7-1-2017

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Journal of Maritime Law & Commerce, Vol. 48, No. 3, July, 2017

The Sailor, the Prostitute, the Pimp, and the Judge: Chasing Down the Loose Ends of Koistinen v. American Export Lines, Inc.

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I
INTRODUCTION

Koistinen v. American Export Lines, Inc.[1] is a case all admiralty law professors love to teach and all admiralty law students love to read. It arises, of course, from a seaman's disastrous visit to a prostitute[2] and his resulting claim for

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[1]194 Misc. 942, 83 N.Y.S.2d 297, 1948 AMC 1464 (N.Y. City Ct. 1948).

[2]Such trysts have become much less common in recent times due to HIV/AIDS; containerization (which has resulted in vessels spending fewer days in port); enhanced shoreside security in the wake of 9/11 (which has made it more difficult for prostitutes and seafarers to make contact); and the internet (which has allowed crewmembers to stay in touch with their spouses and significant others).

For historical commentary about sailors and prostitutes, see GRAEME J. MILNE, PEOPLE, PLACE AND POWER ON THE NINETEENTH-CENTURY WATERFRONT: SAILORTOWN (2016); Linda M. Maloney, *Doxies at Dockside: Prostitution and American Maritime Society, 1800–1900*, in SHIPS, SEAFARING AND SOCIETY: ESSAYS IN MARITIME HISTORY 217 (Timothy J. Runyon ed., 1987); Eve Southworth, *Drunken Sailors and Fallen Women: The New London Whaling Industry and Prostitution, 1820–1860* (unpublished honors thesis, Connecticut College, 2005), available at http://digitalcommons.conncoll.edu/cgi/viewcontent.cgi?article=1000&context=histhp.

For contemporary commentary, see HENRY TROTTER, SUGAR GIRLS & SEAMEN: A JOURNEY INTO THE WORLD OF DOCKSIDE PROSTITUTION IN SOUTH AFRICA (2011); Ryan Jacobs, *The Strange Sexual Quirk of Filipino Seafarers*, ATL. MAG., Aug. 9, 2013, at http://www.theatlantic.com/international/archive/2013/08/the-strange-sexual-quirk-of-filipino-seafarers/278285/; Nandkishore Gitte, *Seafarers Health and Sexuality*, LIFE AT SEA,

maintenance and cure.[3] While the facts certainly are amusing, what makes the opinion so memorable is the flamboyant language the court used to describe them:

> The plaintiff, a seaman, rated as a fireman and watertender, on the S.S. John N. Robins, was injured while on shore leave in the port of Split, Yugoslavia, on February 3rd, 1946; he went ashore about noon; in the exercise of a seaman's wonted privilege he resorted to a tavern where he drank one glass of wine like to our familiar port; thereafter in the course of a walk about town he visited another liquid dispensary where he quaffed two glasses of a similar vintage; there he met a woman whose blandishments, prevailing over his better sense, lured him to her room for purposes not particularly platonic; while there 'consideration like an angel came and whipped the offending Adam out of him;' the woman scorned was unappeased by his contrition and vociferously remonstrated unless her unregarded charms were requited by an accretion of 'dinner' (phonetically put); the court erroneously interpreted the word as showing that the woman had a carnivorous frenzy which could only be soothed by the succulent sirloin provided at the plaintiff's expense; but it was explained to denote a pecuniary not a gastronomic dun; she then essayed to relieve his pockets of their monetary content but without the success of the Lady that's known as Lou in Service's Spell of the Yukon where the man from the creeks, unlike plaintiff, was not on his toes to repel the peculation; completely thwarted the woman locked plaintiff in her room whereupon he proceeded to kick the door while he clamored for exit; not thus persuasive, he went to the window which was about six to eight feet above the ground and while there contemplating departure he was quickened to resolution by the sudden appearance of a man who formidably loomed at the lintels; thus, tossed between the horns of a

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Apr. 1, 2008, at http://mylifeatsea.blogspot.com/2008/04/ seafarers-health-and-sexuality.html.

