

Friday, 27th February 2004

1

2 (10.15 am)

3 MR MEESON: Good morning, sir.

4 MR JUSTICE DAVID STEEL: Good morning.

5 MR MEESON: Just before we continue with the families'

6 statements, can I just mention one piece of

7 housekeeping. There is an updated schedule of repairs,

8 which includes the voyage details, which hopefully there

9 is on the end of the desk next to Mr Craven. It now

10 includes the voyage details which have been discussed

11 with Skipper Suddaby and Mate Petty, and as far as we

12 can tell, we think that it is an accurate account of all

13 the different voyages.

14 The voyages have been put in bold type so that you

15 can pick them out.

16 MR JUSTICE DAVID STEEL: So we can substitute that for

17 schedule A?

18 MR MEESON: Absolutely.

19 MR JUSTICE DAVID STEEL: Thank you very much.

20 MR MEESON: Mr Dudding would like to say something.

21 Statement by MR FRANK DUDDING

22 MR JUSTICE DAVID STEEL: Good morning, Mr Dudding.

23 MR DUDDING: Good morning. My name is obviously

24 Frank Dudding. I have given a statement in bundle AG10,

25 page 129.1.

1 MR JUSTICE DAVID STEEL: Yes, I am there.

2 MR DUDDING: There is just one or two points that I would
3 like to make and a statement to read out as well, if
4 I may.

5 MR JUSTICE DAVID STEEL: Of course.

6 MR DUDDING: The statement is that my name is Frank Dudding.
7 I am the relative of Brian Dudding, his brother, who was
8 the spare hand on the Gaul. He was aged 23. He went to
9 sea all his life from leaving school.

10 I would just like to say to the sister of
11 Skipper Nellist, who said her brother looked to the
12 safety of his crew, that I never doubted his judgment
13 and that his standing and integrity by people who knew
14 him speaks volumes of her brother. I would just like to
15 say that first as it applies to what she said yesterday.

16 I have sat through the full Inquiry and I would also
17 like to thank Mr Saloman and his assistant, Ruth, for
18 their commitment and hard work in representing our
19 family; and also Mr Gold and Barry Tindall for their
20 dedication and perseverance over many years; also the
21 assessor, Mr Justice David Steel, and everyone involved
22 in the Inquiry for the courtesy and feelings they have
23 shown the relatives during the Inquiry.

24 I do believe that all the people involved in putting
25 the Inquiry together have at all times endeavoured to

1 find the truth for the relatives and the dignity of the
2 crew of the Gaul and put the mystery to a final
3 conclusion after so many years of uncertainty.

4 That is the statement I would like to make.

5 The other things now I would like to speak about
6 are: during the Inquiry, which I have sat through, as
7 I have said, the full length, there does not seem to
8 have been a lot of evidence regarding the ship being in
9 the dry dock. My questions are towards really the
10 steering and the hydraulics of the ship. I tend to
11 think that the ship was in the dry dock an exceptionally
12 long time.

13 As I say, I worked along the docks, and it became
14 apparent first of all because it was green, you know,
15 which is an unusual colour for the ship, and so
16 therefore I was drawn to the length of time -- with
17 working on these vessels, with the company I worked for,
18 with the length of time in the dry dock. And obviously
19 there has not been a great deal of conversation
20 regarding, you know, why she was in the dry dock at all.
21 So I would like yourselves maybe to try to get some more
22 information and take that into account.

23 I have one or two things, if anybody is prepared at
24 some time to sit down with me, to give you some more
25 information.

1 MR JUSTICE DAVID STEEL: Well, if you have something else,
2 I would be very grateful. If you speak to Mr Meeson or
3 Mr O'Dea and just indicate to them perhaps the avenues
4 of enquiry which you think might be helpful. Thank you.

5 MR DUDDING: The other things which I would like to draw
6 your attention to, the Panel, is the mechanical side of
7 the hatches, the hydraulics, and the coupling onto the
8 engine. Having seen the report, I believe that the
9 hatches could still be closed. In the report I believe
10 it says that, you know, once opened by the white as she
11 went over, that they could not be closed again.
12 I believe that they could be closed. And looking at the
13 drawings, I also believe that there may be one of the
14 drawings which is incorrect in its diagrams.

15 The other thing was a theory on the coupling to the
16 engine. Reading this report again, it seems to suggest
17 that the air compressor was in the liver house room,
18 which, if that is the case, there could be a scenario
19 that there was water in there. If the compressor has
20 cut out, it will hold the pressure for quite a while.
21 But if this was a general use compressor -- in other
22 words supplying other parts of the ship or the factory
23 deck with air -- it could possibly, after a while, have
24 lost a lot of its air. And when they called for her to
25 go, or so we believe, hard to port, it could be that the

1 thermal coupling disconnected, which would leave the
2 engine running -- still her lights on, but she has got
3 no power -- and leave her in a position vulnerable.

4 I would like you to maybe look at that theory, you
5 know, if this evidence which you have got about the
6 compressor being in the liver room, because I was always
7 of the impression that it would have been down in the
8 engine room. So, you know, I think that's quite a vital
9 point that I would like to you look at.

10 MR HOPPER: Are you talking about the coupling between the
11 engine and the auxiliary?

12 MR DUDDING: The Pneumaflex coupling. Again, I have some
13 comments on this and some observations. If anyone would
14 like to discuss it with me and pass it on to
15 yourselves --

16 MR JUSTICE DAVID STEEL: I think the best way forward -- and
17 I am grateful for your interest and assistance -- of
18 course, my assessors would understand it more readily
19 than I -- but I think probably the best way to start is
20 to ask Mr Meeson to make sure that your notes and paper,
21 and, for that matter yourself, could be put in touch
22 with Mr Bowman and/or Mr Colman and see whether there
23 are any points that we have missed or misunderstood,
24 because we must take up any points that seem worthy of
25 pursuit. Mr Meeson will arrange that. That would be

1 very helpful. Thank you.

2 MR DUDDING: Also, you know, this thing with the ship about
3 having constant hydraulic problems and air-locking seems
4 to be quite a feature with this ship. And this also
5 ties into my thoughts to the dry dock, that she was in
6 the dry dock with scaffolding round her Kort nozzle, and
7 that they was maybe testing the steering gear with these
8 pumps which was fitted, I believe, before she went away.
9 So, you know, again, I would like you, as assessors, to
10 look at that, because I think it is quite important and
11 relevant to the point what has gone on.

12 The reason that obviously I am raising these
13 questions regarding the steering gear and the hatches is
14 because it could have had some contribution to her loss.

15 I think basically that is what I would like you just
16 to take into account.

17 MR JUSTICE DAVID STEEL: Thank you very much, Mr Dudding.

18 Please would you perhaps make sure you hang on to those
19 papers and we will take the matter as far as we possibly
20 can. Thank you very much.

21 MR DUDDING: Thank you.

22 MR MEESON: Sir, what Mr Dudding forgot to mention was that
23 he is an engineer.

24 MR JUSTICE DAVID STEEL: I rather gathered he was.

25 MR DUDDING: May I say, on the statement I have already put

1 that on there.

2 MR JUSTICE DAVID STEEL: I have got that, you are an
3 engineering manager. Thank you very much indeed.

4 MR MEESON: Sir, I think now Mr Collier would like to say
5 something as well.

6 Statement by MR KENNETH COLLIER

7 MR JUSTICE DAVID STEEL: Good morning Mr Collier.

8 MR COLLIER: Good morning, sir.

9 Just a few things I would like to say. My name is
10 Ken Collier. I am a factory hand off the stern ships.

11 All I wanted to say is an undersea cable may have
12 nothing to do with the loss of the Gaul, but I have
13 outstanding questions to which I have received
14 unsatisfactory answers.

15 The first video of the Gaul by Mr Norman Fenton
16 shows a cable across the bow of the ships, and running
17 to the distance in both directions.

18 The second survey of the Gaul, which I was on, the
19 cable was seen again and picked up from the seabed by
20 an ROV. A question was raised at the time as to what to
21 do with it. A telephone call was then made from the
22 ship to London, and the instructions received back were
23 to leave it alone.

24 It has been suggested at this Inquiry that the cable
25 was a trawl warp. If this is so, then: why the phone

1 call to London? Why leave it alone? Why not cut it?

2 On the third survey by the Seisranger the cable had
3 disappeared. The Seisranger, as you know, was owned and
4 operated by Halliburton. Halliburton UK is also a part
5 of Halliburton USA, and the president of Halliburtons
6 was a man called Dick Cheney, which, as we all know, is
7 a high ranking official in the American government.

8 It is my belief that this cable was a listening
9 device, a SOSUS cable, laid by the US government in and
10 around that area. Obviously a Halliburton ship would
11 not pick up the wrong cables, but on this survey could
12 not be seen.

13 The Seisranger did not cut a cable to obtain
14 a sample from the area we asked. The cable, as we know,
15 runs from the bows, not the back end or the arse end of
16 the ship, as it was cut. The cable has been removed by
17 you. Why?

18 I want to go on to the submarine -- sinking by
19 submarine. The Inquiry has scorned the idea of a
20 submarine sinking a trawler. In my opinion, a submarine
21 of upwards of 24,000 tonnes, like the Russian submarine,
22 the Kursk, could easily drag down or turn turtle any
23 surface ship. As the Gaul is 1,106 tonnes, against
24 something like the Kirsk of 24,000 tonnes, there's no
25 match.

1 It's documented that, as indeed happened on numerous
2 occasions, two or three years ago, a small Irish fishing
3 vessel in the Irish Sea was sunk after being in
4 a collision with a submarine. A ship called the
5 Ehime Maru, a Japanese fishing trawler, was sunk off the
6 Hawaiian Islands in 2002 by a submarine, American. The
7 submarine surfaced underneath the trawler and turned her
8 straight over.

9 The Ehime Maru was only marginally smaller than the
10 Gaul. She was a stern trawler. The crew sent out no
11 distress signal; same as the Gaul. There was
12 insufficient time for them to do this, but, however,
13 there was a few survivors, who actually told what had
14 gone on, and the American government was brought to task
15 over this. In fact, they had to raise the Ehime Maru
16 from the seabed and take the dead bodies off it that was
17 on. They raised her, took her into shallow water, took
18 the bodies off and took the ship back out to deep water
19 and sunk her. Only superficial damage was seen on the
20 trawler and the submarine that lifted and turned her
21 over.

22 The Gaul is not fully visible, and damage caused by
23 such an incident may not be on view. Such evidence
24 cannot be ruled out unless the Gaul is lifted, as the
25 Japanese vessel was.

1 Sinking of a trawler by a submarine should not be
2 scorned at. We had a fax only the other day that bears
3 this out.

4 I would like to just touch on spying. The SIS and
5 the MI5 have stated that spying from trawlers finished
6 in 1960 to 1971. This Inquiry has heard evidence that
7 it was still happening up to 1973, and the Lord Nelson
8 and the Invincible were involved in clandestine
9 operations, lifting missiles from the seabed and looking
10 for cameras. These two ships was hired by the MOD to
11 search and look for these things.

12 A statement by Mr Ron Bateman, shop steward for
13 fishermen in Hull at the time, and was in a meeting at
14 Fleetwood in 1974, said the motion was passed to stop
15 naval officers gathering intelligence while at sea on
16 trawlers. Given that this motion was passed in
17 November 1974, it would be reasonable to assume that it
18 would take some time for this action to be stopped, so
19 it is reasonable to say it didn't stop until at least
20 1975.

21 Fish hatches. On my return from the second Gaul
22 survey, my first priority was to visit hydraulic
23 specialists to question them about the possibility of
24 fish hatch doors opening whilst the Gaul was sinking.
25 Everyone I questioned at the time stated that the doors

1 would not open, even if the Gaul had been turned over.

2 Expert witnesses at this Inquiry have stated that if
3 the Gaul had only turned over by 90 degrees the doors
4 would open by themselves.

5 One of my responsibilities while working on the
6 trawler was to open the fish hatch doors and operate the
7 hydraulic system. The operating button had to be
8 manually pressed constantly for the system to operate.
9 If you took your finger off the button, the door stopped
10 where it was.

11 There are conflicting views on this matter, but
12 I still question the experts' answers.

13 Opinions that the doors could have opened by water
14 or air pressure, and this is borne out by hydraulic
15 experts I have questioned about the specific point.
16 They stated that the doors could only be opened by water
17 or air pressure if the hydraulic system was ruptured.
18 The survey which I attended found the hydraulic system
19 to be still intact.

20 I would like to just briefly talk about
21 Mr Norman Fenton. Mr Norman Fenton, the TV producer for
22 Channel 4, has received much criticism at this Inquiry
23 and I believe this is very unfair. After all, the man
24 found the Gaul and should be given appropriate credit
25 for this and thanked. Successive governments did

1 nothing to find the Gaul. It may have been beneficial
2 for Mr Fenton in respect of TV programmes et cetera, but
3 without the media and the press behind us we would never
4 have got where we are today. Our governments past and
5 present have done little, if anything, comparable. We
6 should thank Mr Norman Fenton and his colleagues from
7 the press for their efforts.

8 Lastly, I would like to state for the record that
9 I am concerned about the allotted time for statements
10 made by family members of those lost on the Gaul at this
11 Inquiry. The respective counsels have concluded their
12 summing up, and this indicates to me the Inquiry is
13 finished. The invitation for statements from families
14 is merely lip service, and obviously no credence will be
15 given to anything said, questions raised and points
16 made. There appears to be no forum now for any
17 discussion.

18 I would also like to state for the record that
19 throughout the Inquiry the families and other interested
20 parties have received unsatisfactory treatment. Water
21 has been provided only occasionally. We did request tea
22 and coffee machines and facilities, which we offered to
23 pay for ourselves, but they were not provided.

24 I hope the statements made today and by me are given
25 more regard than has been demonstrated towards the

1 individuals who are now making them.

2 MR JUSTICE DAVID STEEL: Mr Collier, I hope that no
3 discourtesy has been shown to you. If there are any
4 concerns that we are not affording sufficient time for
5 the family members to address us, then I hope that
6 people realise that there is no limitation at all on who
7 should come and speak to us or, within reason, for how
8 long they should address us.

9 But thank you very much for your observations, which
10 gives us much food for thought. Thank you.

11 MR MEESON: Sir, I think Mr Spurgeon also wants to make
12 a statement.

13 Statement by MR MICHAEL SPURGEON

14 MR JUSTICE DAVID STEEL: Morning, Mr Spurgeon.

15 MR SPURGEON: Morning, sir.

16 I would like to say two things. Firstly, a brief
17 statement about my father -- well, on behalf of all the
18 family. My Dad was simply a great man, full of fun,
19 always making us laugh and constantly surprising us with
20 gifts and unannounced trips away. He was considerate of
21 us and was liked by all who met him. His loss to us was
22 ineffable, and even though he was only with us a short
23 while, he is missed as much today as he was then. Thank
24 you.

25 I would like to speak about the Inquiry now. On the

1 whole, this Inquiry, it has to be said, has encompassed
2 many things not covered in the OFI, and for that I am
3 grateful. I also accept people have a job to do and
4 might not always like what I hear. But what I cannot
5 accept is people tampering with evidence. There was
6 a suitcase in my father's cabin, clearly visible, open
7 on the table. It was not a cupboard; I do know the
8 difference. And for that reason there will, on a
9 personal level, always be a slight flaw in this Inquiry,
10 as if that has been removed, what else has?

11 But overall, it has to be said, it has been a fair
12 Inquiry, and I would like to thank you, sir, and your
13 assessors, for your allowing us to encompass and explore
14 all the relevant items for the families.

15 I would also like to congratulate Mr Saloman on
16 a superb job over the past two days, and also extend my
17 thanks to Mr Munyard, Mr Walker and Mr Colman for all
18 their help and support and, above all, their
19 understanding. Thank you.

20 MR JUSTICE DAVID STEEL: Thank you very much, Mr Spurgeon.

21 MR MEESON: Sir, I do not know if there is anyone else who
22 would like to say anything, but if they do, perhaps they
23 could come forward now.

24 Statement by MR RAYMOND SMITH

25 MR JUSTICE DAVID STEEL: Good morning. I am very sorry,

1 I do not know your name.

2 MR SMITH: Raymond Smith.

3 MR JUSTICE DAVID STEEL: Yes, Mr Smith.

4 MR SMITH: Sir, I was a fisherman 25 years and a seaman for
5 30. I served on four different types of factory
6 trawler. Two was the sister ships, the Arab and the
7 Kurd. These ships are a lot smaller than the big
8 freezers when block fishing so they didn't have the
9 space what they did.

10 What concerns me is the hatches -- the net store
11 hatch. The routine was on the midnight it was reported
12 that her trawl was paralysed. That trawl had to come
13 off and a replacement put on, and in those ships the
14 damaged trawl went down the fish hatch. The other trawl
15 was bent on, connected up, and it would take ten
16 minutes, quarter of an hour, and they would clear that
17 trawl away and begin fishing again. Then the fish
18 hatches would be open, the old damaged net taken out and
19 mended. What you see there on the MAIB is just exactly
20 what you would see when you was putting the trawl up and
21 down.

22 My thing is that when she'd been taken unawares
23 then, while we was in the operation of taking these
24 trawls out -- or putting them back, when those trawls
25 was mended -- no matter what anybody says, those ships

1 worked 24 hours a day, seven days a week. When that
2 trawl was finished, then the crew would go off the deck,
3 but until then they would be there no matter what
4 weather. These trawlers -- you can see by the bulwarks
5 how high they are. It was unsheltered, very
6 uncomfortable, a beam sea, but before the wind, and
7 dodging head to wind, they would be on deck.

8 And then the other thing is we have heard a lot
9 about these offal chutes. Now, my concerns are
10 these: these offal chutes are designed to let rubbish
11 out and to stop water coming in. If those offal chutes
12 are letting water in, there was something wrong with the
13 design. You see, there was one lashed lid -- not the
14 flap, the lid was lashed back with twine. That doesn't
15 tell me that some lazy decky had put a bit of twine on
16 it; that tells me that the snag, or the hook and chain,
17 was broken and it had to be lashed because that was the
18 only way.

19 The other point about it: the forward one is the
20 offal chute. That is never used until the fishmeal
21 plant has filled up. I have never seen it filled up, so
22 that one would be very rarely used; only if they was
23 cleaning down and sweeping duff through it. The after
24 one -- as we know, the Gaul was fishing on the Cape Bank
25 and she'd been catching some duffs, so they would be

1 using that one. That would have been used that same
2 day.

3 This is more or less why I had to say I have been in
4 all four different types of ships, two of those, and
5 I have never had any trouble at all with water.

6 While processing, it's just like a factory; you
7 know, go in the fish factory, there'd be water knocking
8 about. But once she was laid steaming, dodging, you
9 could go round them ships in your slippers, which is
10 what people did. Captain's -- skipper's orders,
11 standing orders was, if you was in them conditions
12 steaming, dodging, "Go do your fire rounds", and you
13 could do that in your slippers, and every hour you went
14 round. That's what the standing orders was. You would
15 walk round the ship and if there was any water you would
16 find it. You would find it.

17 And besides that, the engineers, the fishmeal plant
18 operators, the mechanic, they would be in and out of
19 that factory all day long. There's at least half the
20 crew on the go all the time for the completion. That's
21 all I have to say.

22 MR JUSTICE DAVID STEEL: I am extremely grateful to you.

23 Thank you very much. That is very interesting.

24 MR SMITH: Thank you.

25 MR JUSTICE DAVID STEEL: I think Skipper Suddaby wants to

1 say something.

2 MR MEESON: Sir, I think I should clarify, as you probably
3 gathered, Mr Smith is not a relative of --

4 MR JUSTICE DAVID STEEL: That I understand. He is an
5 interested third party.

6 Good morning, Mr Suddaby.

7 Statement by MR ERNEST SUDDABY

8 MR SUDDABY: I would like to make a few comments over all
9 the time I was in the ship and the routine we had. When
10 it came to the Inquiry, there were some very experienced
11 skippers here early on and men who was actually in the
12 area at the time the Gaul was lost. The way they
13 described the weather was "atrocious", "shocking",
14 "horrible". One of them said the only place to be in
15 them conditions was head to wind. And I find it
16 difficult to believe that Peter Nellist would have been
17 running this ship with the wind aft side the beam in
18 this type of weather, when he was under no pressure at
19 all to do so.

20 Another thing I'd like to mention, same as Mr Smith,
21 the duff and offal chutes. It was suggested by the
22 experts that they could possibly have rusted up,
23 although I do not believe that they did, and I believe
24 that they were working right up to the time that the
25 Gaul was lost.

1 Last night I had a little brainstorm and I thought
2 I'll try to make one with a bit of cardboard, and I did
3 this and it gave me a bit of satisfaction. When I got
4 to the end of it, I looked back and I thought: if this
5 would have rusted up, there was more possibility that it
6 would have rusted up in a closed position and not an
7 open position. That was the little conclusion I came
8 to, and I lost a lot of sleep over it.

