

Chapter 10. “New and Important Evidence”

1987-1992

The lack of movement on the *Californian* matter was proving to be disheartening for its greatest champion. Despite a Titanic Historical Society poll that showed that a majority of respondents wanted the Lord case re-opened, Leslie Harrison told this author in 1989 that he had long since given up actively debating and campaigning over the *Californian* incident, and had resorted to a simpler strategy; reducing the evidence for Captain Lord to its simplest, basic form. These consisted of photocopies of sections of the inquiries²¹⁰. Strangely enough, that very year, he wrote to (then) President Bush of the United States regarding Lord's case. Also in 1989, Harrison and Stanley T. Lord had tried to force the Department of Transport²¹¹ to action by arguing that Captain Lord was not adequately represented in 1912. Harrison drafted a letter, to be agreed by Lord Jr.: “My father had no personal connection with Mr. Dunlop, nor any opportunity to discuss his case with him, or to influence what he chose to say. In the above circumstances would you kindly ask your Department's legal advisors to rule on the formal situation of an aggrieved witness, such as my father, whose case is taken up by a barrister purporting to represent him, but when, in fact, had no authority to do so. In my father's case, he did not knowingly delegate to the Leyland Line, his employers, the authority to make any such arrangement with Mr. Dunlop. If, as I submit, my father was not legally represented at the Inquiry, and received no prior warning of the charges later held proved against him, are the findings of the Inquiry nevertheless to be regarded as irrevocable and completely immune from any subsequent formal challenge?”

It is not known if the letter was sent or not. The internal Department minutes make no mention of it, and there is no acknowledgement in the legacy of Harrison's incomplete papers.

Two pieces of evidence could conceivably re-open the Inquiry: the actual 1912 positions of the *Titanic* and the *Californian*. The latter seemed to be an impossibility as the only way to determine her location was to work backwards using navigational data gathered on April 15th, but this was subject to personal biases, interpretation of the evidence and an estimation of the strength and direction of the drift that night.

The first of these desirable pieces of data was known, but unavailable. On September 1st, 1985, a Franco-American team had unearthed the location of the *Titanic* wreck with precision. However, these data were not available because of the fear of looting of the wreck by profiteers. But, on 6th October 1987, the positions were published in “*The Discovery of the Titanic*” by Dr. Robert D. Ballard and Rick Archbold. It was felt that, since sufficient people now knew the location of the wreck, it was futile to keep it officially secret. Indeed, in the book, the co-ordinates were revealed in a chapter dedicated to the question of the *Californian*²¹². It turned out that the *Californian's* overnight DR position was some 21 miles to the NNW of the actual wrecksite, and, according to Ballard, rockets could certainly be seen over that distance. Ballard had been critical of

210 One such despatch, which was sent to this author, highlighted Groves' evidence of a ship coming from the south and west, and a sketch showing the *Californian's* heading, and the bearing of Groves' ship; this was contrasted with evidence, again photocopied from the inquiries, showing that the *Titanic* had been heading almost due west. There is no mention of Captain Lord's sighting of a green light.

211 One of the successors to the original Board of Trade.

212 A mystery exists though, in the strength and direction of the current that existed the night the *Titanic* went down. The schematics in Ballard's and Archbold's book (reproduced from the December 1985 issue of the *National Geographic* magazine) and text state that the current was deduced from the *Californian's* log book, and turned out to be 0.7 knots to the SSE. Not only is this inconsistent with the location of the wreckage on the 15th, the *Californian's* log book has been missing for decades.

Captain Lord and felt that it was a “telling fact” that the men of the *Californian* failed to act when action was needed, even if they could only pluck a few half-dead bodies from the icy waters. He later told Harrison in reply to one of his many letters that he found Walter Lord's *Californian* logic “more persuasive” than that of the ex-M.M.S.A. secretary.