[3]Despite its conceptual simplicity and ample precedents, maintenance and cure remains a slippery subject. See, e.g., Kimbley A. Kearney & Mark J. Sobczak, *Ancient Duties, Modern Perspectives: Recent Developments in the Law of Maintenance and Cure*, 89 TUL. L. REV. 1135 (2015); John J. Walsh, *The Changing Contours of Maintenance and Cure*, 38 TUL. MAR. L.J. 59 (2013); Matthew A. Pruiett, *Who Cares for Those Who Care? Qualifying Cruise Ship Doctors as Seamen for Maintenance and Cure*, 7 LOY. MAR. L.J. 79 (2008-2009); Kenneth G. Engerrand, *Primer on Maintenance and Cure*, 18 U.S.F. MAR. L.J. 41 (2005–2006).

> most dire dilemma to wit, the man in the doorway and the window, the plaintiff eyeing the one with the duller point, elected the latter means of egress undoubtedly at the time laboring under the supposition that he was about to be as roughly used as the other man in a badger game; parenthetically it may be observed that it is a matter of speculation for contemporary commentators as well as for discussion by the delegates to [the] U.N. how the refinements of that pastime came to penetrate the ferruginous arras of Yugoslavia especially as the diversion is reputed to be of strictly capitalistic American origin. So the plaintiff thus confronted leaped from the window and sustained injuries which hospitalized him in Yugoslavia and the United States; during the extensive period of his incapacitation his wages and hospital bills were paid by defendant; the only question confronting the court is his claim for maintenance over a period of thirty-six days.[4]

For its part, the defendant, American Export Lines, Inc. ("AEL"), insisted it was not liable for two reasons: 1) Koistinen had been injured while engaging in an "immoral" act; and, 2) it was not Koistinen's employer because it was merely operating the ship for the United States.[5] The court rejected both of these arguments[6] and entered judgment for Koistinen,[7] even as it chided him for jumping rather than dropping from the window.[8]

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[4]Koistinen, 83 N.Y.S.2d at 298. In parsing this language, some readers may find the following information helpful: (a) "whipped the offending Adam" is a line from Henry V and is a reference to lust; (b) although the court thought the woman asked for "dinner," what she actually wanted was "dinars" (Yugoslavia's national currency); (c) the "Lady known as Lou" is a line from Robert W. Service's 1907 poem The Shooting of Dan McGrew. In it, a prostitute named Lou steals a miner's gold just before he is killed in a barroom shootout to see who will spend the night with her; (d) the man looming at the "lintels" (i.e., doorway) was the woman's pimp; (e) a "badger game" is an extortion scheme; and, (f) the phrase "ferruginous arras" translates to "Iron Curtain," the phrase Winston Churchill coined in 1946 to describe the Soviet Union's domination of Eastern Europe.

[5]See Koistinen, 83 N.Y.S.2d at 298–99 ("The defendant resists the claim on the foregoing facts contending that it is founded in immorality; it further defends against the claim on the ground that during all the times involved in this action the United States and not the defendant was the owner of the ship and, therefore, was exclusively liable in the event plaintiff had a claim.").

[6]See id. at 300 ("While it is true that there was a gross degree of culpability in the original purpose of the plaintiff for which he went to the woman's room it cannot be consistently argued that plaintiff, having abandoned that purpose before consummation and

In and of itself, the result in *Koistinen* is not terribly remarkable—there are, after all, many decisions holding a shipowner liable for shore leave injuries.[9] Nevertheless, *Koistinen* appears in virtually every admiralty casebook currently in use[10]

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having sought to conserve his safety as well as the life of a good sailor, was acting in continuance of the initial immoral intent; in the court's opinion the proximate cause of plaintiff's leap from the window was not his original intent but was the concurrence of the locked door from which he sought egress and the subsequent looming threat of the man with the menacing mien. . . .") and id. at 299–300 ("[T]he defendant cannot defeat the right to recovery merely by establishing that it managed and operated the ship under a General Agency Agreement with the government as owner [because] as appears from the facts of the instant case the plaintiff was not apprized of defendant's status as agent for the government, as principal, therefore, plaintiff without knowledge or disclosure of the agency agreement cannot be deprived thereby of his rights as a seaman against the defendant, as agent of an undisclosed principal.").

