read
25 the press cuttings from Norway which the Department

1 received in July 1978 through the British Embassy at
2 Oslo. The Kasjford had produced an echo sounder trace.
3 The wreck was at 147 fathoms and in the correct
4 position.

5 Here, again, in this period too, the Department
6 continued not to tell the families that it knew or
7 confidently believed that it knew the Gaul's likely
8 location.

9 However, in the late 1980s -- we have read the
10 letters that Mrs Stockdale sent to Mrs Betts and
11 Mrs Parker. The letters of Mrs Betts and Mrs Parker to
12 which it was a response are in AG34, at pages 247 to
13 248. These two ladies have written to Mrs Thatcher, the
14 Prime Minister. We are looking at a letter from
15 Mrs Parker:

16 "Further to our letters sent to you on behalf of
17 myself and other relatives of the crew of the hull
18 trawler Gaul, which as you know she was seized by the
19 Russians in February 1974 while on a secret mission for
20 the Board of Trade. We have waited nearly seven long
21 years for your help. We are still waiting for a reply
22 to our letters which were sent to you a few months ago.
23 The only reply from your Department was that our letters
24 are receiving attention.

25 "This is not good enough. We must have something

1 done at once to get our 36 crew released at once."

2 And then on page 248:

3 "Many people ... agree with us the relatives that
4 the Gaul never sank. So Mrs Thatcher it is either an
5 underwater search, which we know would be a waste of
6 money because you in government know she does not lie
7 there, or for you to get in touch with the Russians for
8 the Gaul crew release. We the relatives would like an
9 underwater search to prove to you that we have been
10 right all along that the Gaul is not on the seabed. It
11 is up to you the government to give us the address of
12 the prison that our 36 men are being held in ..."

13 That, I think, is all I need read from that letter.

14 Mrs Betts writes, on page 244, on 7th August 1980:

15 "Please don't send your sympathy or pity as this is
16 not what we want. All I myself and other relatives are
17 asking for is you to order the Navy to take underwater
18 photos of a wreck off the North Cape of Norway, believed
19 to be that of the Gaul, as there is nearly always
20 a Naval vessel in that area and it would be a good
21 exercise for them as well as bring peace of mind to
22 myself and other relatives ... The only reason I can
23 think of the government not doing this is because they
24 don't know themselves where the vessel or the crew are.
25 I still believe the crew are in Russia."

1 As you have already heard, in Mrs Parker's response
2 at 252 and following, the two families were given
3 significant information about the Gaul's location but --
4 I hope I do not put it discourteously if I say that
5 Mrs Stockdale, on behalf of the Department, fobbed each
6 of them off once again with the same excuses which the
7 Minister had invoked in August 1977 for not searching;
8 namely, that the wreck could only confirm what the
9 government believed was the proper conclusion of the
10 court, and that there were no believed benefits for
11 marine safety, and I have addressed you on that.

12 Firstly, these excuses were, in my submission, by
13 now barren; they always had been barren.

14 I do not really need to elaborate on what I have
15 said this morning about the importance of the
16 investigations performed by the NMI and the report that
17 it had delivered and the sequel paper that came from
18 Dr Morrell. I will deal in a moment with the question
19 of the families, or the bulk of the families' knowledge.

20 I just mention that there is at bundle 34.1,
21 page 53, a contribution provided by Mr MacIver Robinson
22 to the RINA paper, where the Department explicitly
23 recognises the potential relevance to the greater safety
24 of fishing vessels of knowing how loose water occurred
25 in, got into or onto the factory deck. He also

1 recognises the importance of the effectiveness or
2 otherwise of the closing appliances or watertight
3 integrity of a fishing vessel, and you will be able to
4 pick those out of pages 55 and 56. The last section of
5 55 I should read. After his reference to the effect of
6 loose water in the factory deck:

7 "However one should not overlook the general lessons
8 which can be drawn from these investigations, so
9 dramatically illustrated in the film" -- that film, sir,
10 may be the film that, courtesy of Mr Meeson, we saw at
11 the beginning of this Inquiry -- "which reinforce what
12 common sense and experience tells us is good practice.
13 I have particularly in mind the need to ..."

14 Then he sets out various points:

15 "(iii) maintain the effectiveness of closing
16 appliances so that the watertight integrity of the hull
17 and erections can be achieved;

18 "(iv) be vigilant in preventing the build-up of
19 loose water inside the hull and this could involve the
20 need for alarms to be provided;

21 "(v) provide adequate means to remove this loose
22 water and in respect of the factory space this could
23 involve submersible pumps and waterproof motors.

24 "Finally, I am sure that as a result of the
25 discussions here today and the written contributions

1 later on, this paper will make a valuable contribution
2 towards greater safety of fishing vessels ..."

3 What I say about that is that only actual discovery
4 of the wreck and inspection of the wreck would indicate
5 whether Gaul was in fact an intact ship. For example,
6 if closing appliances were found to be closed on the
7 wreck of the Gaul, then water on the factory deck could
8 arguably have accumulated from internal sources.
9 Certain lessons as to the effectiveness and/or operation
10 of the factory deck drainage system could have been
11 drawn for the benefit of future seamen. Conversely, if
12 closing appliances were found to be open, different
13 lessons could have been drawn as to the design and
14 maintenance of hatch covers, doors, duff and offal
15 chutes or what have you.

16 The purpose of Mrs Stockdale's letters was
17 apparently -- and I say this on the basis of documentary
18 materials I will show you -- to discourage these ladies
19 from pursuing a search and to prevent the revival of an
20 issue -- that is the search issue -- which the
21 Department wanted to treat as decided finally in 1977.

22 Page 270 of bundle 34, a memo of Mrs Stockdale to
23 Mr Doyle, sent before she wrote to Mrs Betts and
24 Mrs Parker but after she had received their respective
25 letters. She gives the letters to Mr Doyle.