9 It was also suggested that there was a build-up of
10 water in the factory and nobody noticed it or visited
11 the factory, which is another thing I don't agree with.
12 If there was the remotest possibility of this, I still
13 can't get my my head round the fact that nobody visited
14 the engine room for a period of six hours, or four
15 hours.

16 There would have been a period at about 6 o'clock
17 when the ship comes alive; the cooks are out, watches
18 are changing, the Baader mechanic used to go and check
19 the machines. And there was a full morning, because we
20 know the Gaul was afloat at 11.30, where it seems that
21 people want to us believe that nobody visited the
22 factory, and I just can't accept this.

23 In the time that she was laid and, I presume,
24 dodging, I think the only way that she could have been
25 going was head to wind, knowing Peter Nellist as it did,

1 which seems to have been what all the other ships was
2 doing.

3 I made a statement a few year ago that the Gaul was
4 maybe the best ship I've been in and I've no reason to
5 change that, and I think at the time that's how she
6 would have been going, head to wind, and not with the
7 wind aft side the beam, which would have been her most
8 vulnerable position. Thank you.

9 MR JUSTICE DAVID STEEL: Thank you, Mr Suddaby. Well, you
10 have touched on a few of the very difficult positions.

11 MR HOPPER: Could I just ask one thing, Mr Suddaby. You
12 mentioned the Baader mechanic. Could you tell us who he
13 was? Was he one of the engineers? Was he one of the
14 factory deckhands?

15 MR SUDDABY: He wasn't an engineer. As I suggested, sir, he
16 was a Baader mechanic; he was there to look after the
17 machinery. One of the things what he used to do was
18 when everybody had vacated the factory he would
19 sometimes say, "Leave me a basket of fish or two baskets
20 so I can switch a machine on myself and put the fillets
21 through to see what the quality of them was", because
22 you lose a lot of money and a lot of whites if you're
23 not getting good fillets, and this was his job. The
24 best time for him to do it was when there was nobody in
25 the factory, and this is one of the things what is

1 puzzling me.

2 MR HOPPER: He was on the fateful trip?

3 MR SUDDABY: That is right, yes.

4 MR JUSTICE DAVID STEEL: Thank you.

5 Statements read by MR MEESON

6 MR MEESON: Sir, I do not know if there is anyone else. No.

7 In which case Mrs Griffin has asked me to read out

8 a letter that she has written. You remember I read --

9 MR JUSTICE DAVID STEEL: This is Jennifer's mother, is it?

10 MR MEESON: No, this is Jennifer Griffin that had a

11 statement yesterday. She has written another one. It

12 says:

13 "Dear Sirs,

14 "Except when the weather was inclement I attended

15 all the sessions of the reopened formal inquiry.

16 I thought that all the points that the families wanted

17 raising were discussed, some in great detail, some

18 skimmed over. The spying issue, boarding by a foreign

19 power, scuttling, the crew in a prison camp, have

20 I think, been addressed fully. The structure,

21 weatherproof doors, fish hatches and the duff and offal

22 chutes were given great care and attention to detail,

23 with photographs, line drawings and videos.

24 "The points I feel that were not given enough

25 credence were the inrush of water filling the ship as

1 she was submerged and the lack of damage in the cabins,
2 with intact bulkheads and doors. The damage to the bow
3 was not, I feel, fully explored as to other reasons why
4 this could have happened, for example collision.

5 "The suitcase in the mate's cabin which was missing
6 on the video shown to the court, I think that's another
7 matter which hasn't been given enough credence. The
8 families' statements read to the court showed a wide
9 variance of opinion, some constructive, some derogative.
10 The barristers and court in general must be
11 congratulated in the sensitive way that they related to
12 the families, obviously realising that they were not
13 conversant in court procedures."

14 MR JUSTICE DAVID STEEL: Thank you.

15 MR MEESON: So obviously if there is anybody who has not
16 said anything, then we will still be here, I suspect, up
17 until lunchtime at least.

18 MR JUSTICE DAVID STEEL: Yes, it is certainly not the last
19 opportunity. If they change their mind they can come
20 and speak to us later.

21 MR MEESON: Sir, my learned friend has reminded me that my
22 brain is not fully in gear. There are two more
23 statements that I should have read. The first is of
24 Mrs Joyce Clark, who is the mother of Paul Clark,
25 a spare hand. She says:

1 "I, Mrs Joyce Clark, wish to say that I thank
2 Max Gold, Barry and Christine Tindall, Mr Saloman,
3 Miss Hosking and everyone connected with this Inquiry.
4 During the Inquiry our lawyers have talked to us and
5 explained things. Whatever questions we have wanted to
6 ask have been listened to and dealt with. Everything we
7 wanted to be explored has been, such as the fishing, the
8 cable, Mr Long's theory, and nothing has been left out.

9 "As far as I am concerned, when this Inquiry closes
10 this will be the end of it and I want to put it to rest.
11 I have sat in the Inquiry every day throughout and
12 I have followed every detail. I want it to end after
13 30 years and to be left in peace."

14 Signed "Mrs Clark".

15 Then a letter from Mrs Sewell. She says:

16 "I, Pauline Sewell, wish to say that I am
17 Billy North's sister and wish to make a further
18 statement. I have been at this Inquiry throughout and
19 would like to thank Barry Tindall, Max Gold and his
20 staff, plus all the QCs and everyone who has helped us
21 through this Inquiry for their help. I feel that all
22 the questions that wanted have been asked and that all
23 relevant issues have been explored as far as I am
24 concerned. I am sorry about the remarks made by
25 Mrs Betts in her statement. I now want it to end and to

1 be left in peace."

2 That is signed "Mrs Sewell".

3 MR JUSTICE DAVID STEEL: Thank you.

4 MR MEESON: Sir, I think it is now Mr Munyard's turn.

5 MR JUSTICE DAVID STEEL: Yes, Mr Munyard.

6 Closing Submissions by MR MUNYARD

7 MR MUNYARD: Sir, something of a difficult act to follow, in
8 the light of the comments that we have heard this
9 morning from the relatives. But I shall now make what
10 I hope will be relatively brief submissions on behalf of
11 the families of Skipper Peter Nellist and
12 Mate Maurice Spurgeon.

13 Much of what we would have submitted has already
14 been said by Counsel to the Inquiry and counsel for the
15 other families. Indeed, it might be thought there is
16 little that we can add without merely repeating
17 submissions already made, and we therefore adopt what
18 has gone before rather than repeat it, except where we
19 specifically take issue with any point already made, and
20 we hope not to be unduly repetitious in the way we
21 develop some of those earlier submissions.

22 There is one matter not developed by Mr Saloman QC
23 which we intend to explore further in these submissions,
24 namely the issue of the ship's stability. Mr Meeson QC
25 has already dealt with this issue and we do not differ

1 greatly from him in his approach, but we wish to add
2 a number of points.

3 Before turning to that, however, and the other
4 critical matters before this Inquiry, we wish to make
5 some observations of a general nature.

6 During the course of this Inquiry we have marked the
7 30th anniversaries of both the final sailing of the Gaul
8 and of the day she was lost. 36 men who never returned
9 were among the much greater number of lost seamen from
10 this port whose lives were remembered early this month
11 in a moving ceremony at the Old Fish Dock. A reminder
12 of the terrible dangers men have faced in this industry
13 over the years, on a scale proportionately far greater
14 than that of any other industry in this country.

15 Seamen, and fishermen in particular, from this area
16 have paid a terrible price over the decades in order to
17 provide a livelihood for their families and cheap food
18 for the rest of us. The statistics make plain that
19 their safety has too often been jeopardised in the crude
20 pursuit of profit.

21 It is worth reminding ourselves of the human face of
22 the cold statistics set out in the Holland-Martin report
23 that was published in 1969 following the loss in the
24 previous year of no fewer than three fishing vessels
25 from Humberside. I refer to the Holland-Martin report

1 in AG14, appendix B, at pages 200, 201 and 202. I am
2 only going to touch on a small part of appendix B, which
3 is headed "The Mortality of Fishermen in Great Britain".

4 On page 200 the point is made that when the
5 statistics were originally examined, it appeared that
6 the death rate of fishermen from all causes had been
7 similar to or slightly in excess of those of all males
8 while their accident mortality had been given as two or
9 three times that of the male population of England and
10 Wales.

11 But in fact, turning over the page, at the foot of
12 page 201, when the standardised mortality ratios were
13 properly examined by adding together deaths at sea
14 recorded separately by the Registrar General for
15 shipping and seamen, the fishermen's standard mortality
16 rates for the period that was then examined, 1959 to
17 1963, becomes 17 times greater than that of all men in
18 England and Wales.

19 Turning over the page to page 202, the first
20 paragraph on the right-hand side: "Accident mortality by
21 age". It demonstrates that the risk for deaths through
22 accidents at work for males between the ages of 15 and
23 44 in the fishing industry goes up to more than 20 times
24 that for the rest of the population of a similar age
25 group.

1 Those were statistics gathered from the 1950s and
2 1960s; Holland-Martin, of course, reporting in 1969.

3 The crew list for the Gaul shows us that three
4 quarters of the crew were aged between 15 and 44. This
5 grim picture of the loss of life and of serious injury
6 is one which inquiries of this sort are designed to try
7 to avoid, but although the tonnage of shipping has
8 diminished over the intervening 30 or so years,
9 according to the statistics in the joint experts report,
10 the casualty rate has actually gone up, as we see from
11 AG15.1, at page 238. This is appendix 12.19, halfway
12 down the page:

13 "It will be noted that the size of the UK fleet of
14 vessels of 24 metres in length and over has halved since
15 1993.

16 "There is a downward trend in the number of
17 accidents to fishermen but the number of fatalities
18 remains erratic and very high. Similar trends are noted
19 in the figures for accidents to the vessels and for the
20 number of total losses."

21 Then the important words appear:

22 "Taking into account the reduction in the size of
23 the fleet however, the 'per-capita' accident rates are
24 increasing."

25 Those rather shocking statistics would suggest that

1 although 30 years have gone by, and there have been
2 a number of other inquiries in the meantime, and many
3 working parties and committees on safety, that the
4 accident rate, far from, as we would have hoped,
5 declining, has increased.

6 The deaths of the 36 men on this vessel -- all of
7 them still in the prime of their lives or even
8 younger -- must not simply be another entry on the
9 balance sheet of human life in this industry. Even
10 30 years later, it must be a catalyst for urgent action
11 to prevent these eminently preventable casualties.

12 The catalogue of other lives lost in cases which
13 appear to be strikingly similar to that of the Gaul are
14 set out in AG38, many of which occurred after the loss
15 of the Gaul, some as recent as four years ago, and in
16 countries which pride themselves on high standards of
17 safety conditions at work.

18 The United States, New Zealand and Canada are
19 countries with generally highly regulated workplaces.
20 But clearly not for fishermen. Do we really need yet
21 another casualty with dreadful loss of life for the
22 lesson of the Gaul to be learned for once and for all?
23 It would appear from the conclusion of the joint experts
24 that that lesson is that any ship with openings in the
25 shell close to the water line which give access into an

1 enclosed deck is inherently dangerous unless fitted with
2 failsafe non-return closing devices which will work
3 effectively under all conditions.

4 Moving on to design, maintenance and inspection. We
5 do not need to add much to what has already been said by
6 other counsel in respect of these issues, but we do
7 contend that the combined forces of the Department of
8 Trade, Lloyd's Register, the White Fish Authority, the
9 insurers, and indeed the owners themselves failed to
10 provide a positive statement that this ship was in a fit
11 condition to go to the Arctic in the middle of winter.
12 Whatever views this court may have of Mr Scott's opinion
13 evidence -- and he is clearly a man of trenchant and,
14 I would suggest, not always correct opinion -- his
15 findings of fact as to the state of the sister ships
16 have been borne out in their most crucial respect by the
17 2002 undersea survey of the Gaul.

18 It simply cannot be maintained as unlikely or
19 improbable that the sister ships would be in a similar
20 state of poor repair, as Captain Newbury suggested --
21 Captain Newbury who appeared to belong to the lump
22 hammer school of ship maintenance -- because we have
23 proof beyond peradventure that the Kurd and the Kelt's
24 sister ship, the Gaul, was indeed in a similar state of
25 unfitness in respect of her all-important duff and offal

1 chutes.

2 Lloyd's Register did not survey ships except by
3 appointment with her at the specific request of the
4 owners. There were no unannounced inspections from that
5 quarter. And a ship could be got ready to be in class
6 for the period of the survey yet be unfit or unsafe in
7 some respects only weeks later. The insurers' surveyors
8 were engineers whose interest was shown when
9 a particular insurance issue or claim arose, and we have
10 seen no evidence of their involvement in any sort of
11 inspection, random or otherwise.

12 The White Fish Authority, who had a financial
13 interest in the vessels for the first five years of
14 their working lives, were involved only at the building
15 stage but not at all thereafter, despite having
16 a presence on the dock.

17 I now turn to the statutory framework in 1974, or,
18 more to the point, the lack of it.

19 In 1974 there was little regulation by statute which
20 applied standards to the seaworthiness of fishing
21 vessels as opposed to merchant ships. It really only
22 dealt with life saving equipment, fire drills,
23 navigation lights, radio equipment and matters of on
24 board safety, rather than the inherent seaworthiness of
25 the vessels.

1 Class approval by the classification societies was
2 assumed, on the face of it, to be sufficient to ensure
3 standards otherwise applicable to statutorily regulated
4 merchant vessels -- Mr Tanton gave evidence to that
5 effect in this Inquiry on Day 12, pages 10 to 12 --
6 although the point has already been made in the course
7 of this Inquiry that the mere fact that a ship is in
8 class does not mean that it is therefore necessarily
9 seaworthy. And indeed, sir, that was a comment made by
10 yourself in this Inquiry on Day 6, at page 141.

11 In 1967 and 1968, no fewer than three different
12 committees on trawler safety were set up. A Board of
13 Trade Working Group, then an Interdepartmental Committee
14 were set up in 1967 and 1968 respectively, and in
15 February 1968 the Holland-Martin Inquiry was
16 established. This follows the loss of three vessels in
17 January and February of 1968 alone.

18 In 1969, the Board of Trade Working Group came up
19 with a code of safe working practices which, although
20 significant, was not binding on anyone. Holland-Martin
21 reported in July of that same year with no fewer than 83
22 recommendations as to trawler safety.

23 As a result, important primary legislation was
24 enacted the following year, in 1970, the Fishing Vessels
25 (Safety Provisions) Act, but that was no more than an

1 enabling Act which provided for secondary legislation to
2 be made in the form of a series of rules and
3 regulations. But none of those rules and regulations
4 were in fact made for another five years, when in 1975
5 the Fishing Vessels (Safety Provisions) Rules were
6 finally laid before Parliament and the bite of the
7 legislation came into force.

8 In the meantime, of course, another major casualty
9 had occurred, the Gaul. And the Gaul is very likely to
10 have been the catalyst for action after the Act of 1970
11 had lain dormant for half a decade. It is perhaps
12 remarkable that it is not until a revised Code of Safety
13 in 1978 that there is finally specific reference to
14 offal chutes for the first time, as far as we are aware;
15 perhaps as a result of Mr Scott's findings in 1974.

16 It is perhaps outwith the ambit of this Inquiry to
17 investigate why it took so long for a more comprehensive
18 statutory framework to be applied to the most dangerous
19 industry in Britain, but some clues as to why it took so
20 long appear in the joint experts report, AG15, page 249,
21 in section 12.

22 I will read section 12.3.8 onwards on page 249:

23 "The unique nature of the work carried out on board
24 fishing vessels and the risks to which fishermen are
25 exposed have been the main reasons why the regulations

1 applying to such vessels have developed separately from
2 those applying to the rest of the commercial merchant
3 fleet. Regulation of commercial fishing has tended to
4 lag behind that applying to the main merchant fleet.
5 This has been partly as a result of past governments'
6 'laissez-faire' attitude to a politically sensitive
7 industry coupled with a very strong resistance to change
8 within the industry itself.

9 "The unacceptably high accident rates within the
10 industry, seen by fishermen somewhat fatalistically as
11 the 'risks of the job', have meant that much of the
12 legislation has had to be imposed on the owners rather
13 than it having been unreservedly accepted as necessary
14 or even beneficial.

15 "Many hours of consultation with industry
16 representatives have preceded every aspect of the
17 regulations and there is hardly a requirement that has
18 not been subjected to various degrees of resistance in
19 the course of its progress onto the statute book.

20 "Much of the UK legislation has been perceived as
21 placing the owners at a commercial disadvantage compared
22 with other nations. The very recent harmonisation of
23 the regulatory regime at international level may have
24 done something to breach the wall of resistance that has
25 for so long been such an impediment to raising safety

1 standards throughout the fishing industry."

2 In short, summarising those conclusions of the joint
3 experts, a laissez-faire attitude by government, coupled
4 with very strong resistance to change within the
5 industry itself. The inspection regime, if any, which
6 existed in relation to fishing vessels was perhaps
7 personified by the approach of Captain Newbury,
8 a Department of Trade inspector, who appeared to see
9 nothing wrong with the "system" that was in operation in
10 1974, and believed that the Club, the ships' insurers,
11 were a sufficient additional means of ensuring the
12 safety of the vessels through their own surveyors'
13 inspections.

14 He indicated that the insurers' surveyors went on
15 board with a Department of Trade inspector, but accepted
16 that the evidence was that the last time a Department of
17 Trade inspector went on board the Gaul was in July of
18 1972. And the insurance company, it must be remembered,
19 was owned by the shipowners themselves, hardly an
20 independent means of regulation.

21 What is more, although the Department inspectors
22 had, in theory, the power to prevent a ship leaving port
23 if she fell short of safety standards, the evidence does
24 not disclose one single random inspection of any vessel
25 in the years we have been concerned with. Mr Tanton

1 described the occasions on which a department inspector
2 might go on board a ship to investigate a safety
3 issue: when there had been an accident, a fire or an
4 anonymous complaint by a crew member. In other words,
5 only in response to something that was reported to them
6 did they inspect the vessels.

7 Interestingly, even though Captain Newbury said he
8 had read Mr Scott's preliminary inquiry report, in which
9 so many defects on the sister ships had been discovered,
10 he did not trouble to go on board to inspect them
11 himself and satisfy himself that the sister ships were
12 in fact as badly maintained as Mr Scott reported.

13 I have no desire to make any party political points,
14 but one of the few benefits of age is that it gives you
15 a certain sense of history, and if one looks at the way
16 in which the legislation was enacted, one can see that
17 the Committees of Inquiry in 1968 and 1969 were set up
18 by the Labour government. The primary legislation, the
19 1970 Act, was enacted on 29th May that year, three weeks
20 before the government then lost the General Election
21 that had already been called, and the government of
22 Edward Heath came into power. Nothing happened then
23 until the 1975 rules were laid before Parliament, by
24 which time a Labour government has been returned to
25 power.

1 But whatever the politics -- and there may be no
2 significance in them -- there can be little doubt that
3 it was the loss of this vessel, the Gaul, that provided
4 the final push needed to get the legislation into
5 effect.

6 It is a matter of record that the fishing industry
7 has been in decline since the 1960s and that decline has
8 sadly continued to the present day. The joint expert
9 report correctly describes it as politically sensitive
10 industry -- something of an understatement, I would
11 suggest. The decline of the industry has come about
12 against a background of overfishing of the fishing
13 grounds, of Common Fisheries policies involving the
14 imposition of quotas and bans on fishing at certain
15 times of year, but these measures appear in fact to have
16 done little to preserve stocks but have forced fishermen
17 out to fish in extremes of weather and under severe
18 financial constraints which are bound to have an impact
19 on safety, as we have seen in the statistics referred to
20 earlier in the joint experts report.

21 Can I move on, then, to a completely different
22 matter now, and that is the question of stability. We
23 do not differ fundamentally from the submissions of
24 Mr Meeson on the issue of stability of the vessel, but
25 seek to put forward some further assumptions on which

1 the court may work, both as to the rate of downflooding,
2 depending of course on headings, speed and sea state,
3 and the likely effect on the crew.

4 We start from the position that the ship's intact
5 stability was good. It has now been shown that she
6 could heel to angles in excess of 90 degrees and recover
7 when in an intact condition. I hope that that is shown
8 on Experts 13. I believe it is. That graph
9 demonstrates the point clearly.

10 Conversely, it has also been demonstrated that she
11 was likely to have rolled to more than 90 degrees after
12 downflooding into the factory deck. That comes from the
13 evidence of Mr Colman at this Inquiry on Day 19, at
14 page 54.