A significant point mentioned many times since the wreck was found was that the bow section (the wreck had broken into two major pieces) pointed just slightly east of north, the stern having turned around 180°. To the opponents of Captain Lord, this was proof that the *Titanic* was pointing in the approximate direction of the *Californian*, but the critics of this stance were unperturbed, one saying that the direction of the bow is no indication of the *Titanic's* heading on the surface, as the stern was headed in the opposite direction. But tests performed by the Discovery TV Channel in the 1990s on a model in a water tank demonstrates that the bow section, being more streamlined and hence susceptible to less drag, would continue to the bottom in the direction in which she was heading on the surface; and Dr. Ballard, in his book, noted that the stern probably rotated as she descended, the same motion being observed in submersibles that fell more or less straight down, as the stern undoubtedly did. Perhaps of more relevance is the *orientation* of the bow from the stern. Drawing a line from the mid-line of the bow to the area of the stern reveals a north-south line; if the bow moved forward as she headed towards the ocean floor, this demonstrates a northward heading ship on the surface.

The Lordites now had a chance; in an article discussing (pro-Lord) navigational aspects of the *Titanic* disaster, Harrison wrote, “In 1987, the disclosure of the actual position of the wreck poses a very interesting question: does it constitute 'new and important evidence' within the context of Section 57(1)(a) of the 1970 Merchant Shipping Act, *compelling* [emphasis in original] the Department of Transport to reopen that part of Lord Mersey's Inquiry which censured Captain Lord?”²¹³

The answer was “yes” - but the Department would not accede without a fair amount of struggle on their part: for, in the year that Harrison wrote the above paragraph, there seemed to be the first signs that the Political stonewalling was beginning to crumble. On the 3rd August, Peter McClymont, the Private Secretary to Lord Babrazon of Tara, Minister of State for Aviation and Shipping responded to a letter and annotated copy of “*A Titanic Myth*” sent by Harrison two months earlier. McClymont's reply was that, “The Department has carefully considered the evidence, including that provided by the findings of *Titanic's* wreckage, and its conclusion is that you are right in deducing that *Californian* was in all probability substantially further from the *Titanic* than Lord Mersey found. At the same time, the Department consider it inescapable that Captain Lord did merit a degree of censure. When all possible allowances are made for the different circumstances of 76 years ago, including the common use of company identification signals, the fact remains that signals which could have been those of distress were seen in an area which Captain Lord himself considered hazardous enough to require him to stop his ship until daylight. In these circumstances, the Department consider to reopen the Inquiry would serve no useful purpose and might indeed do more harm than good, and so do not propose to do so.”

One wonders in vain why such an Inquiry would do more harm than good. Harrison responded by noting his disagreements to this response from McClymont:²¹⁴ to his mind, the Department had exposed the absurdity of Lord Mersey's finding that the *Californian* “might have saved many if not all of the lives that were lost.” Another point that fuelled Harrison's anger was the mention of distress signals, which are listed in this book, in Appendix B. He listed the four ways,

213 Seaways, the Journal of the British Nautical Institute, March 1988.

214 Titanic Commutator Volume 12, No.2, 1988

according to law in 1912, that a ship may summon help. However, Harrison was wrong on one crucial point. With regard to “Rockets or shells, throwing stars of any colour or description, fired one at a time, at short intervals,” he noted “The eight 'rockets' seen from the *Californian* were not fired 'one at a time, at short intervals,' but irregularly, over a protracted period of time.” This is true, but the law did not describe that the rockets or shells should be fired at regular intervals, but only that they should be fired one at a time. The duration of the rocket firing is also irrelevant. The *Californian* saw the eight rockets fired over a possible hour's duration, or an average of one every 7 ½ minutes. What was seen, despite Harrison's interpretation, describes exactly the prescribed method in law for signalling distress at night.

The disclosure of the *Titanic* wrecksite location was causing some furore within the UK Government.²¹⁵ Mr. I. Hood, the Treasury Solicitor (Litigation) wrote to Captain James de Coverley (Department of Transport Marine Directorate) on December 22, 1988 saying, “I think it would be a brave man who would say that this Inquiry will be shortly dealt with.”

The matter trundled on intermittently. Exactly two months later, Hood wrote back to de Coverley that “Section 6 of the Maritime Convention Act, 1911 [stated that] ‘...the Master or person in charge of a vessel shall, so far as he can do so without serious danger to his own vessel, render assistance to every person.’” Evidently, some research was being done as to the validity of a possible appeal, or re-appraisal, and what legal arguments could be advanced.