1 "[They are] letters received from Mrs Betts and
2 Mrs Parker. We think the latter was previously
3 Mrs Thornton. Casualty Section proposed to send the
4 usual short letter of 'nothing to add'. But I wonder
5 whether the time has come to try a completely new
6 approach in an effort to try to satisfy these ladies --
7 more of a woman to woman type of letter than the usual
8 Civil Service type.

9 "I have had the section photocopy all the letters
10 sent to relatives since September 1977 when we decided
11 against an underwater search, and a list of the letters
12 in the two years before that -- a further search in the
13 old files would reveal even more. The letters and the
14 list are at document 7 and as you see show
15 a considerable effort on our part. If you agree I would
16 like to aim to close the business by writing as in my
17 draft opposite. But one thing puzzles me and that is
18 that nowhere do we seem to have released information
19 about the echo sounding trace from Coriolanus. Nor do
20 the files show any discussion about whether or not we
21 should do so. At this stage I cannot imagine why we did
22 not."

23 Nor, sir, can we.

24 My submission is that it is clear that the
25 Department regarded Mrs Betts and Mrs Parker as writing

1 in a personal capacity. At page 266, there is a file
2 note of 25th September, following her sending of these
3 two letters to the ladies in Hull:

4 "If there are letters from any other relatives
5 I will send a long letter [as per the ones she has
6 written to Mrs Betts and Mrs Parker respectively] and
7 then answer subsequent letters in the same manner as
8 above"; in other words, your views have been noted.

9 But it goes a little bit further than that. It
10 could be said that the two -- certainly Mrs Parker's
11 letter, and possibly Mrs Betts', described themselves as
12 writing on their own behalf and also on behalf of other
13 relatives.

14 Sir, that was a feature of a number of their
15 letters, and yet it was clear that the families were
16 corresponding individually -- I am talking about the
17 families at large -- there was absolutely no group of
18 Gaul families, there was no association of the families
19 or anything of that kind in that day, and this
20 memorandum does suggest an assumption, which proves to
21 be wholly correct, that the families generally are not
22 necessarily going to be shown what goes to Mrs Betts and
23 Mrs Parker.

24 We have collected in bundle 24B all the reactions
25 that were provided by the families following the report

1 of Mr Roger Clarke being published, and being reviewed
2 by the families. A copy was sent to them all. They
3 were asked for comments, and without reading that
4 dossier of correspondence, it is clear from their
5 reactions to the Clarke report that the families did not
6 know the location of the Gaul.

7 Sir, there is just one argument that the DOT has
8 made in relation to the NMI report in interlocutory
9 hearings. It has made the point, which is correct as
10 far as it goes, that there is some evidence that the
11 solicitors Graham & Rosen were supplied the NMI report
12 in connection with the families' legal proceedings in
13 the late 1970s. That is true, but the Department's
14 argument, that therefore that was good enough, is, we
15 suggest, without any merit.

16 In the first place, the Department had managed to
17 avoid making public its knowledge of -- or confident
18 belief in the location of Gaul's wreck known to the
19 families as a whole, or generally. They had not done
20 that. There had been repeated requests over the years
21 for a search, which had been rebuffed by the Department
22 and had been formally rebuffed in August 1977. Similar
23 requests, of course, were rebuffed when Mrs Betts and
24 Mrs Parker made them in September 1980. Beating of the
25 same drum would have seemed futile.

1 What is more, we can see that there were several
2 further pleas by families for a search made at later
3 periods. In January 1983 there were letters sent to the
4 Prime Minister, and they too were repudiated. Those
5 references are: 293 from Mrs Betts, and I have read that
6 to you yesterday; 279 from Mrs Parker, and 299 from
7 Mrs Doone. I have read that one to you too. And at
8 303, there is a letter, a joint letter, actually, from
9 Mrs Smith and Mrs Clark. They refer to the recent news
10 of Mrs Thatcher's son being recovered, at some cost, in
11 the Sahara Desert, and make the right points that their
12 men on the Gaul should have been just as important.

13 At page 301, the Department writes to Mrs Betts:

14 "I know how distressing the loss of the Gaul must be
15 for you and all the bereaved relatives of the crew.
16 But, as you are aware, the findings of the public court
17 of inquiry were accepted by the Government and, in the
18 circumstances, I have to tell you that this Department
19 has no present plans to carry out an underwater search
20 for the vessel."

21 Well, they were findings accepted by the government,
22 in the sense that they were not, without kicking and
23 screaming, going to do anything to disturb them or
24 reopen them, but in no other sense were the findings of
25 the public court of inquiry accepted by the government.

1 And at page 308, similarly, a response to Mrs Clark, and
2 there is another similar response at page 307.

3 Sir, there has been a further argument of the
4 Department, advanced through Mr Roger Clarke's report,
5 that they somehow succumbed to corporate amnesia in the
6 1980s and 1990s. It is not entirely clear but it seems
7 the submission is that corporate amnesia started to
8 afflict the Department even in the early 1980s, the
9 period we are considering, as well as the later period.

10 The short answer is that that excuse is completely
11 incredible. Most of the civil servants handling the
12 Gaul case on the Department's behalf in 1980 to 1981
13 were the same as the ones handling the case in 1978.
14 Mr MacIver Robinson, Mr Archer, Mr Doyle and
15 Mr Stockdale are still at the helm. The same applies to
16 technical personnel such as Captain Newbury, Mr Scott,
17 Mr Tope and Mr Bird.

18 The second and last point is that the documents
19 relating to the period 1974 to 1979 were as available to
20 the Department in the 1980s as they were in the 1970s.

21 The reasons why there was no search for the Gaul
22 were not the reasons given by the Department. Those
23 were merely pretexts for not undertaking a search for
24 which it lacked the political will.

