

A journey to the Persian Gulf

By Michael Slattery QC

In July 1964 Admiral Harrington, the then chief of naval staff, asked a young Laurence Street QC to form a Legal Reserve Panel to support the Royal Australian Navy. This was thought necessary in the wake of the *Voyager* disaster and the royal commission that followed. Before his appointment to the Supreme Court in 1965, Sir Laurence set up panels of barrister reservists throughout the states of Australia.

From that time, the New South Wales Bar has had a close association with the Navy. When practising at the Bar, three members of the New South Wales Court of Appeal led the Navy's Reserve Legal Panel for this state, Rear Admiral the Hon Harold Glass, Commodore the Hon Terence Cole and Captain the Hon Justice Murray Tobias. Other judges and barristers hold senior rank within the Navy.

Nineteen members of the New South Wales Bar and as many solicitors currently serve in the Navy Legal Reserve for this state, undertaking a variety of courts martial, advisory and operations law work. When Australia is involved in military conflict their workload intensifies.

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Navy sent me to the northern Persian Gulf near the end of the Iraq conflict this year. Immediately before Easter I was appearing as counsel in the courts of New South Wales. The following week I was serving as an officer aboard *HMAS Kanimbla* in Iraq's territorial sea.

In January 2003 the Australian Defence Force ('ADF') commenced anthrax vaccinations of personnel scheduled for deployment to the Middle East. The vaccinations were voluntary, but unvaccinated personnel were refused entry into the Middle East operations area. A number of naval personnel on board *HMAS Anzac*, *Darwin* and *Kanimbla* exercised their rights to decline vaccination and were repatriated. Some made formal complaint that senior officers had threatened them with adverse career consequences if they refused vaccination.

In March I was appointed under the *Defence (Inquiry) Regulations* to investigate and report on these complaints. I first completed a series of interviews in Sydney. *HMAS Kanimbla* was not due back in Australia until July. The Navy required a report before then. Therefore it became necessary for me to visit the ship in the Persian Gulf for further interviews. This meant that I too would need to be vaccinated against anthrax. The initial plan was for me to arrive early in the week commencing 17 March. The week before my planned departure the United States announced that hostilities with Iraq were imminent. My trip was postponed.



The Chief of the Australian Defence Force, General Peter Cosgrove and the author.

It finally took place a little over a month later. Armed attacks against Iraq commenced on Thursday 20 March. Coalition forces entered Baghdad on 12 April. I left Sydney by air on Monday, 21 April, returning on Sunday, 27 April. I was on board *Kanimbla* from 22-25 April.

By then *Anzac* and *Darwin* were preparing to leave the Persian Gulf but *Kanimbla* was still involved in the interception and search of Iraqi vessels and giving support to the coalition's continuing naval operations. The only residual danger at this time was of attack by irregular or terrorist forces.

After completing further interviews back in Australia, I submitted my report in May.

This is an account of an unusual journey for a lawyer. It gives a little perspective on the lives of Australian service personnel at sea in time of war.

The Fleet Legal Officer informed me of this proposed investigation when I took a mobile phone call during a luncheon adjournment in the first week of March. Reactions to my deployment were, at times, unexpected. When I first told my wife that I was about to deploy and be given a course of anthrax injections she foresaw a useful domestic anti-terrorist opportunity, which I had entirely missed. She quickly responded, 'That's great darling. You can open the mail now.'

Inquisitive about my own lack of any physical reaction to the anthrax inoculation that I was given, I asked a Navy doctor about the reason for this. The answer was depressing. He questioned me as to how old I was. 'Just turned forty-nine', I said. 'Well', he answered, 'your negative reaction simply means that your immune system is in decline.'

Leaving legal practice in Sydney at short notice is not easy. Many judges and barristers, including my then opponent in court, were very accommodating about my absence from the jurisdiction and its effects on practice.

All ADF personnel deployed to the Middle East operations area are required to attend a special course to assist in their force preparation. There are no exceptions for lawyers. Amidst the weapons training, gas mask and chemical suit drills, this course included some obviously necessary lectures on how to survive imprisonment, torture and violent interrogations. Every form of human ugliness and degradation was described with clinical exactness over several hours. This is done in order to help build the personal resources of those who might unexpectedly be taken prisoner. About half way through I was startled to realise just how well my professional life as a barrister had prepared me for this aspect of military life. The section on surviving hostile questioning filled me with grateful nostalgia for certain members of the New South Wales Court of Appeal of the late 1970s and early 1980s.

One early flight option for me was to travel to the Middle East via Singapore. By April coalition command was not permitting travel into the operations area via Singapore. In any event I did not want to be remembered as the first Australian to infect a warship with SARS. My flight was finally arranged through Perth, Doha and Bahrain. I arrived in Bahrain International airport at about midday on Tuesday, 22 April. From there I was taken to a military base for helicopter transport out to *Kanimbla* in the gulf.