[7]See id. at 302 ("Judgment for plaintiff against defendant for $187.20 for thirty-six days of maintenance at $5.20 a day. As findings of fact and conclusions of law were waived at the trial let the clerk enter judgment accordingly.").

[8]See id. at 300 ("[It was] an erroneous judgment to jump rather than drop to the ground which undoubtedly would have been a safer means in view of the comparatively short space he had to negotiate for escape.").

[9]See, e.g., Warren v. United States, 340 U.S. 523, 1951 AMC 416 (1951); Farrell v. United States, 336 U.S. 511, 1949 AMC 613 (1949); Aguilar v. Standard Oil Co. of N.J., 318 U.S. 724, 1943 AMC 451 (1943). But see Matthews v. Gulf & South Am. S.S. Co., 226 F. Supp. 555, 1964 AMC 305 (E.D. La.), aff'd mem., 339 F.2d 702, 1965 AMC 1206 (5th Cir. 1964). When the plaintiff in Matthews brought up Koistinen, the district court refused to follow it. See, 226 F. Supp. at 557 n.1 (describing Koistinen as "extreme" without specifying whether this referred to its facts, its holding, or both). For a further discussion, see James E. Mercante, *Mischievous Seamen Sometimes Get No Treat*, N.Y. L.J., Oct. 31, 2012, at 3.

One commentator, however, has argued that Koistinen *is* notable because it was an early signal that, post-World War II, judges intended to provide much greater protection to injured workers. See, LAWRENCE M. FRIEDMAN, AMERICAN LAW IN THE TWENTIETH CENTURY 364 (2002).

[10]The case is a principal reading in Jo Desha Lucas & Randall D. Schmidt, Cases and Materials on Admiralty 985–87 (6th ed. 2012), and Frank L. Maraist et al., CASES AND MATERIALS ON MARITIME LAW 271–74 (3d ed. 2016). It is mentioned in a note in David W. Robertson et al., ADMIRALTY AND MARITIME LAW IN THE UNITED STATES: CASES AND MATERIALS 159 (3d ed. 2015). Although it is omitted from Nicholas J. Healy et al., CASES AND MATERIALS ON ADMIRALTY (5th ed. 2012), it was cited in earlier editions. See, e.g., George C. Sprague & Nicholas J. Healy, CASES ON THE LAW OF ADMIRALTY 286 (1950).

Professors who use their own materials also tend to include Koistinen. In the readings for his course on maritime personal injury law at Tulane's Summer 2016 program in Rhodes, Greece, for example, U.S. District Judge John W. deGravelles provided students

and receives extensive treatment in the country's two leading admiralty study aids.[11] As a result, it would be difficult to take a maritime course in the United States and not encounter it.

Koistinen's case was tried to the court (sitting without a jury) on Wednesday, April 14, 1948.[12] The decision came down on Wednesday, May 26, 1948.[13] Two days later, it was reported in full in the *New York Law Journal*.[14] By the end of the summer, word of its existence had spread to the West Coast[15] and it had garnered its first court cite.[16] Within a year, it had been featured in both a peer-edited[17] and a student-edited law review.[18]

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with a full reproduction of the case. See http://www.law.tulane.edu/uploadedFiles/Summer_Abroad/Countries/Rhodes/degravelles%20materials%202016.pdf. (page 48 of the original, page 57 of the PDF).

[11]See THOMAS J. SCHOENBAUM, ADMIRALTY AND MARITIME LAW 343 (5th ed. 2012) (quoting the opinion for half a page), and FRANK L. MARAIST ET AL., ADMIRALTY IN A NUTSHELL 222 (6th ed. 2010) ("The classic [shore leave] case, which probably has not escaped the attention of any admiralty student through the years, is Koistinen v. American Export Lines, Inc., 83 N.Y.S.2d 297 (N.Y. 1948).").