25 The core excuses, that the search would only confirm

1 the well founded conclusion of the Court of Formal
2 Inquiry, and that there was no evidence within the
3 Department which would justify a search for a ship, were
4 utterly threadbare explanations. It wanted to leave the
5 Court of Formal Inquiry's decision where it stood, even
6 if it was wrong, or arguably wrong, whatever lessons for
7 marine safety might derive from finding the wreck.

8 Those potential lessons were, in my submission,
9 manifest for anybody considering the results of the NMI
10 explanations, and the Department did consider them. It
11 did not want to spend a penny of money on the Gaul.

12 The bundles of memoranda and documents from the DOT
13 do not, it has to be said, lend support to any view that
14 reasons of national security or a desire to preserve
15 East/West relations informed the decision not to search
16 for her.

17 I now proceed to possible and probable causes of the
18 loss.

19 I have already explained that various families have
20 believed at different times that the evidence did not
21 support the Gaul's loss in a maritime accident. If
22 there was such evidence, it did not seem to them
23 satisfactorily to emerge from the first court of
24 inquiry's investigation. There was certainly no wreck
25 to look at.

1 Rather, they believed that Gaul was spying, or
2 rigged for spying, or that the Russians might have
3 believed that they were spying, or that Gaul had been
4 seized with her crew by the Russians.

5 She had been seen, some believed, in a Norwegian
6 fjord, or nearer still to Russia, in Russian waters, on
7 8th or 9th February.

8 Some believed that the Gaul must have been boarded
9 and the crew seized by the Russians, who later scuttled
10 her.

11 We will address spying first. The questions
12 are: was Gaul or any of her crew ever engaged in
13 intelligence gathering or what is colloquially called
14 spying? Were they involved in spying on her final
15 voyage?

16 There were many families who believed, as we have
17 seen, within a short time of Gaul's disappearance, that
18 she had been engaged in spying. They believed that the
19 government had sent their men on a dangerous spying
20 mission to the Barents Sea to look for submarines, which
21 they believed, or some believed, were in turn spying on
22 our ships in the NATO exercise. They believed that the
23 Gaul and her crew were arrested and captured, and hence
24 there was, not surprisingly, no wreckage.

25 You might say, sir, that that rather articulated

1 summary of the Gaul families' belief in 1974 may not
2 have been held in quite that form by the families who
3 believed that there was no marine accident. But it is
4 a tidy summary drawn from Countess Sievert's letter, and
5 the reference I have given you is at page 365 to 366 in
6 bundle 33. I believe that it probably does reflect the
7 views of the families which underscored their upset, at
8 least by the time of the 1974 September Inquiry, and
9 that is why I summarise it in that way.

10 Well, the government assured the families, or
11 perhaps the families' MPs, in August 1974, saying "that
12 the British trawler fleet is not involved in any way in
13 intelligence gathering; this applies as much to
14 equipment as personnel" and saying that the Gaul herself
15 had not been intelligence gathering. Many families did
16 not believe those assurances.

17 I should deal, at the outset, with one somewhat
18 semantic point made by my learned friend Mr Meeson about
19 that letter, which was that, on any view, the statement
20 "the British trawler fleet is not involved in any
21 intelligence gathering", and so forth, was a statement
22 of what the trawler fleet was or was not doing in
23 August 1974, and did not condescend to tell the families
24 what the trawler fleet may have been getting up to or
25 may not have been getting up to at earlier periods, and

1 in particular at the time of the Gaul's disappearance in
2 February 1974.

3 If that is what is being submitted, and I see
4 Mr Meeson shaking his head.

5 MR MEESON: I think it must be intended to mean at the time
6 of the Gaul's loss.

7 MR SALOMAN: That is very helpful. It is important that
8 that statement must have been referable to, and
9 Mr Meeson accepted that it was properly understood as
10 being referable to what was going on at any rate in
11 February 1974.

12 The government also gave the families an assurance
13 that junior naval officers went on trawlers just to get
14 "general experience ... familiarise themselves with the
15 problems of fishermen", with no mention at all of them
16 indulging in any intelligence gathering.

17 Well, at the 1974 Inquiry there were copious
18 outbursts from many families declaring their firm belief
19 that she had been spying and then captured. That gave
20 rise to a further government statement, issued through
21 one of its spokesmen, bundle 33, page 101.

22 This is an article from the Hull Daily Mail on
23 17th September 1974, headed "Angry scenes as Hull
24 hearing gets under way. Relatives in spy ship outburst
25 at Gaul probe", and there is a photograph.

1 "Distraught relatives today stormed out of an
2 official probe into the loss of the Hull trawler
3 Gaul ... uproar only 15 minutes after it had begun ...

4 "Many women at the hearing claimed that the Gaul and
5 her crew of 36 were being held by the Russians. Claims
6 that the Gaul was a spy ship were shouted by the
7 relatives in emotion charged outbursts minutes after the
8 inquiry began ..."

9 Really, the important bit for these purposes is
10 "Claim Denied" in the penultimate right-hand column:

11 "The Ministry of Defence in London immediately
12 denied the woman's claim.

13 "'We do not use fishing vessels for espionage
14 purposes', said a spokesman. 'A lot of people have the
15 impression we do, because very occasionally, no more
16 than half a dozen times a year, young officers do take
17 passage on trawlers. These are officers who are likely
18 in the future to be sent on fishing protection fleets
19 and are simply sent to see what life is like on the
20 trawlers.'

21 "He said there would be 'absolutely no point' in
22 putting intelligence officers aboard trawlers at sea."

23 So, neither in the August government statement nor
24 in the September government statement was there any
25 mention of Royal Naval junior officers "gathering

1 intelligence" under the RN liaison scheme. Indeed, the
2 last statement we have read implied that such would have
3 been a pointless exercise.

4 The families did not accept these assurances. The
5 involvement of local trawlermen in intelligence
6 gathering had become a fact of life, an open secret.
7 For the families to hear these denials shocked the many
8 who knew it was false, and only inflamed the rumour that
9 the Gaul might indeed be seized. They knew that naval
10 officers were not merely embarking for general sea-going
11 experience but for intelligence gathering.