Crossing the border between the civilian and military worlds presented me with an unforgettable and confronting experience. Still only minutes out of the attentive luxury of Emirates business class, I was dropped at a sand-bagged and concrete command post manned by US Marines. This was the entrance to a vast staging area for coalition forces adjacent to Bahrain International Airport. I was dressed pretty much as I would to go shopping in Chatswood on a Saturday morning. No doubt I looked conspicuously Western among the flowing Arab robes all about me and even more so as I was incongruously holding a sailor's echelon bag and my Phillip Street briefcase.



A Sea King approaches the *Kanimbla*.

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I was told that there would be someone to meet me inside and there was. My transport's other duties meant though that I had to negotiate this one on my own. No matter what you looked like, no matter how entitled you might feel, in April 2003 you could not just walk up to a US command post in the Middle East carrying two bags. No doubt you still cannot do this.

On my approach there was no failure in alertness by the occupants of the command post. Three marines emerged and stopped at the perimeter of the sandbags. Through my jet lag I became acutely conscious of the automatic weapons they purposefully lifted and then grasped at the ready. In a curious touch of added courtesy, they were not actually pointed at me. This display prompted my very close attention to the commands that followed: 'Stop', 'Put your bags down slowly', 'Hold your arms out from your body.' and 'Approach slowly, holding out your military ID.' I complied. I amazed myself with the earnest literalism of my responses.

Once inside this, the very sharpest end of executive power, I felt an immediate change from the civilian world. As an Australian, travelling at that time through Doha and Bahrain airports, hearing war reports on every news service I felt a special sense of vulnerability. The most immediate change for me was an overwhelming and palpable sense of physical security within this military envelope. The other difference I noticed was a sudden loss of colour. I found myself in a compound filled with marines, soldiers trucks, transport aircraft, attack and troop-carrying helicopters all covered in the colours of war: black, grey and brown, nothing else.

Despite the massed presence of coalition force and transport in its own enclave, I could not leave the Kingdom of Bahrain without an important ceremony acknowledging its sovereignty. Before embarking on an RAN helicopter to join an Australian ship I presented my passport for stamping to a Bahrain immigration officer inside the compound.

During the short Seahawk flight from Bahrain into the Persian Gulf I counted eight warships from patrol boat to destroyer size during the flight. I saw no civilian vessels of any type.

Since the early to mid-1980s, all distinctions between permanent and reserve ADF personnel have been abolished. Before then reservists wore the symbol 'R' somewhere on their uniforms, perhaps as a pre-emptive excuse for the inevitable gaps in their service knowledge. The 'R' earned them the affectionate title 'rockies' from the permanent services. The concept is now of one undivided defence force.



Lt Monica De Martin, permanent legal officer on board HMAS *Kanimbla*, and the author.

My commander's uniform was the same as that of all the other commanders on board. Despite this there were moments during my time on board that I still felt like a reservist. One of these occurred within minutes of my stepping onto the flight deck of *Kanimbla*.

We had circled the ship before landing. It was early afternoon. Visibility was clear. A long wake of mud-churned water streamed behind her. To make conversation with one of the most senior officers welcoming me I asked him, 'What speed are we doing?' He looked at me quizzically, raised one eyebrow and said, 'Actually we're at anchor.' It turned out that I had only been observing the tidal effects of the Euphrates astern.

A disconcerting but essential part of embarking on any RAN ship at sea is that the very first instruction given is a directive as to where to assemble were an abandon ship order to be given. After learning where this was for me, I was shown my bunk, given a tour of the ship and commenced my interviews.

That night at dinner an important similarity between the profession of arms and the legal profession was brought home to me. I had just left Sydney, which was still debating over the Easter break whether UN resolutions 678 or 1441 provided any legal authorisation for this conflict. That evening I was surprised to find myself as a legal officer invited into exactly the same debate in the ship's wardroom. The inspiring professional commitment of these officers and sailors serving their country was accompanied with a sound sense of objectivity and professional detachment about their client. I heard as varied a range of opinions expressed on board about the conflict as I had in similar situations in Sydney.

The atmosphere on board was efficient but relaxed. *Kanimbla* is a member of the Navy's LPA class. She operates a small hospital. In the Persian Gulf her watches included armed lookouts and she worked day and night whilst protected by highly manoeuvrable small vessels also used by the ship's boarding parties.