[12]See infra text accompanying note 112. Because the case file no longer exists, see infra note 91 and accompanying text, I have not been able to determine when the lawsuit was filed. However, based on its index number, which was 2891–1947, see infra note 111, and the trial date, a good guess is April 1947. See infra note 89.

[13]See Koistinen, 83 N.Y.S.2d at 297.

[14]See N.Y. L.J., May 28, 1948, at 2012.

[15]See, *A Gem from John Rupp*, 2 WASH. ST. B. NEWS 27, 27 (July 1948) ("A recent case which may have escaped notice in Seattle is *Koistinen v. American Export Lines, Inc.* . . ."). John N. Rupp, who submitted the case to the newsletter's editors, was a Seattle lawyer, U.S. Navy veteran, and member of the Seattle Yacht Club. See Carole Beers, *John Rupp, Courtly Lawyer Who Loved Elegant Language*, SEATTLE TIMES, Aug. 26, 1996, at B6.

[16]See, Littel v. Moore-McCormack Lines, Inc., 1948 AMC 1337, 1355 (Md. Super. Ct. 1948) ("In *Koistinen vs. American Export Lines, Inc.*, 1948 A.M.C. 1464, in the City Court of the City of New York (*New York Law Journal*, May 28, 1948), Mr. Justice CARLIN in a somewhat unconventional opinion reached a similar conclusion in an action for maintenance and cure following injuries received ashore on February 3, 1946. Although the case was complicated by the question of non-disclosure of the agency, Mr. Justice CARLIN . . . said: '* * * the defendant cannot defeat the right to recovery merely by establishing that it managed and operated the ship under a general agency agreement with the government as owner.'").

[17]See, *Obligation of General Agent for M. and C. at $5.20 Per Day—Morals vs. Wilful Misbehavior*, 3 NACCA L.J. 265 (1949). After summarizing the case, the journal's staff added: "The decision by Justice Carlin should be read in full for its humorous, literary and persuasive style." Id. at 266. (The *NACCA Law Journal*, which existed from 1948 to 1978,

In 1952, Dean William L. Prosser (Berkeley) included *Koistinen* in his book on judicial humor.[19] Further attention came in 1955, when Professor Brainerd Currie (Chicago) penned a lengthy poem about *Koistinen*. Near the end of it, he wrote:

> The proctors wouldn't let them pay for maintenance and cure,
> So Eino had to go to court to prove his heart was pure.
> The proctors saw in Eino's acts a maritime transgression,
> And said his hurt resulted from his moral indiscretion.
> But Carlin, J., presided, and he saw the issues clear;
> He had the glitt'ring vision of a bright-eyed mariner:
> "I know Eino was naughty, I know he made a slip,
> But all that Eino did was in the service of the ship.["][20]

In their celebrated 1957 admiralty hornbook, Professors Grant Gilmore (Yale) and Charles L. Black, Jr. (Columbia) called *Koistinen* "colorful;"[21] in 1975, Judge Henry J. Friendly of the Second Circuit, in a seaman's injury case, described it as "light

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was the widely-read law review of the National Association of Claimants' Compensation Attorneys, the forerunner of the American Trial Lawyers Association.)

[18]See, Daniel H. Pollitt, Comment, *Admiralty: Shore Leave and the Doctrine of Maintenance and Cure*, 34 CORNELL L.Q. 603 (1949). Pollitt, who went on to have a distinguished career as a University of North Carolina law professor and also was a son-in-law of U.S. Supreme Court Justice Wiley B. Rutledge, closed his piece by writing: "In the Koistinen case the court extended the protection of the doctrine [of maintenance and cure] to less countenanced types of recreation. Whether [other] courts will go still further remains to be seen." Id. at 608.