12 We heard at this reopened investigation from
13 Ronald Bateman. He provided us with a contemporary
14 minute of a meeting of the Annual Fishing Conference
15 held in December 1974. We have it in bundle 10, at
16 page 156. It is the Annual Fishing Conference meeting
17 of December 1974, and we see a heading on this
18 page, "Other business. Naval Personnel on Board Distant
19 Water Trawlers":

20 "The Chairman gave a full report of correspondence
21 between our Union and Secretary of State for Defence."
22 It is a pity we do not have that correspondence. "Of
23 recent months there has been considerable concern
24 expressed in both Hull and Grimsby over the practice of
25 putting Naval personnel aboard trawlers. The Minister

1 had been informed on the following terms:

2 "1. While Naval Officers are welcome on board to
3 learn about the industry, such exercises should be kept
4 to near and middle water fishing grounds."

5 One can see the distinction.

6 "2. Under no circumstances will our members
7 tolerate Royal Naval personnel being on board distant
8 water trawlers that are likely to be entering NATO
9 sensitive waters.

10 "This action was fully supported by the Conference."

11 This was covered on Day 17, for your note, sir, by
12 Mr Bateman, at page 137, lines 24 to page 138, line 17:

13 "Question: Why were you concerned to have that
14 point raised?

15 "Answer: Because, as I say, we carried them five or
16 six times and on occasions it was getting very, very
17 dangerous.

18 "Question: In what way did you consider it
19 dangerous?

20 "Answer: Well, had we been boarded, for one thing,
21 in those days, and I do not suppose you could have told
22 the Russians when they found out, 'He was not a member
23 of the crew', or whatever.

24 "On a couple of occasions we had a grey box about
25 12 inches square, about 4 feet long, painted grey -- or

1 greyish -- and it would be in the port side of the
2 wheelhouse. Our orders were never to ever leave him on
3 the bridge alone. One had to be with him at all times
4 in case we had to get this box over the side.

5 "Question: During that time, was the vessel always
6 fishing outside the Russian 12 mile limit?

7 "Answer: Yes, I would think we would be. It would
8 be foolish to be going inside the limit with one of
9 those people on board."

10 Sir, this does tend, we submit, to justify the
11 families in not believing the government statements
12 which I have mentioned. We have not seen the
13 correspondence the government had with the union.
14 However, the inference is that trawlers were still being
15 used by the government in December 1974 for intelligence
16 gathering, and that the union were highly concerned for
17 the safety of their members.

18 Viewed 30 years on, the families were proven right
19 not to believe the government's then statements about
20 the non-use of trawlers for intelligence gathering. In
21 fact, the government had been placing naval officers on
22 board trawlers under the RN liaison scheme for that
23 purpose. We know that because we were told about it in
24 paragraph 9 of the Ministry of Defence note describing
25 "Use of Trawlers for Intelligence Gathering during the

1 Cold War" at AG10, page 7 to 10.

2 The function of this note was to summarise the use
3 of vessels for intelligence gathering. And the note did
4 properly, in paragraph 9, disclose that junior officers
5 embarked on trawlers as part of the liaison scheme;
6 albeit, the note tells us, the scheme was not widely
7 used between 1969 and 1974, with only ten junior
8 officers going to sea in trawlers. While we do not
9 necessarily accept that as accurate, the numerical
10 statement of ten junior officers only, it is an
11 acknowledgment that they were so used, and we know from
12 Mr Bateman's evidence that it was causing great concern
13 late in that year.

14 MR JUSTICE DAVID STEEL: There is a reference at the end of
15 paragraph 9 to the owners having acknowledged that there
16 were no RN personnel on board the Gaul. Where does that
17 come from? In what form was that acknowledgment made?

18 MR SALOMAN: If I may say so, it is a very good question
19 sir, but not one I can really answer. I suspect it
20 comes from the evidence given in the Court of Formal
21 Inquiry --

22 MR JUSTICE DAVID STEEL: It cannot be that; it is July 1974.

23 MR SALOMAN: I am so sorry. Yes, indeed. We do not have
24 any letter from the owners in July 1974.

25 MR JUSTICE DAVID STEEL: Thank you.

1 MR SALOMAN: And insofar as we did have it, my clients would
2 view it with considerable scepticism.

3 So this feature of the RN officers' activities was
4 not acknowledged in 1974, just as the statement in the
5 families' submission that the hull trawlers were not
6 being used in intelligence gathering was incorrect and
7 not to be accepted.

8 Now, at this reopened formal investigation, the
9 families are again being asked to believe the evidence
10 of the Defence Intelligence Staff, and this time also
11 the Secret Intelligence Service, when they say that the
12 use of trawlers for intelligence gathering was as stated
13 in the 1998 note, and that Gaul was not involved in
14 spying.

15 Commander Clark, in his statement, and
16 Commander Peters and EB, in their oral evidence, have
17 told us that their documents and computerised records
18 are clean of any reference to the Gaul/Ranger Castor or
19 to any of the crew being involved in any intelligence
20 gathering, and it is urged that the families should
21 accept that is true.

22 Well, the families might well ask, in response to
23 that submission: why should they believe the statements
24 of these government representatives now any more than
25 they could believe the earlier statements of predecessor

1 governments? After all, the earlier statements about
2 the non-use of trawlers in intelligence gathering were
3 untrue, as was the statement that Royal Naval officers
4 were never on board for intelligence gathering but
5 simply for generally educational purposes untrue.

6 The Minister of Defence's recent statements appear,
7 in our submission, only as good as their records are.
8 As to this, the statement of Commander Clark merely said
9 that MOD records may have been destroyed. That is at
10 page 6 of bundle 10, at paragraph 13. That, you may
11 think, is not the strongest way I can put it. He is
12 simply acknowledging that there is a routine process of
13 disposing of and destroying documents at certain periods
14 on certain grounds. However, the report of
15 Mr Roger Clarke concerning the MOD records went further.