15 Can I, in passing, make the point that we have
16 realised that when we are referring specifically to
17 a page number in the evidence of this Inquiry, it would
18 appear that the page numbers on the LiveNote transcripts
19 on our computers are one page higher than the page
20 numbers on the website transcripts of the evidence.
21 That is what Mr Colman and I have discovered when
22 comparing our transcripts. I hope, but probably vainly,
23 that it is a problem that only affects the two of us.
24 But I suspect if people are troubled by page references,
25 if they are reading from the web, it may be that they

1 need to add one page.

2 Moving back to stability of the ship, rather than
3 the stability of the website. Both the Marin tests and
4 the Fredyn simulations have demonstrated conclusively
5 that she can lose that stability to a critical degree in
6 a relatively short period of time in port quartering or
7 beam seas if water is able to enter the factory deck.
8 That should be shown in the diagrams Experts 19, 20 and
9 41. 19 is the factory deck flooding now further aft,
10 and 41 is the rate of downflooding. That chart, the
11 polar chart, clearly indicates that a very large amount
12 of downflooding can occur in a very short period of
13 time, depending on the heading, the sea state and other
14 factors.

15 The rate of ingress will vary from an initial
16 1 tonne per minute to 8 tonnes per minute as the
17 flooding gets progressively worse: evidence given by
18 Mr van Walree at this Inquiry on Day 8, page 8. We do
19 not need to repeat here the mechanisms by which water
20 can enter the factory deck. For these purposes we do
21 not need to allow for the internal mechanism of hoses or
22 pipes left running after the processing has finished,
23 although there can be little doubt that such a practice
24 was common on the Gaul in the light of complaints by
25 Chief Engineer Sim, first to Mr Scott and later in

1 Mr Sim's own evidence to the original formal inquiry,
2 which can be seen on Day 8 of the transcripts of that
3 Inquiry, at page 30.

4 In passing, we suggest that it may well be
5 significant that Chief Engineer Sim had left the employ
6 of Hellyer Brothers/British United Trawlers by the time
7 he was introduced by Mr Scott and was thus in no way
8 beholden to the company or dependent on them for
9 a future livelihood in an industry that was contracting
10 year on year.

11 Back to the model tests. The model tests and the
12 Fredyn simulations both demonstrate that, assuming the
13 duff and offal chutes were open, as found in the 2002
14 survey, this ship could take on water and jeopardise her
15 stability in a period of 30 minutes without it
16 necessarily being obvious to those on board that
17 anything was critically wrong until it was too late to
18 do anything about it. The starting point is that even
19 in the intact condition this ship has a bias to
20 starboard of some 4 degrees. There is a table showing
21 that in Experts 259, but I think we are familiar with
22 that table. It is the lower half, the stern quartering
23 seas. In the intact condition she has a 4 degree mean
24 heel to starboard, based on the model tests.

25 It is accepted that wind would add a further

1 3 degrees or so of heel with the weather on the port
2 quarter -- that comes from the evidence of Mr Colman on
3 Day 19, page 56 of this Inquiry -- which means that
4 anyone on the ship would experience a mean angle of heel
5 of about 7 degrees as a minimum in this sea state.

6 A mean angle of heel of 15 degrees was seen in the
7 model tests with some flooding on the factory deck only,
8 in the 9 metre sea state. I do not at the moment have
9 the experts reference to that. We will undertake to
10 supply any missing references by the end of the Inquiry
11 session today. That mean angle of heel of 15 degrees
12 was seen when the vessel was in port quartering seas,
13 which was maintained despite heavy rolling from side to
14 side. This angle of heel, while difficult to manage,
15 would not be felt unusual, we suggest, in that sea state
16 and the weather conditions then prevailing, and would
17 not be enough to indicate that anything was necessarily
18 wrong.

19 We know that if she was then taking on large amounts
20 of water through the duff and offal chutes, the effect
21 of even a critical amount of water -- say 50 tonnes --
22 would not only be unremarkable but could paradoxically
23 even have the effect of reducing the angle of roll;
24 acting, in other words, to some extent as a stabiliser.
25 We heard that in evidence from both Skipper Thresh at

1 this Inquiry on Day 14, page 24 and 25, and from
2 Mr Colman on Day 15, page 24.

3 50 tonnes of water could enter within less than
4 half an hour. In the event of 100 tonnes, the effect
5 would be the same as if there had been no water on
6 board: the evidence of Mr Van Walree on Day 8 of this
7 Inquiry, page 32 and Mr Colman on Day 15, page 25.

8 The Marin model tests data shows the effect of
9 flooding on the roll response, namely that it lessens
10 the roll angle as more water comes in. Anyone who
11 wishes to look at those figures can see them in AG8,
12 pages 237, 245 and 253.

13 The model tests showed that she could take on
14 100 tonnes within an hour and the more water that
15 enters, the faster the rate at which it enters, as
16 I have already demonstrated in paragraph 16 above.

17 That brings us to the crucial 125 tonnes perhaps in
18 just a little over an hour, at which point the factory
19 deck flooding has now entered the liver plant room and
20 the net store, both starboard further aft, thereby
21 increasing her trim by the stern and increasing her
22 angle of heel dramatically to something in the order of
23 25 degrees plus.

24 Once she is at an angle of heel of that order, the
25 duff chute is permanently submerged below the water

1 line. Experts 316, a chart we saw, I think, in the
2 course of Mr Saloman's -- we have also seen a chart that
3 gives all of the various openings and the degree of heel
4 that would require them to be submerged. But that
5 demonstrates that the duff chute is submerged at an
6 angle of 26.22 degrees. And then the rate of ingress of
7 water increases significantly and far faster.

8 By this time the ship is effectively lost since
9 there is no way that she can recover from this angle of
10 heel, and she is now taking in water at an even faster
11 rate. She would eventually capsize and, as was made
12 clear from further calculations by the experts, would
13 sink by the stern, but probably not at quite so steep
14 a trim as had been thought originally by the MAIB.
15 Mr Colman gave that evidence when he was recalled on
16 Day 19 of this Inquiry, on pages 60 and 61.

17 Then the question arises: at what stage would those
18 on board have become aware that something was wrong? We
19 can be fairly sure, of course, by working backwards --
20 this is stating the obvious -- that they did not become
21 aware of it until it was too late to do anything about
22 it; in other words, until they were disabled. But that
23 begs the question: why would they not have realised that
24 something was going wrong until it was too late?

25 The answers are necessarily speculative, but the

1 model tests, the Fredyn results and indeed the evidence
2 of other vessels all suggest that there may be no
3 obvious indication of the critical loss of stability
4 until it was too late. And it must be remembered that
5 the skipper and mate -- and indeed the entire officer
6 complement of this ship -- were new to her, and the
7 skipper and mate had no experience of filleter freezers
8 prior to this voyage. That is a matter that cannot be
9 ignored in this context.

10 May I at this point also refer the court to evidence
11 of Mr Bateman, Mr Waterman and Mr Stansfield.
12 Mr Bateman gave evidence on Day 17, at pages 131 and
13 154. Mr Waterman had a statement read on Day 19, at
14 page 124. May I just read a passage from that
15 statement. At paragraph 6 of this statement he said:

16 "In my experience, if heavy seas hit the ship you
17 can go flying over the wireless room to the point where
18 it becomes impossible to operate the equipment.

19 "I recall once being in a sidewinder in heavy seas
20 when I was thrown across the room and laid on the
21 transmitter and unable to turn it on."

22 And then perhaps significantly:

23 "From my experience I would imagine that it is very
24 difficult to know when exactly the ship is in such
25 danger that you need to get a mayday out. Nevertheless,

1 even once you become aware that you need to get a mayday
2 out, it may not be possible. You might be disabled and
3 unable to operate anything effectively, but unaware that
4 you need to get a mayday out."

5 Mr Stansfield's statement also was read, and in
6 paragraph 4 of his statement, he describes an incident
7 when he was serving as a deckhand on the Ranger Cadmus,
8 sister ship to the Gaul, under their different names:

9 "I was on the bridge hand steering as the automatic
10 steering was not on. I was on the bridge with one of my
11 colleagues, together with the skipper, Mr Abbey.
12 I informed the skipper that the vessel was very
13 difficult to steer and was very sluggish. As we changed
14 course the vessel laid over and did not right herself.
15 The skipper then asked me to go and check the factory
16 deck to see if we had taken on any water."

17 He describes going to the factory deck:

18 "We gained access to the factory deck. From the
19 bottom of the ladder was dry but I could see towards the
20 stern of the vessel that water was along one side of the
21 factory deck. As the vessel then righted herself water
22 came up towards us and it was like Niagara Falls. Water
23 some 2 to 3 feet deep came up towards us and around our
24 waists. I immediately informed the skipper that we had
25 substantial quantities of water on the factory deck and

1 I felt we were in a perilous position."

2 Mr Bateman -- you will no doubt recall Mr Bateman's
3 account of how he was down in the galley area when he
4 looked out of the escape porthole and found that the sea
5 was covering half of it.

6 None of these individuals was necessarily aware
7 until a critical stage that there was something
8 potentially fatally wrong. They were all able, in the
9 circumstances, to do something about it. But
10 Mr Waterman comments that:

11 "Sometimes you would know you were in an emergency
12 and could not do anything about it and other times you
13 would not realise just what degree of emergency you were
14 in. So on the bridge in these seas there would have
15 been enough by way of distraction to disguise from even
16 experienced crew the fact that the ship was taking on
17 water in critical amounts. The factory would be empty
18 for long periods once processing was finished, the
19 freezing process being completed in just about two
20 hours.

21 So there was every possibility that no one would be
22 down there to see the water, most of which would in any
23 event be aft and not readily visible from the area of
24 the freezer blocks, which we can see on the general
25 arrangement, Experts 1. I think everybody is now

1 familiar enough with the layout of the factory deck of
2 where the freezer blocks are. In addition, there would
3 be the effect of transverse accelerations, and they
4 would have been extreme: in other words, as the ship
5 rolled from side to side, those on the bridge would be
6 experiencing a force of something like 0.5G, a very
7 difficult set of conditions in which to realise that
8 anything else might be going wrong.

9 The Marin data provides some figures for that at
10 AG8, on pages 165, 169 and 173. That is for the level
11 of transverse accelerations in the intact condition, in
12 a condition with 50 tonnes of water on board and
13 100 tonnes of water on board respectively. Mr Colman
14 made this point very graphically, talking about people
15 having to hang on to whatever they could in his evidence
16 on Day 19, at pages 62 to 63.

17 In addition, of course, there would be a great deal
18 of noise, and in any event, during periods of heavy
19 angles of roll or heel people would simply be hanging on
20 and waiting for the ship to right herself in order for
21 them to function. Furthermore, in the prevailing
22 conditions of poor daylight, a raging storm and snow, it
23 might have been difficult to know exactly where the
24 horizon was; in other words, what was the angle of heel
25 at any given time.

1 Skipper Suddaby has touched this morning on the
2 question of the heading of the ship: where was she
3 heading and why? Again, this has to be a matter of
4 speculation. But for her to have foundered in these
5 seas because she was taking on water over a period of
6 time without realising it suggests that she was on
7 a course either south west or even due south at the
8 time, which would have exposed her to port beam and/or
9 quartering seas for a sufficient time to take on
10 100 tonnes or so of water. Those headings would have
11 put her on course for either the lee of Norway or for
12 Fruholmen. I do not think the Inquiry has yet been
13 provided with a chart. We do have one we are going to
14 provide by the end of the day which shows exactly where
15 Fruholmen is.

16 MR JUSTICE DAVID STEEL: I have got one but I am not too
17 sure I know where Fruholmen is.

18 MR MUNYARD: It is south and ever so slightly west of the
19 position where she was last seen.

20 MR JUSTICE DAVID STEEL: This is a large scale chart.
21 I have Hammerfest but I cannot see Fruholmen.

22 MR MUNYARD: There should be a lighthouse on the chart to
23 help you identify Fruholmen.

24 MR JUSTICE DAVID STEEL: Oh yes, I have got it. Thank you.

25 MR MUNYARD: Both of which make sense in the prevailing sea

1 state. She might have been dodging, we simply do not
2 know. If her steering gear failed, again, she might
3 have been heading into shelter to effect repairs. But
4 in either event there may well have come a stage when
5 those on the bridge realised that the angle of heel had
6 to be corrected and then put the helm hard to port to
7 try to bring the vessel head to wind, only to be
8 overwhelmed as a result of the very manoeuvre that they
9 thought would rectify the problem.

10 Sir, I have, perhaps, about a third more to cover,
11 but I wonder if this is an appropriate stage to have
12 a break for the shorthand writers.

13 MR JUSTICE DAVID STEEL: Yes.

14 (11.35 am)

15 (A short break)

16 (11.55 am)

17 MR MUNYARD: Sir, can I recap on two matters: one,
18 Mr Bateman. Just to remind the court of the evidence
19 that he gave about the situation on the Hammond Innes in
20 1977. He told us that there was heavy weather, the
21 trawl was paralysed and they were mending it, and after
22 the new trawl was in position he went down to the galley
23 and was talking to the cook and could see behind him
24 a large porthole, escape porthole in the galley. He
25 explained:

1 "Whilst speaking to the cook I noticed that the
2 escape porthole was half underwater and the ship was not
3 rolling back to port which I thought was strange.
4 I left the cook and went down along the alleyway into
5 the factory and was immediately waist high in water."

6 That was the evidence of a deckhand. No one on the
7 bridge at that stage had appeared to notice what was
8 wrong, which further indicates that critical amounts of
9 water may come on board without there being any obvious
10 indication to the bridge.

11 The other matter that I can now illustrate with the
12 benefit of the chart is the position of Fruholmen on
13 AGP11. I will try to operate the technology and point
14 it out. Fruholmen is in the area, I believe, there
15 (indicated), where the marker is. That is the area of
16 Fruholmen, and that would be an obvious heading for the
17 vessel.

18 And indeed the evidence from witnesses and from the
19 tests demonstrates that a course head on to the seas
20 would be just as uncomfortable as, if not more
21 uncomfortable than a course with the seas on the beam or
22 quarter. Mr Bowman confirmed that in evidence on Day 19
23 of this Inquiry at page 38, and indicated the effect of
24 the ship banging down on the waves on such a course.
25 For her to have been taking the only relatively

1 comfortable course, with following seas, makes little,
2 if any, sense at all as she would be then heading
3 straight for Greenland.

4 Can I leave stability and move on to the skipper and
5 mate. You already heard eloquent testimony from many
6 skippers and others as to the steadfast character of
7 Skipper Nellist, and such as you have heard about
8 Mate Spurgeon confirms that he, too, was a sensible
9 first class seaman. Far more eloquent than anything
10 I can say, you heard yesterday moving evidence from the
11 person who knew him best, his sister, Mrs Shirley
12 Pickering, who painted a picture of a man who was as
13 careful as he was caring.

14 Neither of these men had served before on this
15 vessel; both will have been unfamiliar with how she
16 handled and also with the crew. With the departure of
17 Mate Petty before fishing operations began, there was
18 nobody on board to advise them of the idiosyncrasies of
19 this ship. Mate Petty told us that he had really only
20 one conversation of any substance as he and
21 Skipper Nellist operated different watches.

22 Before she sailed, Skipper Nellist had, of course,
23 the benefit of one and a half hours on board with
24 Skipper Suddaby, much of that spent on the bridge and
25 discussing matters relating to how she handled and

1 fishing matters. And, of course, he did not have the
2 benefit of any sort of meeting with Skipper Peter Abbey,
3 as was wrongly suggested by Mr Oswald in his evidence to
4 this Inquiry on Day 4, at page 24. That point was
5 cleared up the other day when it became clear that the
6 Mr Abbey referred to was different person in whose
7 office the meeting took place between Skipper Nellist
8 and Skipper Suddaby.

9 Furthermore, Mr Oswald, for the owners, failed to
10 provide Mr Nellist with a mate experienced on the Gaul,
11 or one of her sister ships, once Mate Petty had to be
12 taken off. Certainly we know that one of the sister
13 ships, the Kurd, had been in port since 23rd December,
14 as is clear from the OFI documents in volume 1, on
15 page 124. Therefore, presumably, the crew of the Kurd
16 might have been available.

17 There is no reason for either Skipper Nellist or
18 Mate Spurgeon to be familiar with the workings of the
19 duff and offal chutes. As to the need for any
20 maintenance or repair work to be done at sea, it is
21 likely that the skipper would have ordered the work to
22 be done on the foredeck first; whether with lump hammers
23 and blowtorches as per Captain Newbury or not, since we
24 know that the hatches and openings on the foredeck
25 appeared to be in good operable condition in the 2002

1 survey. Such maintenance is not likely to have advanced
2 much while the vessel was fishing in any event,
3 according to Skipper Thresh's evidence to this Inquiry.

4 Furthermore, if any net mending had been done on the
5 morning of 8th February, an idea that was briefly
6 floated in exchanges in this Inquiry, the likelihood is
7 that it would have taken place in the sheltered area on
8 the starboard side amidships and not in the most exposed
9 position of all, right aft by the net store hatch.
10 Indeed, if the net store hatch lid had been left open --
11 that is to say by crew -- in the position in which it
12 was observed on the seabed -- in other words, it had
13 just been lying back on its hinge -- then it would be
14 bound to have slammed down with considerable violence
15 with the motions of the ship.

16 Can I make final mention of the duff and offal
17 chutes. The hinge mechanism of the duff and offal
18 chutes was recognised as early as the design stage to be
19 a potential problem. We know that the original owners,
20 Ranger Fishing, themselves remarked as much in a note on
21 the written drawings. It is unlikely in the extreme
22 that either the fish hatches or the net store hatch
23 would not have been pinned open to protect the crew from
24 loss of life or limb if any of these hatches had been
25 deliberately opened. The evidence of Skipper Thresh and

1 Skipper Wharram is clearly to be preferred to the rather
2 more idiosyncratic position adopted by Skipper Suddaby
3 in relation to the pins. Indeed, Skipper Thresh gave
4 a very graphic example of an injury that had occurred
5 before the Gaul was lost on another ship that he
6 believed was well-known in Hull, where an unfortunate
7 crew member had not only lost one arm but also the
8 fingers of his other hand when the fish hatches had not
9 been properly secured in place.

10 That is as much as we wish to --

11 MR JUSTICE DAVID STEEL: I am so sorry, I have forgotten
12 what the note was on the drawings. What did it say?

13 MR MUNYARD: The note said "perhaps too fiddly".

14 MR JUSTICE DAVID STEEL: I had forgotten that.

15 MR MUNYARD: It was a drawing which -- I believe it is
16 drawing 761. Whether it actually ended up as a slide as
17 part of the experts' PowerPoint, we could not find it --
18 ah, there it is. Thank you very much. MM1. And MM2 is
19 the close-up:

20 "Possibly too fiddly", up there in the right-hand
21 corner, "approved for 372 only", that is to say the
22 first of the Ranger C-Class ships, "subject to
23 inspection".

24 MR JUSTICE DAVID STEEL: Thank you.

25 MR MUNYARD: So even the owners were alert to the potential

1 problems of this absolutely critical closing device in
2 all of these ships. On the face of it, those concerns
3 do not seem to have been pursued, and certainly were not
4 pursued once the ships had been sold and taken over by
5 BUT.

6 Can I move, then, on to other discrete matters.
7 I do not propose to spend a great deal of time on the
8 question of why no search. It has been well covered and
9 I am going to mention in a moment our endorsement of the
10 way in which Mr Saloman and Miss Hosking have analysed
11 the evidence on why no search by the Department.

12 But before we get to that, I wish first to say
13 something about the failure to search for the Gaul when
14 she first went missing. Evidence at the original formal
15 inquiry demonstrated an abject failure on the part of
16 the owners to follow their own procedures and that of
17 their insurance company in the event of a ship appearing
18 to be lost. Nothing was done on the Friday or the
19 Saturday; little was done on the Sunday, and nothing
20 really was done to look for the Gaul until the Monday.

21 It has not been explored to any great extent in this
22 Inquiry because the facts as found by the original
23 inquiry speak for themselves. And there has never been
24 any excuse for this appalling failure to alert the
25 rescue services on the Friday or the Saturday, or, for

1 that matter, the Sunday, and indeed other authorities
2 who would have to be involved when the Gaul first went
3 missing and it was first known by the owners that she
4 was missing.

5 The fact remains that it was the owners' failure to
6 act as they should have done over the Friday, Saturday
7 and Sunday which effectively removed any chance of
8 finding either wreckage or bodies when the full-scale
9 search began. It beggars belief that when
10 Captain Habesch eventually obtained permission to
11 contact -- and this should be the Ministry of
12 Agriculture, Fisheries and Food, who had power to order
13 a search, his call went unanswered because Mr Jennings,
14 the Ministry official, was on his lunch hour break.
15 That is clear from Captain Habesch's log in the OFI
16 documents volume 5, document 124, at page 62. It is to
17 be hoped that no emergency service in this country is
18 ever left unmanned during lunch or any other breaks.