In many ways *Kanimbla* resembled a suburb of metropolitan

Australia which had become temporarily stranded in the Middle East. At sunrise joggers and walkers were out exercising. Minimising all unnecessary hierarchy, officers and sailors were all supplied food from a common galley, which produced the cuisine and variety of a good local shopping centre. At night after dinner in the wardroom and surrounding cabins one felt a little like a member of an extended and noisy household. TV was limited to the excruciatingly dull Kuwaiti National Television and a limited range of obviously well watched videos. *Kanimbla* then had a crew of about 350. There were 70 female officers and sailors on board, including several of the ship's navigation officers and a senior engineering officer.

RAN ships are 'dry' at sea when in conflict situations. I just tried to imagine that the red cordial served with dinner was a good Coonawarra cabernet sauvignon. Sleeping space is highly compressed. The biblical cubit of one forearm's length, separated the top of my bunk from the underside of the one above in a cabin built for about 20. Under ship's orders, showering must be accomplished in 90 seconds. What my experience of attempting to carry out this order taught me was that taking 45 seconds to get to the right water temperature was a poor allocation of resources.

Kanimbla kept up a busy schedule supplying other coalition vessels and aircraft. I met crews of British minesweepers and US patrol boats as they were being provisioned. The Persian Gulf is very calm in April and nothing like the open sea. When cloudy, the ambient temperature is about 28-30 degrees celsius. When the sun comes out it leaps to over 40 degrees.

The only increase in operational tension during my stay on board came on the second day. I was in the middle of an interview with a witness. The crew of a civilian vessel a few nautical miles away was not co-operating with *Kanimbla*'s boarding party, which was requesting a search. A warning that this was becoming a 'non-compliant boarding' was piped through the ship. Her operational tempo quickly moved up several levels. She weighed anchor and headed towards the uncooperative *dhow*. As *Kanimbla* appeared within sight, the *dhow*'s crew changed their minds and invited the Australians aboard.

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Crew members only received out of date Australian newspapers, though Internet and some phone access was possible at most times. Given the anti-war protests at her departure from Sydney the wardroom was keen to know what kind of reception she would get on her return. The officers also volunteered many memorable events of the war in late March. Here are two. Low-flying US cruise missiles were much

commented on. Several officers said that some cruise missiles passed so close that at times, from *Kanimbla's* bridge, the ship's company could see the manufacturer's writing on the fuselage.

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Others mentioned an incident when *Kanimbla's* crew discovered an Iraqi barge armed with nearly seventy mines ready for launch but concealed under a false deck. The barge's crew was temporarily brought on board *Kanimbla* but they showed increasing signs of desperate terror to the point of complete physical collapse. It was quite clear that they expected to be shot. Food medicine, fresh clothes and reassurance by Arabic-speaking personnel on board eventually calmed them down over some hours.

There were several other service lawyers on board. Service lawyers giving legal advice do not fit easily into the usual chain of command. It is not uncommon to find junior legal officers advising senior commanders directly on some issues. Other senior operations lawyers were assisting coalition commanders with advice about the application of the Geneva Conventions to command decisions. One common issue for such advice is the application to every targeting decision of Article 52 of Additional Protocol I, which requires that 'Attacks be limited to strictly military objectives'. Their unseen legal work has real influence at every level of operations.

I attended a moving Dawn Service on *Kanimbla's* flight deck on Anzac Day morning. As we assembled at 4.30am for the service an Iraqi fishing *dhow* was moored about half a nautical mile to our port and Iraqi land birds played on our deck. Its crew must have wondered at the strange morning customs of these Australians.



Minister for Defence Senator the Hon Robert Hill



An Iraqi *dhow* (background) moored near the *Kanimbla*.

I left *Kanimbla* by Navy Sea King helicopter late on Anzac Day morning. The helicopter had been arranged to carrying out the VIPs who had been visiting the ship for Anzac Day, Senator Robert Hill, the Minister of Defence and General Cosgrove the Chief of the Defence Force. This aircraft was fully armed against attack. This was the first time that my pre-flight safety instructions had come from someone also doubling as the aircraft's starboard machine gunner.

Military aircraft are impossibly noisy. Earplugs are necessary at all times. Except by the limited available intercom, onboard communication for passengers is limited to one's creative capacity with sign language. After a short flight we landed at Kuwait International Airport. On arrival a company of Kuwaiti troops formed up and presented arms to Australia's representative Senator Hill and to General Cosgrove. It looked like a military honour guard was going to be a new form of arrivals gate service for me. This was not to be. The guard had dispersed before I carried my own bags from the aircraft.

Here too, several square kilometers of land adjacent to Kuwait International Airport had been made available for coalition operations. Vast numbers of transport aircraft, *materiel* and stores were assembled. I changed out of uniform to commence my transformation back to the civilian world. Some locally based RAN personnel then took me back across the divide.

I left Kuwait that night and flew back to Sydney. I resumed practice at the Bar the following Monday. Almost every working day of the year a member of the New South Wales Bar will do legal work for the Navy, Army or the RAAF. We are all privileged to do so.