16 If we could perhaps look at bundle 24, page 12. He
17 is discussing sources and telling us what documents have
18 been made available to him and what documents he has
19 examined, and he gives three warnings at paragraph 8,
20 the first of which is relevant:

21 "First, although (as can be seen from annex B) the
22 surviving files are extensive, there are many gaps. In
23 particular, there are virtually no MOD files on Gaul
24 surviving from the 1970s despite the efforts of
25 officials there to trace them. A few MOD papers have

1 turned up on the files of other departments; the log
2 books and reports of naval vessels, such as those that
3 took part in early searches for the Gaul, are retained
4 in MOD archives (and I have had access to these); but
5 I am told that those Defence Secretariat and other
6 Ministry files from the 1970s that contained any Gaul
7 papers must have been destroyed, probably before 1987,
8 under MOD's policy (in accordance with Public Record
9 Office guidance) of destroying all papers after five
10 years unless they are judged to contain material of
11 administrative or historical value. The loss of these
12 papers is unfortunate; but I am satisfied from the
13 material that I have seen that there are no important
14 factors relevant to the failure to search for Gaul that
15 are not covered in this report."

16 Sir, I am reminded that --

17 MR JUSTICE DAVID STEEL: Oh yes, maybe we should take
18 a break.

19 (3.10 pm)

20 (A short break)

21 (3.33 pm)

22 MR SALOMAN: Sir, Commander Peters gave evidence and did not
23 know what MOD records existed in 1974, and stated that:

24 "There is very little in the way of documentation."

25 You have the references.

1 For those reasons, we submit that the evidence of
2 Commander Peters and Commander Clark as to the MOD's
3 activities, viewed in itself, is inconclusive, and one
4 needs to see if there is independent corroboration or
5 support for them.

6 It could be said that the SIS records appear to have
7 been more complete; at least they told us that they did
8 not have a policy of destroying records, and their
9 documents seemed to pass the acid test of revealing
10 names of trawler skippers known to have been involved in
11 intelligence gathering and the subject of newspaper
12 articles and television programmes such as
13 Skipper Redfern and Skipper Lilley.

14 The SIS records also suggested that all the spying
15 done under the Trawler Skippers' Briefing Scheme
16 terminated in 1967.

17 We submit that nonetheless, against a lengthy
18 background of government misinformation over decades,
19 that it is reasonable as to both those men's evidence --
20 and we respect and appreciate that they gave evidence
21 before this tribunal -- it is reasonable to look for
22 corroboration; that is to say independent support for
23 the evidence these witnesses gave.

24 Did we find corroboration of the government
25 witnesses' evidence and, if so, from what source? There

1 was some corroboration. Certainly it does not come from
2 the source from which the families might reasonably have
3 expected it to come, namely BUT or Hellyers, the owners
4 of the Gaul. We, of course, heard evidence from
5 Commander Peters that owners' consent would inevitably
6 have been needed for any intelligence gathering.

7 One would expect all the more owners' evidence on
8 the issue when at least two of their ships, the
9 Invincible and the Lord Nelson, had been involved in
10 major hardware operations for the MOD, the latest only
11 a few months before the Gaul sailed on her last voyage.
12 Where was the evidence of Graham Hellyer, who, according
13 to Mr Oswald, passed away only a matter of months ago?

14 Mr Oswald, the trawler manager, told us that at the
15 time he was unaware of the Invincible and the
16 Lord Nelson missions. Well, he was only the trawler
17 manager. Nonetheless, there must be a real issue as to
18 what the owners of this ship did or did not know was
19 going on which might have been relevant to this issue.

20 If any comfort is to be found for the families that
21 the government evidence is or may be true, then it comes
22 from other witnesses --

23 MR JUSTICE DAVID STEEL: Mr Saloman, I am not sure you can
24 have it both ways. You say where is the evidence from
25 Mr Hellyer, which I do not think has ever been suggested

1 before, which would be the source of corroboration you
2 would have expected to have had, yet only a few minutes
3 ago, when I asked you what the evidence was that
4 Mr Hellyer or BUT had supported the proposition the Gaul
5 was not carrying anyone, your reply was, "Well, I do not
6 know where it is and if it was there my clients would
7 view it with considerable scepticism". Which is it?

8 MR SALOMAN: My submission is that the owners would have had
9 relevant information on the issue we are addressing,
10 namely whether the Gaul had ever been involved in
11 surveillance gathering. I cannot say more than that
12 their evidence would have been material on this issue.

13 There is no evidence from the owners. There is some
14 corroboration for the government's evidence in other
15 witnesses who had nothing to do with the owners. We had
16 evidence from Mr Sangster in his report about the state
17 of the equipment, aerals and masts found on the wreck.
18 His report is in the expert report at AG15, pages 90
19 through to 96. That evidence, so far as it goes,
20 discloses that there is no evidence of any untoward
21 equipment on the Gaul compatible with surveillance
22 operations.

23 Secondly, on the evidence of Mr Northard at the
24 first Inquiry, nobody from the Royal Navy was on board.
25 There was no mystery passenger. Sir, that was Day 5,

1 page 36 of the first Inquiry. Mr Northard was a
2 shipping master employed by Hellyers and responsible for
3 tallying the crew members as they boarded the ship.

4 You also heard at this Inquiry the evidence of
5 Mate Petty, most vehemently expressed:

6 "I hope I can close that down for good, that spy
7 business. There was no mystery man aboard that vessel.
8 That vessel was never, ever engaged in spying. That is
9 the gospel truth."

10 Sir, the evidence of Mr Sangster and Mate Petty is,
11 of course, directly related to the critical question,
12 which is not whether hull trawlers generally were
13 involved in intelligence gathering but whether the Gaul
14 or her crew was.