19 Moving then to why no search by government
20 departments. We adopt entirely the logical and
21 compelling analysis of Mr Saloman and Miss Hosking as to
22 the failure of the Department to undertake a search for
23 the lost vessel in the 1970s and thereafter when it is
24 perfectly plain that commercial companies were queuing
25 up to offer their services and technology, in some cases

1 for free. To suggest that in the 1970s the technology
2 was insufficiently developed flies in the face of the
3 documentary evidence. It is true that both the
4 technology and our understanding of the needs of
5 bereaved families have developed over the last three
6 decades, but it would be naive to believe that the
7 culture of secrecy and lack of openness which
8 characterises many aspects of officialdom in this
9 country has given way to significantly greater
10 transparency.

11 In his report on the search for the Gaul, at AG24,
12 Mr Roger Clarke comments, at paragraph 135 of that
13 report, on the way in which the families' relationships
14 with the Department had become poisoned. He goes on to
15 say, in paragraph 140, that he believes now that the
16 Department are much better at paying sufficient
17 attention to the interests of the bereaved after an
18 accident; but that there is still clearly some way to go
19 is demonstrated by the way in which the principal and
20 most sensitive objective of the 2002 survey -- namely to
21 search for human remains -- appeared to be subordinated
22 to the development of the technology and only took place
23 at all after the survey time was extended on several
24 occasions following requests by the family
25 representatives on board in order that this supposed

1 number one priority could actually be undertaken. This
2 is all documented in the joint experts report, AG15,
3 paragraph 5.1.5, and may I just read that paragraph:

4 "The limited technical video evidence and lack of
5 evidence of human remains prompted the Gaul Families
6 Association to press for a further more extensive survey
7 of the wreck using divers and involving intrusion into
8 spaces within the wreck."

9 This is before the 2002 survey was undertaken. This
10 was following the 1998 survey.

11 "This was approved and ordered by the Wreck
12 Commissioner. The Department for Transport subsequently
13 argued that a manned dive would be too dangerous and the
14 specification was in due course changed to a dive
15 conducted using ROVs ..."

16 Then at paragraph 5.4.1, it was made clear at the
17 presentation on 20th May 2002 of the programme for the
18 dive, for the survey, that:

19 "Substantial tools have been developed, some at
20 obviously high cost, to perform the survey objectives.
21 It was apparent at this stage that a variety of new
22 concepts were to be tried out. These were however
23 presented as contingencies for use if other methods did
24 not succeed, which may have been somewhat disingenuous."

25 Then if we move to 5.4.6, on page 47:

1 "The objectives of the 2002 survey were highlighted
2 at this presentation, and these objectives were later
3 posted in the ship for everyone's information. They
4 were:

5 "To recover human remains.

6 "To provide evidence on the cause of loss.

7 "To investigate the spying allegations.

8 "To locate and sample the 'mystery cable'.

9 "The presentation of objectives in this order
10 suggested that recovery of human remains was the primary
11 objective of the survey. In fact, this objective was
12 left until the last possible moment in the schedule and
13 in the actual case."

14 Over the page, 5.4.8:

15 "A further objective, not included in the list, was
16 to provide the Department for Transport with insight
17 into different wreck survey technologies and correlation
18 between their results. This was a laudable aim but it
19 very nearly overwhelmed the other objectives by using up
20 a great deal of time and resource. This objective [say
21 the joint experts] should have been subordinate to the
22 rest."

23 I am not going to read any of the further
24 references, but details of the search for human remains
25 during the final three days of the 2002 survey are

1 contained in AG15.1 in appendix 5 and can be seen there.

2 May I move on now, please, to spying. Whether or
3 not the Gaul herself was engaged in spying, it is
4 perfectly plain that both Skipper Peter Nellist and
5 Mate Maurice Spurgeon had been first mate on ships
6 engaged in intelligence gathering previously.
7 Commander Peters in his evidence to this Inquiry on
8 Day 9 was unable to say one way or the other whether
9 either Mr Nellist or Mr Spurgeon had been aware of the
10 nature of the activities undertaken on behalf of the
11 Ministry of Defence on those occasions when they had
12 served on ships involved in intelligence gathering. But
13 it is inherently unlikely that either man, both of them
14 the first mate, would have been unaware of what his
15 skipper had agreed to do for the Ministry of Defence.

16 We do not suggest, however, that any conclusion can
17 be drawn from these facts alone that on her final voyage
18 the Gaul was involved in any kind of espionage.
19 However, it is not right to suggest that the use of
20 trawlers in intelligence gathering had finished at the
21 time of her loss. In the Note on the Use of Trawlers
22 for Intelligence Gathering, in March 1998, attached to
23 the statement of Commander Clark in AG10, pages 7 to 10,
24 we can see that at paragraph 5 there was a scheme of
25 long standing said to go back to Admiral Lord Nelson's

1 time whereby young naval officers were deployed on board
2 fishing vessels to engage in intelligence gathering and
3 not merely to gain experience in fishery protection.

4 Paragraph 5 makes it perfectly plain that the young
5 naval officers were being deployed, amongst other
6 reasons, to do what the skippers of those trawlers were
7 doing, noting anything of interest; that is to say low
8 level intelligence gathering.

9 That scheme is said to have been "not widely used
10 between 1969 and 1974, with only ten junior officers
11 going to sea in trawlers". The note also makes it plain
12 that there was no record of embarkations by these junior
13 officers. But if it was not widely used between 1969
14 and 1974, with only ten junior officers going to sea in
15 trawlers, it is hard to understand how it can be
16 maintained that Mr William Rogers, then Minister of
17 State for Defence, was giving even a technically
18 accurate reply to Parliament when he said in 1974, when
19 we understand the scheme was still in operation from
20 that quote, that the trawler fleet is not used in
21 intelligence gathering.

22 If, by some happy chance, he happens to be right
23 about the date, and for reasons we have never heard of
24 the scheme had finished days or weeks before he made his
25 statement to the house, then the use of that language is

1 sophistry to a degree which would make a Jesuit proud.

2 MR JUSTICE DAVID STEEL: Well, good jury stuff but can I see

3 the Rogers response? I have not seen it.

4 MR MUNYARD: Sir, do you want the statement that he made in

5 1974?

6 MR JUSTICE DAVID STEEL: Yes, the one you are talking about.

7 MR MUNYARD: You want the date of that, presumably?

8 MR JUSTICE DAVID STEEL: No, I want to see it.

9 MR MUNYARD: I can get that for you in due course, if I may.

10 MR JUSTICE DAVID STEEL: But would things have been any

11 better if he had just said "no comment"?

12 MR MUNYARD: That is the point that I come to in the next

13 paragraph.

14 MR JUSTICE DAVID STEEL: What is the answer to the question?

15 MR MUNYARD: The answer to the question is it would have

16 been a more appropriate response.

17 MR JUSTICE DAVID STEEL: Well, it might have been more

18 appropriate, but I cannot believe that it would have

19 satisfied anybody, would it?

20 MR MUNYARD: Well, can I say why it would have been more

21 appropriate?

22 MR JUSTICE DAVID STEEL: Yes.

23 MR MUNYARD: Half of Hull knew that the fishing fleet was

24 used for these purposes. To come out with a bald

25 statement to the effect that it does not happen, even if

1 technically correct on the date that he said it, flew in
2 the face of a decade or more than a decade of what
3 everybody knew from personal experience had been
4 happening. It was a complete contradiction of what
5 everybody knew had been going on up until 1974.

6 MR JUSTICE DAVID STEEL: And if the answer had been "no
7 comment", nobody would have been any further forward
8 either.

9 MR MUNYARD: Well, they would not have thought they were
10 being lied to. That is my point. The people --

11 MR JUSTICE DAVID STEEL: To the contrary, they might have
12 drawn the inference: well, perhaps the Gaul was spying.
13 That is the problem, is it not? People read an awful
14 lot into things.

15 MR MUNYARD: It is a problem. It is inherent in the nature
16 of the Security Service and intelligence gathering. The
17 difficulty is, ministers have a duty not to either lie
18 or to --

19 MR JUSTICE DAVID STEEL: Well, I am not going to get bogged
20 down in a dispute as to whether ministers in the Wilson
21 Administration -- I think we are going that far back,
22 are we not -- were misleading Parliament, or indeed
23 misleading the relatives, save to the extent, of course,
24 it is significant that one of the reasons why the
25 relatives were so sceptical about the suggestion that

1 the Gaul was not a spy ship is that there was a general
2 denial that any trawlers were involved in spying. But
3 there is a limit to what inference you can draw from
4 that.

5 MR MUNYARD: Sir, you have made the very point that I was
6 seeking to make, that the families knew that what was
7 being said was not true. When you know that you are
8 being told something that is untrue, or historically
9 untrue by perhaps a few months, that is different from
10 simply being stonewalled. And there is always going to
11 be a problem, and a problem with what inferences people
12 will draw. But they are less likely to think that the
13 wool is being pulled over their eyes if they are simply
14 greeted with "no comment" rather than being told
15 something that they do not themselves believe to be
16 true, and have good reason for not believing to be true.
17 That is the point.

18 MR JUSTICE DAVID STEEL: I am not sure there is much
19 difference between a half truth and a pregnant denial.

20 MR MUNYARD: Or indeed economy of the truth, which is
21 a slightly more modern approach.

22 It is a problem that I am not suggesting that it was
23 necessarily easy for the government to deal with this
24 issue, but the way in which they chose to deal with it
25 in 1974 understandably destroyed confidence on the part

1 of the families, in particular the families here, in
2 anything that the government then went on to say
3 about --

4 MR JUSTICE DAVID STEEL: That point I have well in mind.

5 MR MUNYARD: I am sure.

6 Can I just say finally on this question, it was
7 raised in discussion about the Intelligence Services Act
8 1994, the suggestion was floated again there that that
9 Act appeared to sanction the telling of lies to
10 Parliament, and in our submission it defies
11 constitutional convention to suggest that Parliament
12 intended to provide for its own deception by the
13 operation of a statute it had passed. All the 1994 Act
14 requires is a position of no comment, however
15 unsatisfactory that may be, and indeed we are in the
16 middle of exactly such a controversy as we speak in
17 relation to the use of the security services and the
18 United Nations.

19 Can I move on, then, to the cable. Mr Peck, who
20 nobody has disputed as an acknowledged and experienced
21 expert in the field of subsea communications cables,
22 gave evidence on Day 17 of this Inquiry to the effect
23 that the seabed cable filmed in the 1997 survey
24 conducted by Mr Norman Fenton for the Anglia Television
25 Dispatches programme appeared to him to be

1 a communications cable rather than trawl warp. He was
2 of the view that the same cable was filmed by the 1998
3 survey conducted by the MAIB, and he based his opinions
4 as to the nature of the cable on the footage of both of
5 those surveys.

6 It is hardly surprising that Mr Peck believed that
7 the two cables were one and the same, given that the
8 MAIB themselves stated in their report, at AG20,
9 page 47:

10 "The cable shown in the Dispatches programme was
11 located during the MAIB survey and followed. It was
12 taut and ran in a fairly straight line on an alignment
13 very similar to the Dispatches report. Unfortunately
14 the Dispatches underwater video provided no clues as to
15 where the cable was in relation to the wreck."

16 Pausing there, it is true the MAIB then went on to
17 say that in their opinion it was trawler warp rather
18 than anything else. But they were making it perfectly
19 plain that that believed that what they filmed was the
20 cable that had been seen the year before and shown in
21 the Dispatches programme.

22 In our submission, Mr Peck cannot be criticised for
23 acting on the word of a branch of the Department for
24 Transport, the MAIB, that they located and filmed the
25 same cable that Mr Fenton had filmed the day before. He

1 happened to differ in his opinion as to what the nature
2 of that cable was.

3 Ultimately, it is a matter for this court to decide
4 what, if anything, they can make of the nature of the
5 cable. The court is not assisted by the samples of
6 cable cut during the 2002 survey since the chart in AG4
7 makes it plain that those samples were taken from areas
8 nowhere near the cables filmed by Mr Fenton and the
9 MAIB.

10 Can I come, finally, to the video footage in the
11 1998 survey of the mate's cabin.

12 The court is aware, not only from his evidence
13 recently, but his evidence earlier in this Inquiry, that
14 Mr Michael Spurgeon, the son of Mate Spurgeon, watched
15 video footage -- in fact all of it; many, many hours of
16 it -- of the 1998 survey at a showing in the Guild Hall
17 in December 1998. He gave evidence to this Inquiry that
18 footage he had seen in late 1998 showed a suitcase on
19 a table in the mate's cabin. Furthermore, he had seen
20 footage of an attempt by a ROV manipulator to lift
21 a piece of cable from the seabed which it then dropped
22 immediately. He has since been shown the videotapes of
23 the mate's cabin and the seabed cable during the course
24 of this Inquiry and neither the suitcase nor the
25 instantaneous dropping of the cable appear.

1 Mr Spurgeon wishes to make it entirely clear, as
2 indeed he has this very morning, that he did not accept,
3 when questioned by Mr Meeson, that his memory was at
4 fault or that he had mistaken footage of a wall cabinet
5 seen from a wrong angle for the footage of a suitcase.
6 He remains extremely concerned that, in his view, the
7 video footage has for some reason been edited.

8 Sir, can I end by paying personal tribute to the two
9 families who we have represented, who have behaved with
10 great dignity and for whom it has been a privilege to
11 act; also to all the families who have attended the
12 hearings and participated, either by their attendance or
13 otherwise, in this Inquiry, and I am asked specifically
14 to express appreciation of all the hard work done,
15 particularly by Mr Saloman and Miss Hosking, and also
16 for the way in which the Inquiry has been conducted by
17 those responsible for running it, and in particular
18 Mr Meeson and Miss Cunningham, for the way in which they
19 have thoroughly investigated every issue.

20 Finally, we also wish to put on record our
21 appreciation of the efforts by Mr Norman Fenton, without
22 whose survey and discovery of the wreck in 1997 it is
23 very doubtful indeed that we would all be here
24 conducting this Inquiry today.

25 Those are my submissions.

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

2 Yes, Mr Cooper.

3 Closing Submissions by MR COOPER

4 MR COOPER: Good afternoon, sir. You should have written
5 submissions on behalf of the Department that appear in
6 the bundle that you have open before you.

7 MR JUSTICE DAVID STEEL: I have.

8 MR COOPER: Before I start through those submissions, can
9 I just remind you, sir, there are two appendices to
10 those submissions. The first, annex A, is an updated
11 response by the Department to the recommendations of
12 Mr Clarke. You will recall, sir, that in the bundle
13 AG24A you have a response prepared shortly after that
14 report was published. This is an updated response for
15 your information.

16 MR JUSTICE DAVID STEEL: Thank you very much.

17 MR COOPER: Sir, secondly, you did ask earlier in
18 Mr Meeson's submissions for an organogram in relation to
19 the Department. That appears at the second of the
20 annexes. We have tried to keep it as simple as possible
21 and only identify relative characters, primarily going
22 to the issue of why no search.

23 You will see, sir, that Mr Stanley Clinton Davis MP
24 appears as the Parliamentary Under Secretary of State
25 for Companies Aviation and Shipping. The Marine Survey

1 Service was headed by Mr MacIver Robinson, who was the
2 Surveyor General. Alongside the Survey Service, there
3 was a Marine Division in which Mr Archer worked, and
4 reporting to him was Mr Doyle of the SG Secretariat, and
5 reporting to Mr Doyle was Miss Stockdale, and below her
6 Miss Kelly and Miss Le Grys, who are, I think, primary
7 characters that appear in the documents you have before
8 you.

9 The chief nautical surveyor at the time was
10 Captain Hampton, and Captain Lusted whose name also
11 appears in the documents also reported to
12 Captain Hampton. So far as is relevant, I believe that
13 Mr Scott, who was a naval architect, would have been
14 working underneath the Chief Ship Surveyor General.

15 Captain Newbury would again have been reporting to
16 the Chief Nautical Officer, although for the purposes of
17 their preliminary inspection into the loss of the Gaul,
18 I believe they both reported to the Chief Nautical
19 Surveyor.

20 MR JUSTICE DAVID STEEL: That is very helpful. Thank you
21 very much. If that could be an image -- perhaps it
22 already is -- I would be grateful.

23 MR COOPER: Sir, it already existed electronically.

24 MR JUSTICE DAVID STEEL: That is all I am wanting. Perhaps
25 it could be given a reference number at some stage.

1 MR COOPER: Certainly.

2 Sir, can I therefore turn to the issues that the
3 Department wish to address.

4 Sir, counsel for the Attorney General has already
5 provided you with a full review of the evidence relevant
6 to identifying the cause of the loss of the Gaul. We do
7 not propose to lengthen the cause of this Inquiry by
8 adding to that review as we believe the evidence has
9 been gone through fully. So far as answers to the
10 questions before this investigation are concerned, the
11 Department is content to adopt the answers put forward
12 by the Attorney General. And so far as those questions
13 contain suggestions for recommendations for the
14 future -- and that is particularly question 9 -- the
15 Department would support those measures in order to
16 avoid a similar loss in the future.

17 There are, however, a number of matters I wish to
18 address. Sir, I have listed four in my written
19 submissions: the introduction of the Fishing Vessel
20 (Safety Provision) Rules issued in 1975; the inspection
21 regime in 1974; the issue of freeing ports; and then,
22 sir, in light of Mr Munyard's submissions this morning
23 I am afraid I will need to comment briefly on the 2002
24 survey, before turning to perhaps the main issue on
25 which the Department is concerned, the issue of why no

1 search was made for the Gaul in the late 1970s and early
2 1980s.

3 Sir, can I turn, first of all, to the question of
4 the introduction of the Fishing Vessel (Safety
5 Provisions) Rules 1975. This matter was raised because
6 a number of questions were put to Mr Tanton in
7 cross-examination seeking an explanation for the delay
8 between the publication of the report of the
9 Holland-Martin Committee in 1969 and the coming into
10 force of the 1975 regulations.

11 Mr Tanton addresses the development of the
12 regulatory regime for fishing vessels from 1974 in
13 section 12 of the expert report, which is at AG15, pages
14 246 and following. He provides a detailed breakdown of
15 the various regulations and other relevant domestic and
16 international materials in appendix 12. So far as the
17 regulatory framework between 1968 and 1974 is concerned,
18 it is addressed at AG15, pages 252 to 258.

19 Mr Tanton explained in his report that in 1967 the
20 Board of Trade set up a working group to produce a Code
21 of Safe Working Practices for Fishermen. That Code was
22 published in 1969 and a summary of its contents is found
23 at appendix 12.15.

24 The loss of three distance water trawlers in 1968
25 led to the establishment of the Holland-Martin Committee

1 to make recommendations regarding the safety of deep sea
2 trawlers and their crews. Sir, you have the full report
3 at AG14, page 141 and following.

4 It was after the publication of that report that the
5 Department consulted with the fishing industry between
6 1970 and 1974 over proposed new safety regulations for
7 fishing vessels.

8 The enabling legislation was passed, as has been
9 commented by Mr Munyard, in 1970, and the rules which
10 were laid before Parliament in 1974 came in force in
11 1975.

12 Those rules are wide ranging provisions that provide
13 rules for the structural strength of the hull,
14 superstructure and certain equipment, the watertight
15 integrity, freeboard and stability, boilers and
16 machinery, bilge pumping arrangements, electrical
17 equipment and installations, miscellaneous plant and
18 equipment, structural fire protection and fire
19 detection, protection of the crew, nautical equipment,
20 documentation to be carried on board, life saving
21 appliances, fire appliances, musters and drills,
22 exceptions, survey and certification, as well as
23 a comprehensive set of schedules giving detailed
24 manufacturing and test standards for equipment to be
25 installed on trawlers, as well as other guidance on

1 certification, documentation and stability information.

2 It was, in short, a very complex code being
3 introduced.

4 In answer to a question as to why it took more than
5 five years to get legislation onto the statute book,
6 Mr Tanton explained in cross-examination that he was
7 able to give an idea of why there was this passage of
8 time. It was simply the length of time required for the
9 Department to consult on the proposed regulations and
10 get agreement on the myriad aspects that were involved.
11 In other words, there was a need to work by consensus in
12 introducing the new rules. These were not rules that
13 were going to be easily enforced against the will of the
14 industry. Obtaining that consensus required a lengthy
15 period of consultation with the fishing industry.

16 Sir, this present Inquiry is not in a position to
17 form any view as to whether any criticism of Parliament
18 or the Department is justified in relation to the time
19 taken for the rules to come into force. It does not
20 have the evidence before it for this purpose. Nor,
21 strictly, does the topic fall within the scope of the
22 questions this Inquiry is asked to address.