[19]See, *Sailor Ashore*, in The Judicial Humorist: A Collection of Judicial Opinions and Other Frivolities 185 (William L. Prosser ed., 1952). Another such work that includes Koistinen is Cameron Harvey, Legal Wit & Whimsy: An Anthology of Legal Humour 39 (1988).

[20]Brainerd Currie, *Koistinen v. American Export Lines, Inc.*, HARV. L. SCH. REC., Nov. 10, 1955, at 3, reprinted as *Eino, A Sailor* at 53 THE BRIEF: PHI DELTA PHI LEGAL FRATERNITY 157 (Winter 1958), and 2 GREENBAG 2d 233 (1999). Currie was famous for his whimsical rhymes. See Becky Beaupre Gillespie, *For the Shame of Rose of Aberlone: Remembering the Rhymes of Brainerd Currie*, UNIVERSITY OF CHICAGO LAW SCHOOL COMMUNICATIONS, Sept. 15, 2016, at http://www.law.uchicago.edu/ news/shame-rose-aberlone-remembering-rhymes-brainerd-currie.

[21]GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY 260 (1957). The pair repeated this assessment when they updated their book. See, GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY 291 (2d ed. 1975).

hearted."[22] Such references continue to appear. In a 2009 blog post about "neat" cases, Professor Gerard N. Magliocca (Indiana) led off with *Koistinen* and said, "I could go on quoting this opinion all day."[23] Similarly, in 2011 a Whittier Law School student named Katrina M. Parra wrote on her blog:

> A bonus from my admiralty reading has been some rather amusingly written cases, such as *Koistinen v. American Export Lines, Inc.*, 194 Misc. 942 (1948), which dealt with a seaman who was injured defenestrating himself from a second story window of a brothel in Yugoslavia in an effort to escape a prostitute's pimp because he didn't pay. Ah, the exploits of seamen on shore leave in foreign ports—shenanigans are bound to follow.[24]

In 2010, on the public discussion board FreeAdvice, a poster calling herself "Cruise Ship Girl" asked what she should do about an injury she had suffered while working for Norwegian Cruise Line. "Stevef," who did not say whether he was a lawyer, replied:

> Admiralty law and employment law are worlds apart. For some interesting reading, see *Koistinen v. American Export Lines*, 194 Misc. 942, 83 N.Y.S.2d 297 (1948), where the plaintiff was entitled to cure after jumping out the second story window of a brothe[l].[25]

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[22]Ressler v. States Marine Lines, Inc., 517 F.2d 579, 582, 1975 AMC 819 (2d Cir.), cert. denied, 423 U.S. 894 (1975). Judges have not paid much attention to Koistinen in recent times. Indeed, it has been more than a decade since it was last cited in a case. See Marine Solution Servs., Inc. v. Horton, 70 P.3d 393, 413 n.91, 2003 AMC 1566 (AK. 2003).

[23]Gerard Magliocca, *Fun Cases That You Don't Know*, Dec. 9, 2009, CONCURRING OPINIONS, at https://concurringopinions.com/archives/2009/12/fun-cases-that-you-dont-know.html.

[24]K.M. Parra, *The Joys of Admiralty Law Reading*, Mar. 23, 2011, at http://schadenfreudeshenanigans.blogspot.com/2011/03/joys-of-admiralty-law-reading.html.

[25]Http://forum.freeadvice.com/health-insurance-hmo-plans-79/dog-bite-claim-denied-2006-a-519163.html (under Stevef, Post # 6, June 9, 2010, at 11:59 a.m.) (underlining in original). For other examples of a commentator using Koistinen to demonstrate the distinctive nature of maritime law, see JEFFREY MILLER, ARDOR IN THE COURT!: SEX AND THE LAW 174–75 (2002); Arthur Allen Leff, *Unconscionability and the Code—The Emperor's New Clause*, 115 U. PA. L. REV. 485, 532 n.197 (1967).