15 According to the evidence of Skipper Suddaby, the
16 Ranger Castor was never involved in intelligence
17 gathering.

18 A number of experienced skippers, who had been
19 involved in intelligence gathering, testified that their
20 involvement with SIS and the Trawler Skippers' Briefing
21 Scheme ceased in the 1960s. They were Skipper Wharram,
22 Skipper McCarthy and Skipper Thresh. All that evidence,
23 understood objectively on the basis of what the men
24 said, did tend to support what the SIS witness was
25 telling us.

1 Commander Brookes died in 1971. There are no
2 reports of any other SIS gentlemen operating at
3 St Andrews Dock in the years following.

4 There are some families, who sir, believe, and will
5 always believe, that the Gaul was a spy ship. The
6 circumstances of the voyage, the evidence that we have
7 from men who superintended the embarkation of the crew
8 members, is against there being any untoward or naval
9 personnel, or persons other than ordinary fishermen,
10 being on board. At the end of the day, you, the
11 Tribunal, we invite to consider all the evidence
12 dispassionately on this most passionate subject and
13 deliver your verdict on whether or not the Gaul was
14 a spy ship or any of her crew were spying.

15 On the question on whether any of her crew were or
16 had ever been spies, the greatest comfort, if any, would
17 come from the SIS records and the MOD computerised
18 records as to the non-appearance of the skipper or mate
19 or any of the crew on those files in circumstances where
20 all other known persons involved in such operations were
21 recognised in those files.

22 On seizure, we have provided you with a schedule for
23 information purposes, detailing correspondence between
24 the years 1974 and 1982, showing how firmly the view
25 that the Gaul had been seized by the Russians was held

1 by certain families. When the CFI, the Court of Formal
2 Inquiry, announced its decision, there was a statement
3 made in public by Mrs Betts:

4 "We do not accept the court's decision. I still
5 believe that the Gaul is in the hands of a foreign
6 power."

7 That we have at bundle 33, page 115, an article of
8 uncertain date, about November 1974, headed, "'It's all
9 lies' outburst as Gaul relatives quit inquiry":

10 "Relatives of the Gaul crew members sat in silence
11 through most of the court's findings."

12 Then, in the fourth column:

13 "Mrs Beryl Betts, a spokesman for some of the
14 relatives, said: 'We do not accept the court's
15 decision'.

16 "She continued: 'I still believe the Gaul is in the
17 hands of a foreign power. As far as we are concerned,
18 the question of the Gaul's disappearance is not yet
19 over.'"

20 Later there was an outburst from Countess Von
21 Sievert, who shouted across the hall: "It's a lie", and
22 this lady claimed "... she would soon have proof that
23 the super trawler was in Russia.

24 "'I will have proof within a few months', she said.
25 'The inquiry is all lies. They don't want the British

1 public to know they are using trawlers for spying. The
2 government is trying to save face'."

3 The government obviously was not concerned to search
4 for her -- for the Gaul, that is -- and disproved the
5 belief in her capture by pointing to her, locating her
6 on the seabed. It was only in 1997 that most families
7 came to realise that the ship was definitely sunk.

8 There were many statements of belief over the years
9 that the Gaul, or a trawler bearing her blue and white
10 colours, was seen in Norwegian waters, in particular
11 I should, I think, say including Tana Fjord, which is on
12 or about 71 north/29 east longitude; and also that she
13 was seen in Russian waters being escorted by two Russian
14 gunboats.

15 It has to be acknowledged that finding concrete
16 evidence of these sightings, or alleged sightings,
17 proved difficult, but the families concerned were
18 unshaken in their belief that this had happened, that
19 Gaul must have been arrested and her crew seized. It
20 was in that context that many witnesses at this reopened
21 formal inquiry were asked whether Russian naval vessels
22 or submarines were ever seen on or around the North Cape
23 Bank. The evidence was almost entirely negative.

24 Skipper Suddaby, Skipper McCarthy, Mate Petty and
25 Radio Officer Waterman, they were all clear that there

1 was no evidence of such submarines being seen on, or
2 reported seen on the North Cape Bank. Radio Operator
3 Waterman said, as well, that at "... Kildean Bank, you
4 often got submarines popping up out of the water".
5 Kildean is east board of the North Cape Bank. I do not
6 believe it was clear what particular period of time he
7 was talking about; whether it was the 1960s or the
8 1970s, but that was his evidence.

9 Several witnesses were asked whether Gaul could have
10 been boarded by the Russians and arrested at all in the
11 extreme weather conditions prevailing on the North Cape
12 Bank throughout 8th and 9th February. The evidence has
13 squarely negated that possibility. The references are
14 Day 3, page 45, Mate Petty, and Skipper Suddaby at
15 Day 3, page 124; the latter saying:

16 "To be honest, I think it is absolutely bloody
17 ridiculous ... With a high sided ship like the Gaul,
18 no, absolutely out of the question."

19 There was also evidence that boarding would have
20 allowed time to send a distress message. This would be
21 the case wherever she might have been boarded; that is
22 to say even in the calmer waters of the Norwegian
23 Fjords.

24 Sir, it is difficult to be categoric about the
25 number of occasions, if any, when Soviet vessels or

1 submarines have attacked or had hostile confrontations
2 with British trawlers. The evidence we have culled --
3 and culling is the right word -- amounts to three such
4 incidents, or possible incidents.

5 The German trawler Scharnhorst, which had
6 disappeared, was found ashore near Cape Kanin in the
7 White Sea. It was believed that her crew had been
8 captured. That, sir, was in the year 1929. The
9 reference for it is in bundle 34.1, page 36. This is an
10 article from the Fishing News on 3rd August.