23 Nevertheless, in order to try and assist the Inquiry
24 and indeed the families in understanding what was
25 happening between 1969 and 1975, Mr Tanton has

1 undertaken some further research that shows that during
2 1969 to 1970 the Board of Trade established a number of
3 working groups with members of staff selected from
4 within the fishing industry and associated organisations
5 to examine particular aspects of fishing vessel safety.

6 The Board of Trade published a consultative paper
7 for industry in 1971, then engaged in a detailed
8 consultation process with the fishing industry that
9 included representatives of not only the owners but also
10 relevant unions, the officers guilds and various
11 fishermen's associations.

12 Sir, the Department laid the regulations before
13 Parliament late in 1974. While the legislative process
14 was ongoing, the Department also established the
15 administrative machinery necessary for implementation of
16 the regulations, including establishing the Fishing
17 Vessel Survey section within the Department.

18 Sir, we would submit, so far as you need to consider
19 this matter, that the period of time taken to introduce
20 what were highly complex and detailed regulations
21 imposing a completely new statutory framework for
22 fishing vessels cannot be regarded as excessive.

23 In any event, sir, so far as the hull and
24 superstructure of the Gaul were concerned, the Gaul was
25 already subject to a survey regime equivalent to that

1 later introduced by the 1975 rules. Sir, obviously
2 there I am talking about at the time of its loss. So
3 prior to her loss the Gaul was classed with
4 Lloyd's Register and subject to annual survey by that
5 organisation's surveyors. She had also been subjected
6 to survey during construction by surveyors from the
7 White Fish Authority.

8 Lloyd's Register surveyed the Gaul's hull and
9 superstructure in May 1973 and reported the condition of
10 her duff and offal chutes to be good. I have given you
11 the reference, sir, but we have already looked at those
12 documents. She was not due another class survey until
13 May 1974.

14 Sir, if the Gaul had not been lost, the regulations
15 would have required the Gaul's hull and superstructure
16 to undergo biannual inspection for the purposes of her
17 United Kingdom fishing vessel certificate. That is the
18 consequence of rules 126 and 130 of the Rules. In line
19 with the Holland-Martin recommendations, that survey
20 would in fact be carried out by a Lloyd's Register
21 surveyor.

22 Sir, can I just pause there for a moment because it
23 was suggested to you yesterday by Mr Saloman that the
24 consequence of the decision by the Holland-Martin
25 Committee that a statutory regime was required was to

1 suggest that a class survey was not sufficient. Sir, in
2 fact that proposition is simply contrary to what we find
3 in the Holland-Martin report. Perhaps I can take to you
4 that, sir. It is bundle AG14, at page 163.

5 Sir, the relevant passages are paragraphs 92 to 96;
6 perhaps in particular paragraphs 95 and 96. I will just
7 start, if I may, at the top of paragraph 95:

8 "Although there are no statutory requirements on the
9 design and maintenance of the hull structure of fishing
10 vessels, over four fifths of the deep sea fleet consists
11 of vessels voluntarily 'classed with Lloyd's Register of
12 Shipping. Vessels which are 'classed' have their
13 structure designed in compliance with a detailed set of
14 rules laid down by Lloyd's Register, whose surveyors
15 oversee construction in the shipyard, and inspect the
16 ship periodically in service as a condition of retaining
17 it in class. From their survey reports Lloyd's Register
18 maintain a detailed record of structural defects arising
19 in the fishing fleet and have made available to us some
20 statistics on hull machinery defects in trawlers
21 together with corresponding figures for the merchant
22 fleet. The figures show no statistical evidence of lack
23 of structural strength in trawlers which are classed,
24 and indeed the fishing fleet compares favourably with
25 the merchant fleet where structural and machinery

1 failures are concerned. In fact, it is common for the
2 steelwork in trawlers to be thicker in places than the
3 minimum measurements laid down in Lloyd's Rules.

4 "In view of the present generally satisfactory
5 record of trawlers' structures, and the practice of the
6 majority of the British trawler owners of classing their
7 vessel with Lloyd's Register of Shipping, it appears to
8 us that the structural strength of fishing vessels is
9 adequate. We recommend however that the basic
10 requirements on hull strength laid down for merchant
11 ships on the load line rules should be applied to
12 trawlers (with any necessary modifications) as part of
13 the statutory requirements on seaworthiness which we
14 have already proposed. Ships built to the requirements
15 of Lloyd's Register or a recognised Classification
16 Society, and maintained in class, will already comply
17 with these requirements."

18 It is apparent, sir, that what Holland-Martin was
19 seeking to ensure was that all ships were subject to
20 a statutory seaworthiness review, not simply those
21 classed with Lloyd's.

22 Sir, can I then turn to deal with my second matter,
23 which is the inspection regime in 1974.

24 The Inquiry has heard evidence of the presence of
25 Board of Trade surveyors, White Fish Authority surveyors

1 and surveyors from the UK Trawlers Mutual Insurance and
2 Protection Company in Hull. Mr Tanton has explained the
3 various rules of different surveyors in his note at
4 AG15.5, particularly at pages 3 to 7.

5 So far as the Board were concerned, its statutory
6 powers of inspection at this time was limited. The
7 Board of Trade surveyors would inspect to ensure
8 compliance with the requirements for fishing vessels
9 included in the general regulations for merchant
10 vessels. Those general regulations governed life saving
11 appliances, firefighting, musters, collision avoidance,
12 radio equipment and log book entries. Sir, I have given
13 you the reference again in Mr Tanton's report. The Gaul
14 was inspected in July 1972 and an SUR 183 was issued.
15 Sir, the reference for that is AG15.1, at page 61.

16 In addition, the Board of Trade surveyors had the
17 power to randomly inspect and, if necessary, detain
18 unseaworthy ships. Mr Tanton explained that this was
19 a power exercised in practice in reaction to a complaint
20 or following an incident involving the vessel concerned.
21 That was at Day 12 of this Inquiry, pages 39 to 40.

22 Crew members do have an opportunity to complain and
23 would generally do so either by telephone or by letter.
24 Again, the reference to that is Mr Tanton's evidence at
25 pages 80 to 81. However, there would generally be no

1 cause to inspect a vessel that was 18 months old, owned
2 by reputable owners, classed with Lloyd's Register and
3 insured with the UK Trawlers Mutual, particularly when
4 no complaint had been made about that vessel. Again,
5 I have given you the reference.

6 Mr Tanton was asked in cross-examination whether he
7 could identify how frequently random inspections would
8 take place, and he thought that they would occur
9 infrequently. This forms the basis for the comments we
10 had from Mr Munyard this morning. However, during the
11 adjournment that we had for the writing of submissions
12 Mr Tanton has checked to see if he can provide any
13 further detail as to the frequency of random
14 inspections. It has not proved possible to identify how
15 many random inspections were carried out.

16 However, in 1971 the Surveyor General did ask for
17 figures for the total number of inspections that were
18 carried out on fishing vessels in the year 1970. In
19 1971, the UK registered fishing fleet was 2,150 vessels.
20 In 1970, when the fleet would no doubt have been roughly
21 the same size, a total of 1,941 inspections were carried
22 out. This figure does include both random inspections
23 and inspections under the relevant merchant shipping
24 legislation. In short, sir, over 90 per cent of fishing
25 vessels were inspected in that year.

1 Sir, can I therefore turn to deal with the issue of
2 freeing ports. I do this only briefly because Mr Scott
3 has been following the Inquiry on the web and he has
4 contacted Mrs Duff just to remind the Inquiry of his
5 evidence at the original formal investigation in
6 relation to freeing ports. Sir, that evidence appears
7 at page 7, paragraphs E(ii) and (iii) of his preliminary
8 investigation report, which is at page 9 of AG11, and
9 section 36 his proof of evidence, which is at AG11,
10 page 101, and his calculations are contained in
11 particular at pages 103 to 104. In short, Mr Scott
12 agreed with the area of the freeing ports as measured by
13 the Lloyd's Register surveyor.

14 Sir, so far as Mr Scott's evidence is concerned,
15 there is perhaps one other aspect that needs to be
16 mentioned in light of the comments that were made as to
17 the conclusions you should draw as a consequence of his
18 evidence as to the condition of the sister ships. Sir,
19 although, in accordance with what I understand to be the
20 usual practice, then as well Mr Scott's preliminary
21 report was not disclosed, he was in fact asked to give
22 evidence as to the condition of the sister vessels at
23 the original formal investigation. He was questioned on
24 this matter by Mr Longcaster, who then represented the
25 families of Skipper Nellist and Mate Spurgeon. Sir, the

1 relevant evidence appears at page 47 for Day 12, and it
2 is questions 1 to 14.

3 Sir, enlightened with the normal theory that you do
4 not ask questions where you do not know the answers, the
5 questions asked by Mr Longcaster would tend to suggest
6 that by some means he did have knowledge of Mr Scott's
7 views on the sister ships. Sir, perhaps we can just
8 pick up a few of the questions rather than the whole.

9 Question 3:

10 "I take it you never saw the Gaul. I am asking
11 about the sister ships you have seen.

12 "Answer: On the sister ships, the condition of the
13 clips on the door in question was such that the door
14 could not be closed.

15 "Question: Is that on the vessel that we saw prior
16 to the Inquiry?

17 "Answer: No, sir, it was on the Kurd.

18 "The Commissioner: For what reason?

19 "Answer: The clips on the weathertight door were
20 rusted and paint-bound.

21 "Mr Loncaster: You say that meant it could not be
22 shut. Do you mean it would not move on its hinges?

23 "Answer: It would move on its hinges, but it would
24 not close."

25 Sir, there are then a number of other questions in

1 relation to that matter. Question 12, Mr Longcaster:

2 "You have, of course, heard the evidence given
3 earlier about requests for work to be done on, in
4 particular, the Gaul when she had returned to Hull in
5 the past?

6 "Answer: Yes.

7 "Question: I think I am right in saying that at no
8 time has there been any reference to that door on the
9 Gaul.

10 "Answer: Not to my knowledge.

11 "Question: So that, in effect, what you are saying
12 about the Kurd could be and probably was a single event
13 relating to that vessel alone?

14 "Answer: Very likely."

15 Sir, we know that following his preliminary report
16 further enquiries were made by Mr Scott and Mr Rea as to
17 the condition of the Gaul, and in particular depositions
18 were taken from Mr Dry and Mr Lee. It certainly appears
19 that by the time of his cross-examination by
20 Mr Longcaster, Mr Scott was not expressing a view about
21 the general condition of the sister ships, at least for
22 the purposes of the OFI.

23 So far as the preliminary investigation report is
24 concerned, the cross-examination by Mr Thomas of
25 Mr Scott again makes it clear that although the report

1 had not been formally disclosed, the fact of its
2 existence was known to the parties, as was the fact that
3 it contained other theories of loss beyond those
4 contained in his proof of evidence. Sir, again, I have
5 given you the reference to the cross-examination by
6 Mr Thomas on Day 12.

7 Sir, if and to the extent that you are considering
8 the question of the standard of the maintenance regime,
9 I just remind you again of what was said in Mr Meeson
10 and Miss Cunningham's closing at paragraphs 26 to 33.

11 MR JUSTICE DAVID STEEL: I am sorry, I am not quite getting
12 the drift of that.

13 MR COOPER: Sir, I was simply picking up that insofar as you
14 are contrasting the evidence you have before you
15 relating to the condition of the Gaul when she set to
16 sea, or the maintenance regime, you have Mr Scott's is
17 evidence. You also have the other evidence that is
18 summarised in those paragraphs --

19 MR JUSTICE DAVID STEEL: I see, yes. I will certainly
20 grapple with that issue.

21 MR COOPER: Sir, in my written submissions I was about to
22 move on to the question of why no search. However, in
23 light of the comments made this morning about the 2002
24 survey, can I just pick up very briefly what was said
25 there.

1 Sir, first of all, it was suggested that what is
2 found in section 5 is the account of the joint experts
3 as to the search for remains from the crew members. It
4 is to be remembered that that is in fact an account
5 prepared by those members of the joint experts report
6 who were on board. In light of the fact that you had at
7 a previous preliminary hearing indicated that conduct of
8 the 2002 survey was not a matter on which you required
9 detailed comment unless it went to the evidence as to
10 the cause of the loss, no issue was taken by the
11 Department with that account in order to avoid
12 distracting this Inquiry. We do not necessarily,
13 however, accept all the comments made there.

14 Sir, it is important to remember that this was an
15 investigation to identify not only the cause of the
16 loss, as well as recovering samples for forensic
17 analysis. A layered approach had to be adopted to the
18 survey in order not to disturb the evidence that might
19 go to the cause of the loss. The recovery of forensic
20 samples was always going to be at the end of the survey
21 because it would involve activities that might destroy
22 or disrupt evidence that was important to the discovery
23 of the cause of the loss. It involved breaking into the
24 ship's superstructure; it involved moving furniture and
25 other items within the cabins in order to recover the

1 forensic samples.

2 Sir, the objective of the 2002 survey was to recover
3 sufficient samples to enable the remains of six members
4 of the crew to be identified. Sir, the reference for
5 that is AG3, tab 2, page 8.

6 The survey believed that it had sufficient for
7 forensic samples to achieve that aim. As it turned out,
8 they came back with sufficient samples to identify four
9 members of the crew. You might feel, in light of the
10 unique and innovative nature of the 2002 survey, that
11 that is a success rate that is to be commended, not
12 criticised. Sir, that is all I wish to say on the 2002
13 survey.

14 I know that it is 12.55. Before I turn to the long
15 topic of why no search, is this a convenient moment?

16 MR JUSTICE DAVID STEEL: Certainly.

17 (12.55 pm)

18 (The short adjournment)

19 (2.00 pm)

20 MR COOPER: Sir, I started my submissions by referring to an
21 organogram at the back of my submissions.

22 MR JUSTICE DAVID STEEL: Yes, I have that.

23 MR COOPER: That has now been given an image number and it
24 has become, having broken our duck, DFT1 and will appear
25 in the images bundle.

1 Sir, in opening the case for the families on the
2 issue of why no search, Mr Saloman suggested that the
3 focus should be on two things: firstly, the government's
4 knowledge of the likely location of the Gaul in 1977 to
5 1978 and in the early 1980s; and secondly on the reasons
6 the government gave for not searching for the Gaul.

7 He has sought to suggest that the Department buried
8 its knowledge of the likely location of the wreck and
9 that the reasons given by the Department for its failure
10 to search for the Gaul both in its internal
11 documentation and in its public statements are not true.
12 He has however failed to offer a coherent explanation
13 for why the Department should seek to bury its knowledge
14 of the location of the wreck or offer any sensible
15 explanation as to why the Department's stated reason for
16 not searching for the wreck should be false.

17 It has been suggested that the government lacked the
18 political will for a search. If this is intended to
19 suggest that the government failed to give serious
20 consideration to the question of whether a search should
21 be mounted, the Department submits that such
22 a conclusion runs contrary to all the evidence disclosed
23 in the documents before you.

24 Sir, the Department recognises and regrets that the
25 families, or at least some of them, may never accept the

1 decision not to search for the wreck sooner.
2 Unfortunately it is the role of a government department
3 that it must at times balance particular interests
4 against the wider public interests and the resources
5 available to it. It is not so easy to make a decision
6 when faced with having to decide how to allocate what
7 are necessarily limited resources to not just the
8 particular case before you but also others that may have
9 occurred or may be likely to occur.

10 Whether or not one agrees that the Department got
11 the balance right in its earlier decision not to search
12 for the Gaul, objective analysis of the evidence before
13 you can lead only to one conclusion, namely that the
14 Department made the decision it did in good faith and
15 for the reasons publicly stated at the time.

16 Sir, I turn now to deal with the government's
17 knowledge of the likely location of the Gaul.

18 We do not dispute that by April 1977 the Department
19 was reasonably confident that the information it had
20 pointed to the likely location of the wreck of the Gaul.
21 So in the remainder of that paragraph of my closing
22 I have given you reference to two of the documents that
23 you have already been referred to.

24 Can I just make one point in relation to the memo
25 from Captain Lusted that you find at AG34, page 15.

1 A complaint was made that the Department did not follow
2 up Captain Lusted's suggestion to call for trawlers to
3 take soundings and record the position of the wreck.
4 What is clear from the minute of Mr Doyle that appears
5 at AG34/17.2, and the Surveyor General's response that
6 follows it, is that the Department decided instead to
7 take up Captain Lusted's second suggestion and ask the
8 Ministry of Defence to do a sonar sweep. So it is
9 unfortunate that the Department was unsuccessful in
10 persuading the Ministry of Defence to do that, but they
11 did not simply ignore Captain Lusted's recommendations.

12 Sir, it was the knowledge of the likely location of
13 the wreck that led the Department to give extensive
14 consideration to the question of whether to search for
15 the Gaul and later to offer what assistance it could to
16 commercial companies looking to search for the Gaul.
17 Throughout the relevant periods, the Department
18 corresponded at length with the relatives who wrote to
19 them directly and sought to explain its decision not to
20 search for the wreck. The Department maintained
21 a consistent view that the Gaul had been lost at sea in
22 the area of the North Cape Bank and that there was no
23 foundation to the rumours that the crew had been seized
24 by the Russians.

25 Did the government reveal its knowledge of the

1 likely location of the wreck? Although the Department
2 may not have given the relatives an exact estimate of
3 the position of the wreck in 1977, the Department kept
4 the families and their MPs informed both as to the
5 findings of the life raft container and as to their view
6 that it was a significant piece of information
7 confirming that the Gaul sank in the area where the
8 Department believed it had been lost. There was never
9 any doubt as to the Department's view that the vessel
10 had been sunk, but at this time those relatives
11 corresponding with the Department, directly or through
12 their MPs, did not accept that the vessel had sunk.

13 Clearly, if it would have assisted families
14 generally to have been given a decision, it is to be
15 regretted that this did not happen at the time. But the
16 documents show that the officials concerned at this time
17 were not aware that this was such an important feature.

18 There is certainly no evidence to the Department
19 deliberately concealing their view as to the location of
20 the wreck or of their intentions in relation to
21 searching for the vessel. And, sir, I then go on to
22 give you a number of images. I do not propose to pick
23 up every document by going to them, but I will take you
24 through what is in my closing, if I may.

25 The Marbella picked up the life raft container in

1 early March 1977 at about the same time as the
2 Coriolanus detected an obstruction on the North Cape
3 Bank. On 7th April Mr Clinton Davis provided a written
4 answer in Parliament to Mr James Johnson MP stating
5 that:

6 "Part of a life raft container, later identified as
7 equipment which had been put aboard the Hull trawler
8 Gaul, was recovered in the trawl of the Marbella on
9 2nd March while the vessel was fishing on the North Cape
10 Bank, north of Norway in the broad area where it
11 believed that the Gaul was lost on 8th February 1974."

12 Subsequent correspondence with both MPs and those
13 relatives who were writing directly to the Department
14 confirmed the recovery of the container and that it was
15 recovered in the broad area where it was believed that
16 the Gaul was lost.

17 Sir, you are referred to the letter to Countess Von
18 Sievert dated 27th April 1977, at page 21 of bundle
19 AG34, in which Mr Doyle tells the Countess that the life
20 raft container was recovered by the Marbella whilst
21 fishing on the North Cape Bank.

22 You are also referred to letters dated
23 13th June 1977 to Mrs Doone, in which a Mr Crossingham
24 provides similar information to her; and, similarly,
25 a letter to a member of the general public,

1 a Master Birtwhistle, who had also sought information
2 about the Gaul.

3 Sir, in late June 1977, Mrs Stockdale prepared
4 a response for Mr Clinton Davis to send to Mr Hoyle, MP,
5 concerning correspondence received from Mrs Doone. The
6 draft states that ships fishing north of the North Cape
7 Bank have recently reported echo sounder traces of an
8 uncharted obstruction on the seabed that could be the
9 wreck of the Gaul. Sir, that is at bundle AG34,
10 page 44.

11 MR JUSTICE DAVID STEEL: It is slightly odd that we do not
12 know whether the section within which that observation
13 was made, which was placed in square brackets, was ever
14 said.

15 MR COOPER: Sir, there are two pieces of evidence which
16 suggest that it was. Sir, I have given you one of them
17 in my footnote. Although we only have the letter in
18 draft, we have a letter from Mrs Doone to Mr Clinton
19 Davis dated 21st July at page 90, and this is a letter
20 that Mr Saloman took you to. Sir, if you turn on to
21 page 92 in the letter, you will see that in the final
22 paragraph -- this is a letter that she writes having
23 seen the letter to Mr Hoyle, and she writes at the end:

24 "As for the undersea search, this will never happen.
25 You do not know where to look."

1 The fact that she is referring to an undersea search
2 might suggest that the paragraph in square brackets was
3 actually included.