Three months on, de Coverley wrote to Captain Marriott, the Chief Inspector of Marine Accidents at the newly formed Marine Accident Investigation Branch (M.A.I.B.), and Paul Channon, the Secretary of State for Transport. De Coverley stated that “in all probability the *Californian* was, as Captain Lord claimed, much further from the *Titanic* than the Formal Investigation found and could not have assisted her.” De Coverley had based this opinion on “a short paper” and the location of the *Titanic's* wreckage²¹⁶ but also remarked that “some criticism of Captain Lord remains valid [although] it is very much less severe than that levelled at him in the Report of the Court. It is submitted that it would be difficult and indeed unjust to continue to resist pressure for some action to set the record straight.”

“Further,” he goes on, “the approaches [i.e. the various letters and appeals regarding Captain Lord] to the Department ... all have to be dealt with, and, as our files show, have occupied a quite significant amount of the time of both nautical and legal staff.”

De Coverley saw three possibilities:

The first was to undergo a re-hearing of the relevant part of the Formal Investigation. However, practicalities and costs argued against this.

The second option was a public statement by the Department of Transport, or possibly an answer to an “inspired” question in the house. The disadvantage was that, an unsupported statement might not put the matter to rest. The reader will recall that such an “inspired” question from a Member of Parliament who held no interest in the *Californian* had sounded the first death knell of the 1968 petition.

The third was his preferred option: a re-appraisal of the evidence by the year old M.A.I.B..

215 BT 239/787

216 Perhaps Captain Quick's report; see later

But who would perform this re-appraisal? De Coverley favoured “a retired surveyor.” This would be someone “outside the branch to ensure that the task is carried out thoroughly and without pressure of other work, yet without taking up our own time.” The cost of this option would be minimal, he further notes, compared to the first option and would “probably be saved in terms of staff time within a very few years.”

He signed off his memorandum, “at least we would be seen to be taking action; and once the report was published any further representations could be met by referring to it.”

A brief summary of the case was attached to this memo. While it supports the notion of a great distance between the two ships, it ends, “...some criticism of Captain Lord must stand; but the conclusion ... that the grave charge against him of failing to save lives was unjustified – holds good.”

Apparently, there was some internal scepticism about de Coverley's favoured option, and Hood wrote to him that, “I feel that the re-appraisal of the evidence by [the] M.A.I.B. will not put the matter to rest either. That is unless the outcome was a complete exoneration of Captain Lord's, relatively speaking, inactivity in difficult circumstances. That is something which it seems to me is unlikely.”

By June 8th 1990, Channon had been replaced by Cecil Parkinson as the Secretary of State for Transport and he had decided that the third option was the best one but he wanted the M.A.I.B. to perform the task, not a retired surveyor. Legal Advisor Geoffrey Beetham tried to convince him that the independent surveyor approach was the best way of proceeding, but Parkinson would not alter his conviction. In a letter to the Secretary of State, Mr. Beetham later wrote that “it seems unlikely that [the location of the *Titanic's* wrecksite] will put an end to all speculation about the relative positions [of the two ships]” as there were many pieces of evidence that needed considering, such as the current at the time of the accident. “All these matters will be open to speculation and opinion, and consequently it is certain that a reappraisal of the existing evidence will not put an end to the questions or speculation. There is therefore a big question mark about the effectiveness of incurring costs on the proposed reappraisal exercise. It is not going to provide definitive answers and put all questions to bed.”

“Perhaps of more significance to the Department [of Transport] is the precedent which the reopening of the evidence would provide in other cases. It would not be difficult for interested parties to come up with 'new evidence' in other cases, such as the *Derbyshire* or the *Marques*. In both these cases there are numbers of people who could well benefit financially from a reopening of the investigation. There are parties eager to have these investigations reopened, and it would be difficult to resist their arguments on the basis of new evidence if we have reopened the case of the *Titanic* which is of much more 'academic' interest.”

Cecil Parkinson's opinion on the matter changed, and he agreed to de Coverley's suggestion. A suitable “external” assessor was found in Captain Thomas Barnett, a recently retired 60 year who had been a Principal Nautical Surveyor (Shetland), and was now living in Alderbury. Barnett didn't recall anything about the *Californian's* role in the *Titanic* disaster prior to his appointment²¹⁷, describing himself as a “here and now” person.

The news finally broke. It looked at though nearly three decades of sisyphian propaganda and campaigns for Captain Lord were finally about to produce dividends.

217 Private Information