11 MR JUSTICE DAVID STEEL: It is certainly of some historical
12 interest.

13 MR SALOMAN: We are doing the best we can, sir.

14 MR JUSTICE DAVID STEEL: Trotsky was still alive at this
15 time, I think.

16 MR SALOMAN: "A rumour that the Russians have her crew [that
17 is the Gaul's crew] imprisoned is persistent [we are
18 talking now in August 1979], and indeed a very similar
19 thing happened 50 years ago. The German trawler
20 Scharnhorst" -- I have a picture, sir, of the German
21 trawler Scharnhorst at home in the Falkland Islands at
22 an earlier phase of its life as a trawler, being used in
23 the Falklands campaign in 1914, which takes us back even
24 further.

25 MR JUSTICE DAVID STEEL: The wreck of the battle cruiser

1 Scharnhorst lies, I think, sadly, not very far away from
2 where the Gaul is.

3 MR SALOMAN: "The German trawler Scharnhorst, which had
4 disappeared two years previously, was found ashore near
5 Cape Kanin in the White Sea.

6 "At least one of her crew was traced in a Bolshevik
7 prison camp. There were 12 more men aboard; and the
8 suggestion was made that the rest might also have
9 survived. The story was reported in the May 25th 1929
10 issue of Fishing News, but there was no follow-up, so it
11 was not conclusively proved. But it shows that the
12 possibility is not as far-fetched as it sounds. It has
13 actually happened once."

14 Sir, the hull trawler Swanela was arrested for
15 fishing in a Russian naval exercise but was released
16 within days. That, sir, occurred in 1950, at page 6 of
17 the same section that we are currently looking at, in
18 bundle 34.1.

19 MR JUSTICE DAVID STEEL: 34.1 or 36?

20 MR SALOMAN: It seems it is bundle 36, I am sorry. Page 6
21 comes in the middle of an extremely detailed article,
22 written in June 2001 by Eamonn O'Neill, published in
23 The Scotsman, called "Tinker, Tailor, Sailor, Spy?".

24 At page 6, right-hand column:

25 "By the 1960s, the MOD was running a network of

1 around 40 trawlers to spy on the USSR. Not
2 surprisingly, the Soviet Union knew all about it. They
3 themselves maintained a large 'fishing' fleet that
4 trawled for little apart from intelligence."

5 Then there is a quote of the MOD statement of 1998:

6 "'Soviet trawlers were often stationed in strategic
7 waters around the British Isles and made no pretence of
8 fishing. This activity continued into the 1990s.'

9 Declassified Soviet documents freely available in Moscow
10 now attest to the Kremlin's concern about the activities
11 of British trawlers in their waters. This sometimes led
12 to direct confrontations between Soviet sailors and UK
13 fishermen. The Hull vessel Swanelle, for example, was
14 arrested in September 1950 for fishing in a Russian
15 naval exercise area."

16 The next part is important:

17 "She was held for five days before being released.
18 The skipper claimed his radar had been acting up. The
19 Russians were sceptical since they had an unusual amount
20 of air and naval forces in the area at the time.

21 "This was the Cold War backdrop against which the
22 Gaul and her crew operated."

23 That is all we need to read about the Swanelle
24 incident.

25 The expert evidence we have, through Skipper Thresh,

1 is that he was on a vessel detained by the Russians for
2 three days in Teriberski Bay when they were fishing in
3 an "area off the Barents Sea off Sern Island well within
4 the Russian area", at AG15, page 32. His conclusion,
5 again quoting:

6 "As far as I am aware my vessel is the only one to
7 have been arrested in this way. For the most part the
8 Russians did not become involved with British trawlers
9 being still conscious of [this goes back even further]
10 the so-called 'Russian Outrage' when the Russian fleet
11 fired on innocent British trawlers fishing on the
12 Dogger Bank. This happened during the Russo-Japanese
13 war ..."

14 Sir, in our schedule A at tab 2, we have listed
15 a large number of references to the way the case of
16 seizure was put and was sought to be justified in
17 correspondence. The letters appear at the following
18 references, which I should record for the transcript
19 because these bundles are, we are told, to be publicly
20 available, or one set of them, and anybody concerned can
21 read them.

22 They are AG9, 264 to 274, Mr Slater's statement, who
23 undertook a private investigation into the circumstances
24 connected with the disappearance of the Gaul;
25 a statement of Harald Bratland, a post officer

1 concerning the Hakon Jarl, made in September 1974, at
2 AG9, page 270; a letter from Countess Von Sievert to the
3 British Red Cross on 30th October 1974, at AG33, 216 to
4 219; also, OFI Day 5, page 2 to 4 and pages 4 to 5;
5 a letter from Mrs Betts to the Prime Minister,
6 suggesting in November 1974 that the Gaul had been
7 seized by the Russians, at AG33/124; the public
8 statement of Mrs Betts that I have already referred to
9 at 33/115; a letter written by Mrs Betts on
10 13th March 1975 to the British Embassy in Copenhagen at
11 AG33, page 160. That letter stated:

12 "... the relatives have definite proof that between
13 February 7th 1974 to February 12th 1974 that two ships
14 were very close to Russian waters and one of these ships
15 saw the Gaul being escorted by two Russian gunboats
16 between the dates mentioned above (we do not know which
17 one yet) as broadcast on Danske 1 to 2..."

18 AG33/214 to 215. This is undoubtedly a letter of
19 29th October 1975 which shows the capacity of television
20 companies to influence beliefs. It is a letter written
21 from Mrs Betts about the programmes of 16th and
22 23rd October 1975:

23 "I hope you intend to find out who planted the
24 lifebuoy."

25 That is AG33/214 to 215. She expresses disbelief in

1 the Gaul being collided with by a submarine, on the
2 grounds -- and they are logical grounds -- that there
3 would have been some wreckage and perhaps an oil slick.