4 Sir, two other pointers. The first is this: that
5 there is no obvious reason why the passage in square
6 brackets should be taken out, having been put in the
7 draft. Secondly, sir, we do have, at page 134 of the
8 bundle, an extract from the Hull Daily Mail in which
9 Mr Clinton Davis' decision not to search for the Gaul
10 was announced. Sir, I have an extract from that in my
11 closing at subparagraph (d). The passages I draw to
12 your attention are the following:

13 "A search became a possibility when debris,
14 including a rife raft cover, was found in the area where
15 the Gaul disappeared. But the Department's decision
16 announced to the three Hull MPs this week has ruled out
17 such a move because of the cost and the limited
18 information that it would reveal ...

19 "The trawler is thought to lie at about 150 fathoms
20 depth, which would pose serious problems for the
21 searchers. Its precise location has never been fixed,
22 although skippers fishing the area have had traces on
23 echo sounders which could be the wreck of the Gaul."

24 It does therefore appear, sir, that by the date of
25 this article knowledge of the echo sounder traces had

1 become public knowledge, and it is of course entirely
2 possible, and perhaps likely, that the way it had become
3 public knowledge was through reference to being found in
4 the letter to Mr Hoyle.

5 Sir, while you have that clip open to you, it is
6 perhaps just helpful to pick up the other passages that
7 I rely on. Page 134, a little bit further through the
8 article -- and, again, this is set out in my closing, if
9 it is easier to read, sir:

10 "The Secretary of Hull Trawlers Officers Guild,
11 Skipper Tom Neilson, said today: 'we can all appreciate
12 what the relatives feel and can sympathise with them,
13 but there is also a different side to consider.
14 Skippers have picked up various bits and pieces of
15 debris in the area so we all know she's there. Any
16 search made of the area could be at the cost of other
17 lives.' ..."

18 "A spokesman for British United Trawlers, the Gaul's
19 owners, who have been in contact with the Department of
20 Trade during the life raft tests added: 'Mr Davis has
21 carefully weighed up the situations and looked at the
22 cost and difficulties. It's one of the hardest places
23 in the world to carry out an underwater search. Even if
24 she was found, it would not answer all the questions
25 about her loss. We feel the inquiry came to the right

1 decision and that a search would only support that. We
2 are as certain as anyone can be that she sank.'" "

3 Sir, I have moved forward, as it were, to
4 subparagraph (d) on page 11 of my closing, and missed
5 out some of the other correspondence referred to on
6 page 10. I am not going to take you through all that
7 now, if I may, but could I just ask you to note it is
8 there.

9 MR JUSTICE DAVID STEEL: Yes.

10 MR COOPER: Picking up, if I may, at paragraph 22 of my
11 closing. As I said earlier, I accept that the
12 Department did not give a specific estimate of the
13 position to the families in the period 1977 to 1978.
14 But it was given to them in September 1980. Sir, you
15 have already been referred to the Stockdale letter -- or
16 what are called the Stockdale letters that appear at
17 pages 252 and following of the bundle.

18 Sir, if we just for a moment turn through to
19 page 270, you will see some of the internal memoranda
20 that went before the writing of this letter. Sir, what
21 it apparent from this is that it was at Mrs Stockdale's
22 initiative that the position was given to the families
23 and that her superior at the time, Mr Doyle, agreed that
24 she should do so.

25 Sir, it is perhaps curious to suggest that somehow

1 the government were seeking to cover up the position of
2 the wreck when it is at their very own initiative, and
3 in particular the initiative of Mrs Stockdale, that that
4 information was given to the families. Sir, the
5 relevant passage appears at page 271:

6 "But one thing puzzles me and that is that nowhere
7 do we seem to have released information about the echo
8 sounding trace from Coriolanus nor do the files show any
9 discussion about whether or not we should do so."

10 Sir, a number of suggestions have been made to you
11 about the motives of Mrs Stockdale in writing this
12 letter. We would submit, so far as that is a matter
13 that you actually need to consider, that there is no
14 reason to doubt that Mrs Stockdale's motives were other
15 than those set out in her letter and in the memorandum;
16 namely that she wanted to help the families come to
17 terms with the fact that the vessel had been sunk, and
18 she wanted them to understand the reason why the
19 government was not prepared to carry out the search.

20 Sir, if we look at page 252, we see that
21 Mrs Stockdale is a lady who has had a long and, as it
22 were, intimate acquaintance with the Gaul tragedy:

23 "My name is Peggy Stockdale. I am near to retiring
24 age and I work as a Senior Executive Officer in that
25 section of Marine Division which deals with the

1 investigation of ships casualties. Most civil servants
2 move around to different jobs every few years, but I am
3 perhaps unusual in that I have been doing the same job
4 for 8 years. This means that I have been dealing with
5 the administrative aspects of the loss of the Gaul from
6 the day we first heard the alarming news that she was
7 missing until now when I sit down to answer your latest
8 letter.

9 "Perhaps you will find it difficult to believe that
10 a remote civil servant like myself grieved with you in
11 the loss of your menfolk, but such was the case. I sat
12 among you during part of the Public Inquiry at the City
13 Hall in September 1974 and was even further moved when
14 I came to know some of you personally and felt the shock
15 and grief that the loss of that fine modern trawler and
16 her crew had had on the fishing people of Hull -- and
17 not only among those who were directly involved."

18 Sir, my short submission in relation to that is
19 there is no reason to doubt that those are other than
20 the true motives of Mrs Stockdale in writing that
21 letter.

22 Sir, moving on to another point in relation to these
23 letters, it was suggested that this letter was only
24 written to two of the families and was not more widely
25 seen. We obviously cannot know how widely this letter

1 was seen, but we do have some evidence to suggest that
2 it was seen by more than just the ladies to whom the
3 answers were sent.

4 Sir, we know, for example, from the letter to
5 Mrs Stockdale from Countess Von Sievert at AG34,
6 page 267, that she saw the letters. We can pick that up
7 just from the first paragraph:

8 "To: Peggy Stockdale.

9 "Your letter of the 25th September 1980 to
10 Mrs B Parker about the Gaul trawler and her crew, the
11 contents of which took up seven pages, my how your
12 guilty conscience must be preying on your minds.
13 I curse each and every one of you who has withheld the
14 truth from those relatives regarding the facts of what
15 really did happen to the Gaul and the crew."

16 So we know that Countess Von Sievert at least saw
17 the letter.

18 We also know that the original letters from
19 Mrs Betts and Mrs Parker were written on behalf of the
20 authors and other relatives, and I will not take you to
21 the letters, sir, but you can see it if you look back at
22 them later. So it would seem likely that they were
23 shown to those other relatives.

24 Similarly, sir, the series of letters that appear at
25 AG34/293 to 305, which are letters to Mrs Thatcher

1 referring to the loss of her son Mark in the Sahara,
2 would also suggest that the families were sharing
3 information among themselves and co-ordinating their
4 letter writing.

5 Sir, other evidence which makes the suggestion that
6 the Department was somehow holding the location of the
7 wreck untenable is the evidence of the Department's
8 negotiations with commercial enterprises for an
9 underwater search. Sir, that evidence makes clear that
10 the Department was willing to co-operate and was open
11 about its estimated position for the wreck.

12 Sir, on 6th September 1977 Mrs Stockdale gave the
13 Board's estimate of the position of the wreck to P&O
14 Subsea, and that appears from a note on a letter from
15 the Department to P&O Subsea at AG34, pages 154 to 155.

16 Sir, in a minute of the same date that appears over
17 the page, at page 156, we also see that Mr Doyle has
18 given the position to ULS, and that ULS also have a copy
19 of the echo sounder trace.

20 MR JUSTICE DAVID STEEL: Where on page 156?

21 MR COOPER: Sir, in paragraph 3, about two thirds of the way
22 through:

23 "I propose to discuss these points with Mr Jones
24 [who worked for ULS]. Presumably we would be interested
25 to see the video films of the wreckage if they became

1 available, although we do not think they would yield
2 anything positive in terms of maritime safety. The two
3 firms already have the position of the Gaul, as reported
4 to us, and ULS also have a copy of the echo sounder
5 trace. Both firms understand and accept that they are
6 on their own, but I think we should respond positively,
7 if we can do so, to any requests for information."

8 Sir, later in September, Miss Le Grys arranged for
9 Mr Eastaugh to be given further information about the
10 position of the Gaul and a list of known wrecks. That
11 appears at page 178. Sir, perhaps the easiest place to
12 note it is the handwritten note at the bottom:

13 "Captain Munro has discussed with Mr Doyle. He will
14 give positions to Mr Eastaugh together with a list of
15 known wrecks and all what else is required."

16 Sir, perhaps one of the most important documents is
17 that on 14th November 1977, Mr Haynes of Thames
18 Television asked Mr Doyle for his estimate as to the
19 position at which the Gaul was likely to lay. Mr Doyle
20 replied on 25th November with the approximate position
21 of the Gaul, giving both Decca position and geographical
22 position. That, sir, is at AG34, page 209. Sir, the
23 relevant paragraph is paragraph 1.

24 We can also see that the Department was generally
25 being helpful to Mr Haynes in terms of the provision of

1 information.

2 Sir, all of the above shows that the Department did
3 not in any way seek to hide its knowledge of the
4 location of the wreck or its belief that the wreck had
5 foundered. It is easy to suggest that the Department
6 knew where the wreck was in mid-1977 when one looks back
7 with actual knowledge of the wreck, and with the benefit
8 of two, maybe three, substantial surveys behind one.
9 The Department officials at the time had no such luxury.
10 They were operating in an environment where underwater
11 technology for the use of the civilian industry was
12 relatively new. They only had an estimate of the
13 wreck's position, even if it was one in which they were
14 confident. They had to acknowledge the risk that the
15 particular wreck was not the Gaul; that notwithstanding
16 the information they had, they might not find the wreck;
17 that if they did find it, it might not yield useful
18 information about the cause of the loss. Sir, the
19 Department also had to be mindful of not causing further
20 distress to the families, particularly in light of the
21 current of false rumour that continued to circulate
22 about the Gaul.

23 Sir, it is entirely reasonable for the Department to
24 consider that if they had announced the search or
25 announced the location and searched there and not found

1 it, it was only going to add credence to the rumours
2 circulating at the time about the ship having been
3 seized by the Russians.

4 Sir, it is perhaps also worth noting at this stage
5 that in his television programme concerning his search
6 for the Gaul, Mr Norman Fenton does acknowledge that it
7 was only at the very end of his search that they found
8 the wreck, and that they very nearly missed it.

9 Can I then turn to the Department's reasons for not
10 searching for the Gaul. Mr Clinton Davis made the
11 decision not to search for the wreck in August 1977.
12 His reasons for the decision were outlined in letters to
13 the MPs Mr Prescott, Mr Johnson and Mr McNamara, and you
14 have those letters at AG34, pages 127 to 129. Sir,
15 generally the letters stated:

16 "I wrote to you on 1 August about the recovery of
17 part of a life raft container from the trawler Gaul and
18 the possibility of mounting an underwater search.

19 "In consultation with Naval authorities and the
20 operators of submersibles we have carefully considered
21 the case for mounting an underwater search in very deep
22 water. I have reached the conclusion that the
23 considerable cost involved would not be justified,
24 particularly as it would not be possible to do more than
25 locate the vessel and would not help us to learn new

1 lessons regarding safety at sea. I appreciate that
2 relatives of the crew of the Gaul would have preferred
3 me to have arrived at a different conclusion. I wish to
4 assure you that, while I did take this very important
5 factor into account, for the reasons which I have set
6 out above I felt that I should not authorise the
7 expenditure involved."

8 Sir, Mr Clinton Davis' decision was taken in light
9 of internal advice received from Department officials.
10 You have that, sir, at page 119. What is obviously
11 apparent from the document, sir, is the publicly stated
12 reasons given by Mr Clinton Davis for his decision are
13 entirely consistent with his internal advice, and
14 nowhere in these documents are you going to find
15 a suggestion that the Department simply did not want to
16 search for the Gaul or that it lacked any particular
17 will to do so.

18 Sir, if we look at Mr Doyle's memorandum -- and you
19 have already been taken to it so I was not proposing to
20 read it into the transcript again, but just to summarise
21 its contents -- what we see is Mr Doyle outlining the
22 steps that have been taken to investigate the
23 possibility of a search, using the resources of the MOD,
24 the Royal Norwegian Navy and commercial operators.
25 A wide ranging span of enquiry has been made to see

1 whether there is a way to mount a search.

2 He has outlined the potential cost of using
3 commercial operators: between £50,000 and £90,000 -- and
4 expressed his preference for using the services of
5 Vickers, who provided the highest quotation, on the
6 basis that there was a greater likelihood of success.
7 Sir, again that is a indication that, if there had been
8 a conclusion that there were grounds of maritime safety
9 that justified a search, cost was not going to be
10 a decisive factor.

11 Expressed the view that there was no argument of
12 maritime safety that would justify the search since
13 a search would "confirm the findings of the Court of
14 Formal Investigation only in the sense that the Gaul had
15 in fact sunk off the North Cape Bank. It would not
16 establish positively what caused the vessel to go down".

17 Sir, again, there you have an early indication that
18 when the Department writes to relatives or to MPs
19 suggesting that a search would not add anything to the
20 conclusions of the Court of Formal Investigation, they
21 were referring to the fact that that court had concluded
22 that the vessel had sunk rather than the mechanism by
23 which it had sunk. I will come back to develop that
24 point a little bit later.

25 Sir, importantly, Mr Doyle also considered whether

1 a search could be justified on humanitarian grounds, but
2 he concluded that it could not as (i) it was in his view
3 a dubious proposition that the finding of the Gaul would
4 offer solace to all the relatives, and, (ii), he
5 concluded that there was a real possibility of failure.
6 Although Vickers Oceanic had given a 95 per cent chance
7 of finding the wreck if the position was accurate, they
8 conceded:

9 "We may run out of time and not find the obstruction
10 or we may find that it is not in fact the Gaul. We
11 could thus wind up in a situation where, having expended
12 a great deal of money, we would have succeeded only in
13 reawakening the distress of the relatives and generating
14 a new wave of doubt and anguished correspondence about
15 the crew being taken by the Russians."

16 In other words, sir, the stated reasons for not
17 carrying out a search were that a search would not help
18 the Department learn new lessons for maritime safety;
19 the humanitarian grounds for a search were doubtful as
20 it was unlikely that finding the Gaul would satisfy all
21 the relatives; and there was a real likelihood of
22 failure. In all the above circumstances, the cost of
23 a search could not be justified.

24 Sir, those reasons for not mounting a search are
25 consistent with the reasons given by Captain Lusted, who

1 had previously considered the question of whether
2 a search should be mounted in August 1974. Sir, I have
3 given you the document reference AG33, at page 74.
4 Unless it would assist you, sir, I was not proposing to
5 look at that now, but simply give you the reference.
6 And it was also consistent with the reasons identified
7 by Mrs Stockdale in her letter of 25th September 1980.
8 Sir, in that letter, which we have already looked at, we
9 note that Mrs Stockdale says:

10 "There then arose the question of whether
11 submersible craft, equipped with cameras, should be used
12 to dive down to the wreck. But after consulting the
13 naval authorities and the operators of submersibles, the
14 Department decided against it. The reason for this was
15 not so much the costs (which would have been very high)
16 but simply because it would not have resulted in
17 anything more than being able to locate the ship and
18 take photographs. At that depth, the photographs might
19 not necessarily have shown up the ship's name and
20 certainly would not have revealed why she foundered so
21 we would not really have learnt any more than we already
22 know. Nothing in the 3 years since that decision was
23 taken has caused us to change our mind about this ..."

24 Sir, so far as the question of the size of the
25 search area was concerned, that was a matter Mr Saloman

1 addressed as a reason for not searching. It is clear
2 that while that was a factor the Department was
3 obviously considering in relation to assessing the
4 prospects of success of any search, it was not a reason
5 for refusing a search in 1977.

6 So, sir, it did feature in the letters that were
7 originally written to the MPs on 1st August, where they
8 were being told about finding the life raft container
9 from the Marbella. Those letters did not contain the
10 actual decision not to search. The actual decision was
11 contained in the letters of 22nd August that are
12 referred to in paragraph 29 of my closing submissions.
13 And nowhere in those letters do size of search area
14 appear as a particular reason for not carrying out
15 a search.

16 Sir, there are no internal documents from the
17 Department's files to suggest that the Department's
18 publicly stated reasons were not the actual reasons why
19 the Department decided not to search for the Gaul.

20 I then turn to consider the different grounds on
21 which the Department decided not to search for the Gaul.
22 Can I start with no benefit for maritime safety.

23 Sir, the only bases on which this ground for no
24 search is challenged are the suggestions that it is
25 inconsistent with, firstly, the results of the NMI

1 studies that supported the view that water on the
2 factory deck had to be a contributory factor to the loss
3 and were themselves a reason for a search.

4 Sir, it is also suggested that the NMI studies were
5 inconsistent with the conclusions of the original formal
6 investigation, and so undermine the Department's stated
7 view that a search would not add to the conclusions of
8 the original formal investigation.

9 Sir, can I first of all turn to deal with the NMI
10 studies. Again, sir, you were referred to various
11 extracts from Mr Nicklin's book in relation to the NMI
12 studies. This was said to be because interim report
13 number 6 was not available. We do, however, have the
14 NMI collated report at AG2, and comparison between the
15 report and the extract from Mr Nicklin's book attached
16 to the closing submissions of Mr Saloman and
17 Miss Hosking shows that the information relied on by the
18 families does appear in that collated report. Sir,
19 I have given you the references to where you will find
20 that.

21 Sir, the Department does not dispute that the NMI
22 were carrying out tests for the Department, which would
23 eventually establish that it was likely that the Gaul
24 would have needed water to get to the factory deck in
25 order for her to be overwhelmed. It is also not in

1 dispute that this mechanism was not one which the formal
2 investigation explicitly recognised as being causative
3 of the loss of the Gaul.

4 Sir, I pause there to note it was however work being
5 carried out with the encouragement of the original
6 formal investigation. Sir, the reference for that is
7 paragraph 13.2 of the report of the original formal
8 investigation, which you find on page 110 of AG20. This
9 is where originally the Court of Formal Inquiry was
10 considering the recommendations put forward by the
11 Department, on which it declined to comment:

12 "The first conclusion which was reached by the
13 Department of Trade was that Gaul would not have
14 capsized unless there was a combination of excessive
15 free surface water on the trawl deck and on the main
16 deck in the factory spaces. This preliminary conclusion
17 was modified after Mr Scott had discussed the matter in
18 detail with the other experts. Nevertheless it was
19 necessary to investigate the possibility that an
20 excessive amount of water accumulated in the factory
21 spaces. That investigation led the Department of Trade
22 to formulate nine ways in which the design of the sister
23 ships of the Gaul might be improved."

24 He then goes on to consider the fact that the
25 Inquiry was asked to make recommendations as a result of

1 the Department's recommendations, and he explained why
2 he was not prepared to do that:

3 "For these reasons the Court declined to hear
4 evidence about the suggested alterations in design.
5 Nevertheless the Court expresses the hope that these
6 topics will be further investigated by naval architects
7 in the Department of Trade with a view to promoting
8 greater safety."

9 Sir, coming back to paragraph 32 of my submissions,
10 there is no basis on which it can be said that the work
11 done by the NMI is a good ground to challenge the bona
12 fides of the Department. At the time, the Department
13 did not believe that a search would enable them to do
14 more than locate the vessel and was unlikely to assist
15 in identifying the cause of the loss. This was
16 a reasonable view in light of the information then
17 available to the Department.

18 Sir, in 1974, Captain Lusted discussed the question
19 of a search with Mr Redgment at the Admiralty Underwater
20 Weapons Establishment, again at AG33, page 74. The
21 advice was:

22 "Even if we were to locate the wreck of the Gaul
23 with sufficient confidence and accuracy to justify an
24 investigation by a submersible there is doubt if this
25 would lead to any definite findings of the cause of the

1 loss. We would be able to find out how she was lying on
2 the bottom (of very doubtful value). If the exposed
3 parts of her hull were intact and we would learn what
4 her general external condition was, these might give a
5 clue to her loss but it is doubtful if they would give
6 much more. If she foundered due to loss of stability we
7 would probably learn nothing."

8 That information was later relied on by
9 Captain Lusted in 1977 in his original memo in
10 April 1977, considering what should happen now that the
11 Department was reasonably confident they knew where the
12 Gaul was.

13 Sir, Captain Lusted continued further
14 investigations, and the information he was provided by
15 ULS, at a meeting on 8th June, was that their
16 submersible was:

17 "Difficult to operate in currents in excess of 2.5
18 knots when near stationary photography is required. Has
19 two cameras fitted -- one wide lens for the use of
20 operator in controlling the movement of the submersible
21 and one for taking video film ...

22 "With reasonably clear water a well defined picture
23 of objects at a range of 1 metre through an angle of 70
24 degrees is obtained making a complete and detailed
25 inspection of a large underwater object possible."