4 AG33/260, a letter of 2nd December 1975 from
5 Countess Von Sievert to Captain Newbury:

6 "This is the second trawler my brother has worked on
7 which the Russians have seized. In the 1960s he and all
8 the rest of the crew were seized and served three months
9 in Archange SK, but that incident was never made
10 publicly known, neither was another Hull trawler whose
11 crew was seized by the Russians and they served four
12 years in Siberia?"

13 It is appropriate to say that that evidence is
14 somewhat stronger than the evidence she gave in the
15 witness statement she made in February 1974 which has
16 been read out to the Inquiry.

17 A letter from Mrs Thornton on 17th December 1975 at
18 AG33/280 to 282. She writes to Mr Walmsley citing the
19 trawler Victory as an example of how Russian ships could
20 seize a trawler and states that:

21 "They would have got the crew of the Victory if the
22 Kurd had not saved them."

23 MR JUSTICE DAVID STEEL: Is that Mr Thresh's?

24 MR SALOMAN: I do not think so, sir, no. But it is quoting
25 a view based on an incident of real life, which is well

1 cited and explained in a letter from Mr John Nicklin in
2 bundle 36. At a convenient moment I will give you
3 a letter too. There is absolutely no doubt that in
4 early May 1974, a BUT ship -- yes, the reference is 36,
5 page 9, and I think it is important to read that out at
6 the moment.

7 This was a real life incident which was in fact not
8 sinister or ominous but, as understood, perhaps through
9 various mouths and hands who passed on the information,
10 it seemed, plausibly, to perhaps indicate that the Gaul
11 may have been captured by Russians and escorted to
12 Russia. Page 9 of bundle 36.

13 Sir, this is a detailed letter from Mr Nicklin,
14 which is relevant on various issues and, in his view,
15 myths.

16 He takes up the matter of the Victory in the second
17 column, third line:

18 "In the interval that Gaul disappeared and the
19 holding of the official inquiry [and this is the period
20 that you have expressed an interest in, sir] it was
21 reported that a Russian warship was seen towing a
22 British freezer trawler towards Murmansk. Some
23 enterprising journalist decided it was the Gaul being
24 towed and the rumour that she had been taken by the
25 Russians was born. A freezer was being towed by

1 a Russian warship but it was not the Gaul -- it was the
2 Grimsby trawler Victory. On 1st May 1974, a few weeks
3 after the Gaul sank, Victory was fishing in the
4 Barents Sea when she caught fire. The Hull trawler Kurd
5 took her in tow and proceeded towards Vardo. The crew
6 managed to put the fire out but next day, 2nd May, the
7 fire broke out again and got out of control. Kurd took
8 her crew off and a Russian warship took the blazing hulk
9 in tow. She was beached on the west side of Kola Inlet
10 close to Murmansk and eventually declared a total loss."

11 So there was an incident where a Russian warship had
12 acted wholly properly in attempting to save, rescue and
13 salve the blazing hulk of the Victory.

14 Because it is relevant, at this juncture I will read
15 it:

16 "Another myth propagated by the media, and drawn
17 from the realms of fantasy, was that Gaul had been sunk
18 by a Russian submarine surfacing underneath her. This
19 is even more ridiculous than her being captured by the
20 Russians. Gaul had a double bottom extending most of
21 her length which was compiled of fuel oil tanks and at
22 the time of her loss these tanks would have been full.
23 Had her bottom been ruptured, oil would have escaped and
24 the slick would certainly be seen by the searching
25 aircraft."

1 That point, if I may say so, has already been made
2 effectively by Mrs Betts in the letter I read out.

3 Mrs Greenley, on 28th March, wrote a letter at
4 AG33/323 to 324. I can cite the operative part because
5 it is of some interest. It shows how tenaciously these
6 views were held:

7 "A passenger mail boat Hakon Jarl" -- this is
8 a letter, I should say, to which nine other relatives
9 actually write their signature:

10 "A passenger mail boat Hakon Jarl was passed by
11 a blue and white freezer trawler the Gaul's colours on
12 the Friday night between Batsford and Vardo heading
13 towards Russian waters. There were only two other
14 trawlers in that area besides the Gaul and they have
15 been eliminated because they had different colours...

16 "A British freezer trawler saw two Russian gunboats
17 escorting a blue and white trawler in Russian waters...

18 "We know the name of the freezer trawler and also
19 her colours ... who saw the Russian gunboats as it was
20 very close to Soviet waters."

21 AG33/340. In April 1976, Mrs Betts declines to name
22 the British trawler which saw the two gunboats escorting
23 the blue and white coloured trawler close to Russian
24 waters. That was put down to rank suspicion as to what
25 might be made of that information.

1 Then AG33/354 to 355, another letter, this time from
2 Countess Sievert.

3 AG33/359, 365 to 366, 368, 369, 371, and 373 are all
4 letters written -- or mainly letters written to the
5 Department itself, asserting that British trawlers have
6 been arrested by the Russians for infringements of
7 fishing limits or other reasons in the past and
8 therefore putting forward their view that that might
9 well have been what had happened to their men this time,
10 there being no evidence of any wreck and no interest
11 being shown in a search.

12 Then, in bundle AG34, pages 13 and 14, 19 and 20,
13 there is correspondence between families and J Marr and
14 Son, trying to confirm whether or not one of their
15 fishing vessels, Westella, saw the Gaul on 8th or
16 9th February in or around Russian waters. At the end of
17 that correspondence, the J Marr and Son manager says
18 that he is unable to confirm it was the Westella who
19 sighted the Gaul in the port of Vardo on 9th February.
20 No records show the Westella was at sea in the North
21 Cape of Norway but 120 miles from Vardo.

22 Finally, letters which you have seen and I have read
23 to this court already, at 34/90 to 92, 244 to 246, 293
24 to 296, 300 to 302.

25 MR JUSTICE DAVID STEEL: I think we need to take a break.

INDEX

1		
2		PAGE
3	Closing Submissions by MR SALOMAN	5
4	(continued)	
5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		