1 Sir, it appears from Captain Lusted's minute that
2 the submersible had not been used at depths in excess of
3 500 feet before.

4 Sir, there was also advice from the MOD in a letter
5 dated 21st June -- and again I might invite you to read
6 that, sir, later -- that there would be considerable
7 difficulties with the search.

8 Sir, we have ULS's proposal for confirmation of the
9 identity of the wreck and hull survey at AG34, page 51.
10 Sir, that proposal, at pages 55 and 56, demonstrates the
11 relatively limited camera and lighting resources that
12 would have been available for a search. So I draw your
13 attention to paragraph 2.2.6:

14 "CETUS uses a National Panasonic half inch VTR and
15 silicon target vidicon camera."

16 Then in 2.2.7 you have details of the lighting.

17 Over the page, at paragraph 2.2.10, "Stills
18 Records":

19 "An Olympus OM2 still camera is fitted with a 250
20 shot magazine, uses a 28mm focus f.1.8 lens, automatic
21 exposure control."

22 Sir, similar limited specifications are provided by
23 the Risdon Beazley specification at pages 67 to 68.

24 What I would suggest, sir, is that all one needs to
25 do is contrast that level of technology with the sort of

1 technology that it has been necessary to use for the
2 2002 survey to acquire the imagery that we have seen,
3 the use of video rays that were necessary to enable us
4 to acquire detailed imagery of the duff and offal
5 chutes, both internally and externally, and the use of
6 the video spyball camera, for example, which enabled us
7 to identify that the factory access door had been hooked
8 back.

9 Sir, we accept that it would have been possible to
10 identify that the Gaul had actually been found, but any
11 imagery would certainly have been limited. It would not
12 have been of the quality provided by the 1998 survey, or
13 perhaps more particularly the 2002 survey. We would not
14 have had imagery that would have enabled us to know how
15 the hatches came open. There would no doubt have been
16 problems caused, sir, at that stage by the difficulties
17 of removing nets that surrounded the wreck. And, of
18 course, sir, you will be aware of the importance of GPS
19 technology these days to keep mother ships on station.

20 So, sir, although Mr Clarke suggested that the
21 Department's view that no benefit might be gained from
22 an underwater survey could be questioned in light of the
23 discoveries made on the 1998 survey, that suggestion has
24 to be considered harsh in light of the fact that it was
25 only with the 2002 survey that the duff and offal chutes

1 were found to be open and that an intrusive examination
2 of the wreck could be made.

3 Sir, we are obviously all aware, also, that one of
4 the most important tasks so far as the families are
5 concerned was to obtain proof that their men were still
6 on board the wreck. In 1997 it would clearly have been
7 impossible to do that, and it certainly would not have
8 been possible to collect the forensic samples that were
9 obtained in 2002; nor would it have been possible to use
10 DNA matching to match those samples to the relatives of
11 the crew.

12 Sir, we would therefore submit that it is
13 a reasonable view that a search for the Gaul was
14 unlikely to assist the Department in confirming whether
15 the Gaul had water on the factory deck at the time of
16 sinking. Indeed, one might think, sir, that the
17 relative certainty of the results provided by the NMI,
18 including the trials done with one of the Gaul's sister
19 ships, might be said to mitigate against a search, given
20 the information that they had already provided to the
21 Department for future trawler safety.

22 Sir, you were taken by Mr Saloman, again, to
23 Mr MacIver Robinson's introduction to the MAIB paper,
24 which appears at AG34.1, page 56. Sir, if one looks
25 through those recommendations, one will see the depth of

1 lessons that the Department felt it had been able to
2 learn from the NMI trials alone.

3 In any event, there is no basis on which one can use
4 the NMI studies that casts doubt on the genuine
5 reasoning of the Department for not carrying out
6 a search.

7 Sir, we do also note that the correspondence shows
8 that a copy of the NMI stability report was provided to
9 the solicitors then representing the families in
10 June 1978. That appears at AG34.1, page 22. And there
11 is no evidence to suggest that anyone then acting for
12 the families came back and suggested that the report was
13 a reason to reopen the question of whether there should
14 be a search.

15 Sir, can I then turn to deal with the conclusions of
16 the OFI. Sir, we suggest that the focus of the families
17 corresponding with the Department and indeed the focus
18 of the MPs corresponding with the Department in 1977 and
19 1978 was the theory that the vessel had not been sunk
20 and that the relatives were being held by the Russians.
21 Sir, in paragraph 35 of my closing I have given you
22 various examples of that sort of correspondence. I was
23 not proposing to take you back through it, unless you
24 wished me to.

25 It was against that background that the Department

1 expressed the view that a search would not add to the
2 findings of the original formal investigation; that is
3 to say the finding that the Gaul sank off the North Cape
4 Bank. Sir, in this respect, I refer you to the letter
5 from Mr Clinton Davis to Mr Johnson and other MPs on
6 1st August 1977, at AG34, page 104, in which he records:

7 "You will recollect that the container was recovered
8 in the trawl of the MT Marbella on 2nd March this year
9 whilst fishing off the North Cape Bank, north of Norway.
10 In our view, this conclusion if anything endorses the
11 finding of the Court of Formal Investigation which
12 inquired into the loss of the Gaul."

13 Sir, that is consistent with the minute from
14 Mr Doyle dated 5th August, which we have already looked
15 at, in which he states:

16 "If the Gaul were in fact located it would confirm
17 the findings of the Court of Formal Investigation only
18 in the sense that the Gaul was in fact sunk off the
19 North Cape Bank. It would not establish positively what
20 caused the vessel to go down."

21 Can I pick up one other document, sir, that was
22 referred to by Mr Saloman. It appears at AG34,
23 page 159. Sir, this was the letter from a Mrs Holborn
24 that Mr Saloman referred to as an example of somebody
25 writing to the Department about the question of

1 stability as well as the question of the vessel being
2 seized by the Russians. The relevant paragraph appears
3 at page 160:

4 "If you don't agree to a search on the grounds to
5 allay the suspicions regarding the Russians, surely one
6 would be justified to determine what went wrong
7 regarding the stability or the gear aboard the ship."

8 And so you were taken to the response by the
9 Department to that letter, and that appears at page 172:

10 "I have been asked to reply to your recent letter
11 addressed to Mr Clinton Davis about the trawler Gaul.

12 "I can assure you that the decision not to mount
13 a search for the Gaul was not taken easily and the
14 points that you have made were given very careful
15 sympathetic consideration. Marine safety, as you
16 obviously realise, is the Department's main
17 responsibility and we do try to learn what we can by
18 carrying out inquiries into shipping casualties. The
19 formal investigation into the loss of the Gaul was in
20 fact one of the longest and most detailed on record. In
21 light of that inquiry the Department has in fact already
22 commissioned studies into the stability aspects of the
23 Gaul and these are still going on. We do not however
24 believe that finding the Gaul would contribute further
25 to the Department's knowledge of this matter and to the

1 interests of maritime safety generally. The Court of
2 Formal Investigation concluded that the Gaul was lost
3 off the northern coast of Norway having been overwhelmed
4 by very heavy seas. All evidence available to the
5 Department supports that conclusion and we do not feel
6 justified in making further inquiries."

7 So, sir, there we see an example of the Department
8 distinguishing between the need to investigate stability
9 further and the conclusion of the OFI that the Gaul had
10 been sunk. That response, sir, was obviously
11 a considered response because it contrasts to the
12 response that was sent, for example, to those families
13 who were simply concerned about the vessel having been
14 seized by the Russians. And just for reference, sir, if
15 you look to the previous page, page 171, you see the
16 response to Mrs Steele.

17 Sir, I have reached a point where I was about to
18 move on to another topic. It is five to three. Would
19 you like to take a break for the transcript writers now
20 or would you wish me to continue for a little while?

21 MR JUSTICE DAVID STEEL: Let us continue for another
22 15 minutes.

23 MR COOPER: Sir, one of the other aspects that needs to be
24 considered, to demonstrate that the government did not
25 lack political will in terms of making a search for the

1 Gaul, if it was otherwise justified, was the
2 consideration they gave to the likely costs of such
3 a search.

4 Sir, in rebutting the suggestion that the Department
5 did not investigate the costs of a search sufficiently,
6 we rely on the matters set out below in paragraph 40 of
7 my submissions. In addition, first of all a detailed
8 proposal for a search from ULS, which we costed as being
9 about £60,000; and a further proposal from
10 Risdon Beazley at a cost of £50,000.

11 Sir, in assessing these figures, it is to be
12 remembered that the figures are 1977 prices. In his
13 report Mr Clarke estimated that £50,000 was equivalent
14 to about £180,000 in 2000. The families' submissions
15 seek to look at the question of costs in complete
16 isolation from the Department's other responsibilities.
17 That decision on whether to fund a search has to be
18 taken against all relevant criteria, including balancing
19 the interests of maritime safety, the concerns of the
20 relatives and the other operational requirements of the
21 Department. Sir, you will understand that this would
22 have been a fairly novel venture had it been undertaken.

23 While the families may disagree with the conclusions
24 reached by the Department in carrying out their
25 balancing act, there is no reasonable basis to suggest

1 that we did not consider where the balance lay
2 carefully. Sir, I refer you to the following
3 Departmental records.

4 First of all, we have the minute from Mr Doyle to
5 the Surveyor General dated 30th June 1977 at AG34/69.3,
6 in which he assesses the possible costs of a search
7 against the reasons for a search.

8 We also have the minute from Mr Doyle to the
9 Surveyor General, dated 29th July 1977, where Mr Doyle
10 carries out a fairly careful analysis of where funds
11 might have been coming from. And he looks sensibly at
12 the different suggestions, including looking at whether
13 funds were available from the formal investigation
14 budget. Sir, you will be clear from the document that
15 that is a budget not just for the Gaul but for all
16 formal investigations that might be mounted at that
17 time. He pointed out it was a matter for consideration
18 whether it would be right to divert these funds and that
19 that would depend on other priorities.

20 Similarly, sir, perhaps tellingly, in his minute of
21 5th August, instead of there being a sort of general
22 discounting of any possibility of spending money on the
23 search for the Gaul, Mr Doyle makes it clear that if
24 a search is going to be done, the Department should use
25 Vickers, who were the most expensive of the companies

1 but who would be likely to give the best chance of
2 success.

3 Sir, complaint was made that the Department did not
4 follow up an offer from the SMTRB, at AG34, page 123.
5 Sir, you will remember that is the offer of
6 a submersible from the Department of Consumer
7 Protection.

8 Sir, two things are clear about that. First of all,
9 we do not have any information as to the capabilities of
10 the submersible, although it is clear that this will
11 have been looked at -- that the SMTRB were considering
12 this question in a developmental context. Secondly,
13 sir, the Surveyor General did consider the proposal, but
14 as we can see from the minute at AG34.1, page 16 -- I am
15 sorry, sir, my reference is wrong. I will have to find
16 the reference and give it to you later. The surveyor
17 did consider it, but his concern was that there was
18 still a cost of a mother ship, that could be between
19 £25,000 and £50,000, and that there were also other
20 disadvantages with the proposal.

21 Sir, can I turn, then, to deal with the question of
22 what are said to be the real reasons for not wanting
23 a search.

24 Sir, we suggest that the suggestion that the
25 Department lacked the will to carry out a search is

1 simply unsustainable. The Department gave sustained and
2 considered thought as to whether to carry out a search,
3 and indeed, sir, we would submit that in many respects
4 it was the Department's initiative that provoked or led
5 to the commercial interest in carrying out a search.
6 You will recall, sir, that it was in the face of the
7 refusal of the MOD to assist that the Department
8 approached the Royal Norwegian Navy, to see if they
9 would carry out the search.

10 Sir, I have set out in the subparagraphs that follow
11 paragraph 40 various matters that again I rely on. Some
12 of them we have already looked at. Can I just pick up
13 a number. For example, subparagraph (c).

14 On 4th May, Mr MacIver Robinson wrote to
15 Mr Haydu Jones, expressing the hope of visiting their
16 premises for a demonstration of the company's
17 capabilities.

18 On 9th May, he attended a meeting of a body known as
19 SMTRB, where he discussed the possibility of using
20 a developmental sonar system to find the Gaul. And that
21 was followed up by Mr Doyle.

22 Sir, on 8th June, Captain Lusted did visit ULS.

23 Sir, one of Mr Doyle's initial conclusion, that
24 there should not be a search, was on 30th June 1977, and
25 that is the minute at AG34/69.3; that is subparagraph

1 (h). But, again, evidence of reasoned debate within the
2 Department about that view is to be found in the minutes
3 from Mr Archer, that he was concerned about the
4 recommendation that there should not be a search, and
5 that he wanted to be asked to join in the debate. That
6 is AG34, page 84.

7 In July 1977 we have Mr Doyle making enquiries of
8 both the RNN and Vickers. We will then see the decision
9 for no search being made on or about 22nd August, in
10 1977. Again, the Department did not abandon the
11 question of whether a search should be made at this
12 time. They continued to correspond and assist the media
13 organisations and commercial interests that were still
14 interested in carrying out a search; notwithstanding
15 that the Department was not prepared to fund it.

16 Sir, this material is referred to earlier in my
17 submissions. But I remind you of the contacts with P&O
18 Subsea and ULS in early September 1977. I also remind
19 you of Mr Doyle meeting with Mr Eastaugh on
20 22nd September to discuss the P&O proposal and confirm
21 the Department's willingness to provide such information
22 as it had.

23 Sir, one point was made against us that we failed to
24 follow up free proposals. Inevitably, the proposals at
25 no cost turned out to not in fact be that or to have

1 other disadvantages.

2 So, sir, for example, the P&O proposal foundered in
3 October 1977 because P&O concluded that they did want
4 funding from the Department, which would be at least
5 £33,000 and was dependent on the participation of
6 a Sunday newspaper that had yet to give a firm
7 commitment. Sir, you will find the reference to that at
8 AG34, page 199.

9 Subsequently, P&O failed to come back to the
10 Department on that proposal. Again, sir, I remind you
11 of the correspondence with Thames Television as being
12 another example of the Department helping those who were
13 considering mounting a search on their own.

14 The other ground on which it is suggested we did not
15 want to search for the Gaul was a desire that the
16 findings of the OFI should be left undisturbed. Sir, no
17 real good reason has been given to suggest why the
18 Department should have that desire. If it did, it would
19 not have made the enquiries it did into whether to
20 search for the Gaul and how to search for the Gaul. And
21 certainly it would not have commissioned the NMI tests,
22 nor released the results to their families.

23 Sir, can I just pick up two points there. First of
24 all, reliance was placed on a minute at AG34.1, page 18,
25 where over the page, at page 19, there is a reference to

1 what should be done in relation to the NMI results, and
2 it is suggested that the reference to "court" here was
3 a reference to the Court of Formal Investigation. In
4 fact, sir, if one reads the whole minute, one will find
5 that what one is concerned with here is the question of
6 whether the Department was to be dragged into the
7 litigation that was ongoing between the families and the
8 owners and the builders of the Gaul, and that the
9 reluctance expressed by the Department is a reluctance
10 to be dragged into that litigation.

11 Sir, it was also suggested to you by reference to
12 the letter from Mr Nicklin that appears at AG36, page 9,
13 that the families did not know about the NMI evidence.
14 Sir, if that is the case, it cannot be laid at the
15 Department's door. The report was released to the
16 families' then legal representatives, which we see by
17 confirmation of receipt in a letter dated
18 26th June 1978. Contrary to the assertions made in
19 Mr Nicklin's letter, this report was released to the
20 families over a year before the decision was taken to
21 settle their case. Sir, you can pick that up by
22 reference to the letter that appears at AG34.1, page 39,
23 where the families' then solicitors confirmed the
24 litigation had settled. That is a letter dated
25 19th September 1979.

1 Sir, for all the reasons set out in paragraph 41 of
2 my closing, we submit that there is no substance to the
3 suggestion that the Department had a desire that the
4 findings of the OFI should be left undisturbed.

5 Belief that a search should be refused and that with
6 the passage of time the families would give up pressing.

7 Sir, it is correct that for valid reasons the
8 Department had reached a view that a search was not
9 justified. The Department was also concerned to try and
10 persuade the relatives that there was no substance to
11 the rumour that the ship had been taken by the Russians.
12 Those are entirely valid reasons for seeking not to be
13 pursued into having a search, but it is not a reason to
14 suggest that the Department was simply trying to ignore
15 the families.

16 Sir, can I turn to the position in the early 1980s.
17 As I have pointed out by reference to the letters from
18 Mrs Stockdale already, there is no reason to believe
19 that our reasons for not searching for the Gaul during
20 the period 1980 to 1981 had changed in any way. The
21 reasons given by Mrs Stockdale were consistent with
22 those given by Mr Clinton Davis, and on the balance of
23 all the evidence that I have taken you through already,
24 that conclusion remains as valid in 1980 and 1981 as it
25 did during 1977 to 1978.

1 Sir, I took you to the letter from Mrs Stockdale.
2 There is no basis for the suggestion that she was
3 writing other than for genuine motives and in a desire
4 to try and help the families bring closure to the
5 question of how the Gaul had sunk.

6 Can I then turn to the question of corporate
7 amnesia. It was suggested to you that this was relied
8 on as a reason for not searching for the wreck in the
9 period 1980 to 1981. That has never been the case.
10 Equally, it has not been the case that when Mr Clarke
11 was preparing his report the Department made submissions
12 to him. He was left to get on with his report and reach
13 his own decision.

14 The views taken by Mr Clarke as to corporate amnesia
15 relate to a later period in the 1980s, by which time, if
16 one goes through the papers, there had been a change of
17 relevant staff in the Department. So that Mr Doyle and
18 Mrs Stockdale and the others who were intimately
19 concerned with the question of the search had moved on.
20 Sir, confirmation that Mr Clarke is looking at a later
21 period is found by reference to paragraphs 47 and 82 of
22 his report, but I will not take you to those at the
23 moment.

24 Sir, intelligence gathering. Just to be clear, sir,
25 there is no evidence to suggest the Department's

1 decision not to mount a search for the Gaul was
2 motivated by a desire to hide the involvement of the
3 Gaul in intelligence gathering activities or because of
4 concerns to hide the location of underwater surveillance
5 devices.

6 As described in paragraphs 131 to 139 and 161 to 170
7 of the Attorney General's closing submissions, the
8 evidence before the investigation demonstrates that
9 there were no SOSUS cables in the vicinity of where the
10 Gaul was lost, and that the Gaul and its crew were not
11 involved in intelligence gathering activities.

12 Sir, in conclusion on the question of why no search,
13 I invite you to accept that the only reasons why no
14 search was made for the Gaul are those that were
15 publicly stated at the time of the initial decision in
16 August 1977; namely that it was the conclusion of the
17 Department at the time that a search would not provide
18 any new lessons for maritime safety.

19 Sir, that concludes my submissions on why no search.
20 Various tributes have been paid to those who have
21 presented the case in this Inquiry on behalf of the
22 families and on behalf of the Attorney General. Can
23 I associate myself with those tributes and indeed
24 tributes to the families who have participated, and also
25 include a thanks to those who have worked hard: Mr O'Dea

1 and his secretariat and those in the back room team who
2 have helped to present this Inquiry to you.

3 Unless there is anything further I can provide you
4 with.

5 MR JUSTICE DAVID STEEL: Thank you very much. That is very
6 helpful. We will take a break.

7 (3.10 pm)

8 (A short break)

9 (3.30 pm)

10 MR COOPER: Sir, there were just two very short points
11 arising from my submissions before the break. First of
12 all I said I would give you a reference that I had lost
13 in my submissions. It was a reference to Mr MacIver
14 Robinson's consideration of the proposal for
15 a submersible from SMTRB. The reference, sir, is
16 AG34.1, page 7.

17 Sir, you will recall this is where Mrs Stockdale
18 draws the proposal to the Surveyor General's attention,
19 and he says, about halfway down the page:

20 "Mrs Stockdale,

21 "We discussed the problem and expense of utilising
22 a mother ship remains and whereas costs might be less
23 than with Vickers there are other disadvantages."

24 MR JUSTICE DAVID STEEL: Thank you.

25 MR COOPER: Sir, the other point is it has been pointed out

1 to me that through my submissions I have referred to
2 Mrs Stockdale; she is in fact a Miss.

3 MR HOPPER: Could you tell us what SMTRB means? It is one
4 of those mystery words that we have lost.

5 MR COOPER: I will make further researches.

6 MR JUSTICE DAVID STEEL: Yes, Mr Meeson.

7 Reply Submissions by MR MEESON

8 MR MEESON: Sir, I will try and be short, as I was born like
9 it.

10 Sir, first of all, I have a rather short statement
11 from a Commander Phillips, regarding Polaris submarines,
12 which I should read. It is in bundle AG10, at page 196.

13 It says:

14 "I am David George Phillips, a Commander in the
15 Royal Navy, serving in the Naval Staff Directorate,
16 a department within the Ministry of Defence. I make
17 this statement, which is true to the best of my
18 knowledge and belief, on behalf of the Ministry of
19 Defence. The information given in this statement has
20 been obtained from my examination of Ministry of Defence
21 records.

22 "I have been made aware of correspondence from an
23 unnamed Chief Petty officer addressed to the Gaul
24 Families Association. This reports an alleged
25 conversation to the effect that the Gaul was sunk due to

1 its becoming entangled with a Royal Navy Polaris
2 submarine.

3 "I can state that Polaris submarines would not have
4 been operating in the vicinity of the position at which
5 the wreck of the MV Gaul was found (72 degrees
6 4.1 minutes north, 25 degrees 05.3 minutes east) on or
7 near the date that she sank (on or about
8 8th February 1974)."

9 That is signed by Commander Phillips.

10 Sir, I just have a few points to deal with in reply.
11 Firstly I wanted to make a short point about the most
12 probable cause. Sir, after listening to all of the
13 counsel address you, it is apparent that all parties to
14 this Inquiry are at one as to what was the most probable
15 cause of the loss of the Gaul; namely a flooding of the
16 factory deck, probably through the duff and offal
17 chutes. Sir, you have had that addressed by me in some
18 detail, by Mr Saloman and by Mr Munyard.

19 I would wish simply to take up one point in
20 Mr Munyard's address to you, at paragraph 21, where he,
21 when dealing with this aspect of the case, said that the
22 course that the vessel may have been on was:

23 "... either south west or even due south, which
24 would have had her exposed to port beam and/or
25 quartering seas for a sufficient time to take on

1 100 tonnes or so of water."

2 Sir, you will recall that although 100 tonnes or so
3 of water would almost certainly result in the loss of
4 the vessel, the vessel can in fact be lost with
5 considerably less water than 100 tonnes. Sir, I would
6 simply remind you of the Fredyn run that was used as an
7 example by Mr Bowman, showing the vessel to have been
8 lost after about 14 minutes, with only 40 tonnes on the
9 factory deck.

10 I do not know if it would be possible to have
11 Experts 326 shown.

12 Sir, this was the Fredyn run at a speed of 6 knots,
13 showing the roll against the wave elevation, and showing
14 that with only about 40 tonnes of water on the factory
15 deck, after about 14 minutes the vessel is rolled by
16 a wave to 60 degrees.

17 So although one can perhaps say for safety's sake
18 that with 100 tonnes on board the vessel is definitely
19 lost, it has to be remembered that this vessel can be
20 lost with considerably less water, which would take
21 potentially quite a short period of time to come on
22 board and would be extremely difficult for anybody to
23 notice unless they were in the factory deck.

24 Sir, the other matter I wanted to deal with as well
25 was in relation to the duff and offal chutes. Sir, you

1 were referred to MM2, if we could have that up, and to
2 this ringed note on the drawing in relation to the duff
3 and offal chutes, and the notation:

4 "Possibly too fiddly, approved for 372 only, subject
5 to inspection of first..." something or other --
6 "construction", perhaps.

7 Sir, what was suggested by Mr Munyard was that this
8 showed -- this was paragraph 25 of his submissions --
9 that the owners Ranger Fishing had recognised during the
10 design stage that the hinge mechanism of the duff and
11 offal chutes was recognised to be a potential problem.

12 If we could have the larger version, MM1, up on the
13 screen. Sir, in fact, when one analyses what part of
14 the drawing those words which have been ringed relate
15 to, one actually follows it through and finds that they
16 are actually related to the details of the watertight
17 hopper hatch; in other words, the lid, rather than the
18 hinge of the duff and offal chutes.

19 The point made by Mr Munyard was a point well made,
20 in the sense that, as we heard explained by Mr Tanton,
21 the mechanism itself of the hinge is such that it has no
22 means of being lubricated, or even repaired, and is
23 a mechanism that is ultimately liable to seize. The
24 point on this particular drawing is not a point well
25 made. It was another part that was considered to be

1 "possibly too fiddly".

2 Sir, while we have MM1 -- unless one has
3 considerably better eyesight than my own, I do not think
4 one can follow it from the screen -- but actually in the
5 middle of the drawing there is a reference to the hopper
6 lid in terms of how it is to be secured in the open
7 position. It says:

8 "Suitable arrangement for holding hatch open to be
9 decided on board."

10 So, in other words, at the design stage there was no
11 arrangement for securing the hopper lid in its open
12 position. That was to be decided on board. You heard
13 reference this morning to there being a chain on at
14 least one of the sister ships. On this vessel we know
15 that in fact it was held up by a ligature. Whether
16 there in fact was a chain or whether that was the
17 securing arrangement, one does not know.

18 Sir, another point that was raised by Mr Munyard was
19 the reference by Mr William Rogers MP, as he then was,
20 the Minister of State for Defence, in 1974. Sir,
21 I think it may be appropriate if I read, for the record,
22 the letter that he wrote to the MPs who had written to
23 him about trawler spying so everyone can see exactly
24 what he says.

25 MR JUSTICE DAVID STEEL: Is it in the bundle?

1 MR MEESON: I do not think it is, for some reason.

2 MR JUSTICE DAVID STEEL: That is what caught me unawares.

3 I would like a copy --

4 MR MEESON: Which is perhaps why Mr Munyard was unable to
5 refer you to it immediately. Otherwise he would have
6 been able to. It is a letter headed "Minister of State
7 for Defence", and it says "8th August 1974". The
8 addressees are blank, but they were the Hull MPs that
9 I referred to earlier, John Prescott and others. What
10 he said was:

11 "I was very glad to have the opportunity of meeting
12 you yesterday to amplify what Frank Judd had already
13 said to you on the question of Royal Navy personnel on
14 board trawlers operating from Hull. First, may I say
15 how completely I understand and appreciate the fears and
16 anxieties of those who lost members of their family on
17 the Gaul. However, as I said on Wednesday, I can
18 categorically assure you that no Royal Navy personnel or
19 MOD equipment were on board Gaul. I can also assure you
20 that the British trawler fleet is not involved in any
21 way in intelligence gathering. This applies as much to
22 equipment as to personnel.

23 "As you know, and as I confirmed yesterday, the
24 Royal Navy runs a scheme by which naval officers gain
25 experience of the day-to-day work of the fishing fleet

1 (and the Merchant Navy as a whole). This, of course,
2 contributes to good relations between the two services.
3 Ten junior naval officers in all have gone to sea in
4 trawlers under this scheme in the last five years, and
5 about 30 in all have used other merchant ships over the
6 same period.

7 "There may well have been other occasions outside
8 the formal scheme when Royal Naval officers have gone to
9 sea in fishing and other merchant ships. We would not
10 necessarily have kept a record of each occasion. They
11 go on board to get general experience or, in the case of
12 trawlers, to find out what fishery protection is all
13 about by familiarising themselves with the problems of
14 fishermen. They do not, of course, displace regular
15 members of the crew by, for example, acting as radio
16 operators.

17 "Apart from such sea-going experience, there have
18 only been two other occasions in recent time on which
19 MOD personnel have embarked on trawlers. These were
20 when Royal Naval officers from The Hydrographical
21 Service, one on each occasion, took part in an exercise
22 to check the radio navigation chain by reference to the
23 satellite navigation system in the area where the
24 trawler was due to fish. The opportunity was also taken
25 to try to find some equipment which had been lost.

1 "Up to now we had believed that the presence of
2 naval officers from time to time was well-known to the
3 trawlermen in Hull and that they were happy with the
4 arrangement. There had certainly been no evidence to
5 the contrary. We will be happy to listen to any
6 representations, but I can see no grounds for putting an
7 end to such a useful scheme or of limiting it to
8 particular areas of the high seas.

9 "As I say, I very much appreciate the need to remove
10 any remaining anxieties and I hope this letter will
11 help. I am writing in similar terms to James Johnson
12 and Kevin McNamara."

13 So this must have been the letter written to
14 John Prescott.

15 "I have sent copies of this letter to you at the
16 House. I know that you will understand if I feel free
17 to draw on this letter in the event of there being any
18 further public discussion."

19 That was signed William Rogers.

20 Sir, the point made by Mr Munyard is that where it
21 says "the British trawler fleet is not involved in any
22 way in intelligence gathering", given what we now know
23 about the fact that Royal Naval officers may have been
24 on board primarily for the purpose of familiarising
25 themselves with the problems of fishermen and fishery

1 protection, and they also carried out surveillance work
2 when they were on board, that that letter incorrectly
3 states the position. That point made by Mr Munyard
4 seems well founded, because what is not stated in this
5 letter is that the Royal Navy officers on board trawlers
6 for the familiarisation are also carrying out
7 surveillance activities, albeit of a low level nature.

8 I should probably also add that the two other
9 occasions when MOD personnel have been embarked on
10 trawlers is not -- if I could put it this way, at its
11 lowest is not accurately described by Mr Rogers in this
12 letter, in that, as we now know, the exercise in which
13 they were engaged on those two separate occasions was to
14 recover a Soviet test missile and not primarily to deal
15 with matters of The Hydrographical Service.

16 It is correct to say that they were trying to find
17 some equipment which had been lost, but the equipment
18 had been lost -- or it had not been lost, it had been
19 deliberately fired into the sea by the Soviet Union; it
20 was only lost in the sense that it was out there for
21 somebody else to go and collect. So one might think
22 that this was extremely economical with the truth.

23 On the other hand, of course, this is against the
24 background of 1974 and the middle of the Cold War. It
25 is hardly likely that the Minister of State for Defence

1 is going to put in a letter that, "Yes, last year we
2 went looking for a Russian Soviet test missile with a
3 trawler", but there it is. That is what was said.
4 I can provide you with a copy of it, sir, and anybody
5 else who wants it.

6 In relation to spying, obviously, just to summarise
7 the position as we know it, there were really three
8 separate matters. There was the Trawler Skippers'
9 Briefing Scheme, which finished in the late 1960s.
10 There were then the specific chartered missions, the
11 much earlier ones relating to the Boyd Line vessels, and
12 then the two later ones with the Invincible and the
13 Lord Nelson, the last arriving back in port very shortly
14 before the Gaul sailed.

15 As far as the first scheme, the Trawler Skippers'
16 Briefing Scheme, that had finished in the late 1960s and
17 therefore could have had nothing to do with Gaul anyway.
18 The charter missions: the Gaul was not on such
19 a mission. The only matter that was continuing at the
20 time of the loss of the Gaul was the naval officer
21 training scheme, which plainly continued through 1974
22 and subsequently. Indeed, the MOD briefing note makes
23 it clear they are not actually sure when it ceased. It
24 presumably probably ceased when the British trawler
25 fleet declined to such a level that there were

1 insufficient trawlers to make it worthwhile continuing
2 with it.

3 Sir, in relation to the cable, what has been said is
4 that the court is not assisted by the samples of cable
5 cut during the 2002 survey because those samples were
6 taken from areas nowhere near the cables filmed by
7 Mr Fenton and the MAIB, for the simple reason that
8 Mr Fenton's cable, as far as Mr Fenton is able to tell
9 us at least, is in front of the vessel and to the
10 starboard side and the MAIB's cable runs pretty close
11 underneath -- or very close to the bow of the vessel;
12 the cable cut during the 2002 survey was from the aft of
13 the vessel.

14 Sir, the short point is the relevance of those
15 samples is that we know without doubt from those samples
16 that the cable cut during the 2002 survey was simply
17 some form of old trawl wire. The point is that when one
18 looks at the video of the 2002 survey of the cable which
19 was cut, it exhibited precisely the same characteristics
20 as the cable shown by the MAIB in 1998 and the cable
21 filmed by Mr Fenton, so that its assistance is that it
22 is obvious that simply from looking at the video footage
23 there is no distinction between those two cables, and
24 the one in 2002 we know to be nothing other than an old
25 trawl wire.

1 Sir, I wanted to mention briefly recommendations.
2 I went through some recommendations in my proposed
3 answers to the questions when I made my first address.
4 I would simply, really, wish to give you some
5 references. The experts report, AG15, pages 286 to 289
6 gives the joint experts' views as to possible scope of
7 recommendations and is fairly self-explanatory.

8 Some further work has been done more recently, which
9 I have included in the appendices to my address, which
10 I think is now called AG39 in everybody's bundle except
11 my own. At tab G there is some work done by Banff and
12 Buchan College of Further Education and the Universities
13 of Glasgow and Strathclyde on flooding of UK fishing
14 boats. This is simply, sir, to make you aware that work
15 has been done recently on the question of flooding. But
16 certainly from my reading of the work that has and
17 appears to be currently underway, that does not in fact
18 obviate the need, as I see it, for the recommendations
19 that I have suggested.

20 Similarly, I ought to draw your attention, sir, to
21 annex H, which is Marine Guidance Note 165, on the risk
22 of flooding. It is obviously of itself a very helpful
23 document, but, once again, I do not think that it
24 entirely obviates the need for consideration of
25 recommendations in this particular case.

1 In short, it seems that from this case the key
2 safety lessons that need to be learned and promulgated
3 are that these particular waste chutes with which we are
4 dealing -- in this case duff and offal chutes, but on
5 other vessels maybe similar chutes -- may very well be
6 used by persons who have very little, if any, training
7 and experience.

8 One can focus on training skippers and mates and
9 officers and engineers and all of those sort of people,
10 but if one in fact simply employs factory hands or
11 deckhands, or whatever, straight onto the vessel, it may
12 be the first time they have ever been on a vessel. They
13 may not have any awareness whatsoever as to the
14 importance of these sort of openings, even if officers
15 do. And therefore it seems sensible that these sort of
16 openings be accompanied by extremely clear foolproof
17 instructions, in stark terms, by the opening, stating
18 that it should be closed when not in use or in
19 particular circumstances, and it should be made clear as
20 to the importance of that so that anybody looking at it
21 will have it impressed upon themselves that they have to
22 do this. One may think it should be in sort of
23 cigarette packet type warning terms so people are left
24 in no doubt.

25 Along with that, the idea that there should be some

1 means on board of monitoring the fact that such an
2 important opening is in fact closed does not seem to be
3 any great feat of technology, to have some form of
4 warning device perhaps connected to the bridge to show
5 whether or not a particular thing such as that is
6 closed.

7 And similarly, the question which is at least partly
8 addressed in regulations and current standards of having
9 bilge alarms and other early warning devices to ensure
10 that a build-up of water from any source is noted
11 promptly.

12 Sir, that was all I intended to say about
13 recommendations at this stage.

14 Sir, I have a further statement to read on behalf of
15 the Nellist family that has been handed to me:

16 "The Nellist family would like to express their
17 thanks to this court and to all those who have helped
18 create a friendly and relaxed atmosphere. In
19 particular, we would like to thank Mr Justice Steel and
20 his assessors, all the QCs and their juniors, the
21 experts, the technical team and also the shorthand
22 writers, Sophie and Jacqueline, for all their efforts in
23 providing us with a historical record of this Inquiry.
24 Finally, we would especially like to thank
25 Gareth Peirce, Terry Munyard, Jerry Colman and

1 Tom Walker for all their help."

2 That is from the Nellist family.

3 Sir, that brings me on. I would wish to associate
4 myself with those sentiments, and in particular to thank
5 the families who have battled through snow and other
6 adversities to attend this Inquiry regularly, and for
7 their patience in listening to some of us, whose voices
8 they may wish no longer to hear, and for struggling with
9 some of the technical evidence that we have been hearing
10 that we have all had to struggle to understand. Their
11 patience and determination is to be commended.

12 I would also wish to note our thanks to the
13 witnesses, who have all volunteered to come; some of
14 whom, I am afraid, due to the inability of counsel to
15 estimate anything, have had to hang around when they may
16 rather not have done.

17 I would also want to make a particular tribute to
18 the work done in this case by the technical team, who
19 have worked tirelessly behind the scenes to enable this
20 Inquiry to function properly, and frankly without whom
21 I do not think this Inquiry would have been possible.
22 They have all given 110 per cent, if not more, of their
23 time to the Inquiry; they have made themselves available
24 whenever needed, irrespective of whatever their
25 contractual hours are, and that is Will Handley,

1 Steve Watts and Richard Hulme. And I also would wish to
2 include in that our Inquiry webmaster and computer guru,
3 Dave Woods, who, again, is striving to provide us with
4 the best Inquiry website and has helped to solve all our
5 computer problems.

6 Also another person -- it is difficult to single
7 people out for particular thanks -- but Mr Graham
8 Wilson, who has been lent to us by the MAIB and who has
9 done tireless work, again behind the scenes and largely
10 unnoticed.

11 Jackie and Sophie, the transcript team, have already
12 been noted by the Nellist family, and they have
13 struggled with our speaking too fast or with lack of
14 clarity. Sarah, the receptionist, sir, has provided
15 a cheery face for people arriving. And obviously
16 I would also, again, from a personal perspective, wish
17 to pay thanks to Mr O'Dea, the Solicitor of the Inquiry,
18 and particularly to solicitors and counsel for other
19 parties who have made my life in trying to present this
20 Inquiry a lot easier than it could otherwise have been.

21 I also would not wish to leave out of the equation
22 those members of the press who have attended the
23 Inquiry, in particular the continuing daily coverage
24 from the Hull Daily Mail, who have reported, largely
25 accurately, the proceedings that have gone on.

1 Finally, sir, no doubt you will have been assisted
2 by the experts for all the parties, who have acted in
3 a cooperative way, possibly for the first time from the
4 very outset of an inquiry, to produce a joint experts
5 report and to come here and explain rather complicated
6 matters in a way which we can all at least have some
7 hope of trying to understand.

8 Sir, those are what I thought I should say.

9 MR JUSTICE DAVID STEEL: Thank you very much. Before we all
10 depart, there are just a few things I would like to say.

11 First, I would like to express my appreciation to my
12 colleagues. Those who practice at the Admiralty Bar
13 know that, as Admiralty Judge, I am familiar, unlike
14 most judges, with sitting regularly with assessors. But
15 there has been, in my experience, no better example of
16 the value of a judge sitting with assessors. I have
17 found it a priceless experience and I hope they have
18 found it interesting and cordial.

19 I would like to express appreciation to counsel.
20 I did so at the time when they finished their
21 submissions. Their work in producing in particular
22 final submissions I fully appreciate, having done this
23 sort of thing myself in the past, involved a great deal
24 of work, probably both by day and by night. But my
25 gratitude goes a bit further than that. Without their

1 assistance in conducting this hearing efficiently and
2 effectively, this hearing might have been inordinately
3 extended.

4 They recognise, as I do, that that achievement could
5 not have been made without the enormous work, unseen and
6 unsung, in the engine room behind me by Laurance O'Dea
7 and his team, and his assistants, Christine, who has
8 kept the papers in order, which has been an achievement
9 bordering on miraculous, and Mandy, who has programmed
10 the witnesses.

11 We are also grateful to, and express our admiration
12 to the technical team. They have taken off the
13 astonishing underwater survey material and have
14 demonstrated the great value of IT in promoting an open
15 and speedy conduct of our business, and I can remember
16 no occasion in which the machinery has broken down or
17 there has been any failure of the IT to match up to our
18 demands.

19 Our thanks, too, to the shorthand writers, who have
20 managed over six weeks, staggeringly, to produce almost
21 faultless transcripts.

22 Lastly just a word to the families. My colleagues
23 and I are now faced with a blank piece of paper. This
24 case has ebbed and flowed for 30 years, sometimes along
25 the main channel, but often up creeks and tributaries.

1 The result is that our report will be long and will take
2 a considerable time to prepare. We will produce it as
3 fast as we can and as any, our other commitments allow.
4 I have decided not to tell you when I think we will
5 complete our work. Either we will cause disappointment
6 because some will regard it as too diligent or we will
7 cause dismay as others will regard it as too hurried.
8 But please be assured we will try and cover every issue
9 that has been raised.

10 I know there are those who feel uneasy about this
11 Inquiry; in fact, feel they might want to decry its
12 outcome, even before it is reported, as being shallow,
13 or even containing some hidden agenda to bury
14 uncomfortable conclusions. I hope you all will try and
15 reserve your judgment. I am only one of the panel. My
16 assessors, including, if I may say so, two men of
17 considerable distinction from this very community,
18 deserve a more generous attitude in mind.

19 I have not forgotten that we are only here because
20 36 men disappeared in a vessel 30 years ago. Much money
21 has been spent to try and identify the explanation for
22 it all, but the real focus of our attention remains them
23 and their families. I am particularly glad that quite
24 a few of you felt able to contribute, either orally or
25 in writing, to our discussions, and I only add that none

1 of us will forget the moving words of Mrs Pickering
2 about her brother.

3 Anyway, with all those men in mind, let us adjourn.

4 Thank you very much.

5 (4.08 pm)

6 (The Inquiry Concluded)

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