Despite its fame, *Koistinen* is a case shrouded in mystery. Who, for example, was Koistinen? How was he able to afford a lawyer? Why did he bring his suit in an obscure municipal court when one of the nation's foremost admiralty courts (the Southern District of New York) was just two blocks away? And who wrote the opinion and how does it fit into his or her judicial career?

For the past few years, I have been looking into these and related questions. What follows are the answers I have been able to find.

II
THE BASICS

As noted at the outset of this article, *Koistinen* is a thrice-reported case.[26] Collectively, the different versions provide the following information:

A. Ship's name: S.S. JOHN N. ROBINS
B. Plaintiff's name: Eino J. Koistinen
C. Defendant's name: American Export Lines, Inc.
D. Plaintiff's lawyers' names: William L. Standard and Louis R. Harolds
E. Defendant's lawyers' names: John Osnato, Jr. (Haight, Griffin, Deming & Gardner)
F. Judge's last name: Carlin
G. Court's name: City Court of the City of New York

A. Ship's Name

A Google search reveals that the S.S. JOHN N. ROBINS was a "Liberty ship." As is well known, during World War II the U.S. government built 2,710 Liberty ships to help deliver cargo and move troops. Costing roughly $2 million each, and completed on average in just 42 days, the ships were intended to last five years but remained operational for decades. To get them into the water

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[26]See supra note 1. The number increases to four if one includes the *New York Law Journal*. See supra note 14.

as quickly as possible, contracts were given to 18 different shipyards scattered across the country. Following the war, the government sold off the fleet for roughly 28 cents on the dollar.[27]

In all respects, the JOHN N. ROBINS (officially Hull 819) was typical. Its keel was laid down at the New England Shipbuilding Corporation's West Yard in South Portland, Maine, on Monday, August 9, 1943; it was launched on Thursday, September 30, 1943; it was accepted by the U.S. government on Monday, October 11, 1943; it was laid up on the Hudson River on Monday, June 24, 1946; it was sold to the French government for $544,506.00 on Tuesday, December 31, 1946 (by which time it had been moved to Hoboken); and it then traded as the French-flagged LE LAVANDOU (1947-63) and the Panamanian-flagged KETTARA VIII (1963-64) before being scrapped at Nagoya, Japan in 1964.[28]

As has been explained elsewhere, "Liberty ships were named after prominent (deceased) Americans, starting with Patrick Henry and the signers of the Declaration of Independence . . . . Any group which raised $2 million . . . in War Bonds could suggest a name for a Liberty ship."[29] The JOHN N. ROBINS was named for "John N. Robins . . . (1852-1923) founder of the Robins Dry Dock & Repair Co., one of three companies that merged into Todd Shipyards."[30] Any law student who has taken

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[27]For a further discussion, see Peter Elphick, Liberty: The Ships That Won the War (2001).

[28]See, *Launch Liberty Vessel at South Portland Yard—Bears Name of N.Y. Shipbuilder*, BIDDEFORD DAILY J. (ME), Sept. 30, 1943, at 6; *John N. Robins*, MARAD, at https://www.marad.dot.gov/sh/ShipHistory/Detail/2645 (under "Status Cards"); *LIBERTY SHIPS—Joaquin-Johns*, MARINERS, at http://www.mariners-l.co.uk/LibShipsJo.html; *Compagnie des Chargeurs Reunis, Havre*, THE SHIPS LIST, at http://www.theshipslist.com/ships/lines/creunis.shtml; *John N. Robins*, WORLD WAR II ENCYCLOPEDIA, at http://lemairesoft.sytes.net:1944/pages/page.aspx?univid=326046; *List of Liberty Ships (Je–L)*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at https://en.wikipedia.org/wiki/List_of_Liberty_ships_(Je%E2%80%93L).

For a photograph of the JOHN N. ROBINS, see *Pictures of Liberty Ships in Peacetime*, at https://www.armed-guard.com/lsip02.html.

[29]Liberty Ships Built by the United States Maritime Commission in World War II, at http://www.usmm.org/libertyships.html.

[30]Greg H. Williams, The Liberty Ships of World War II: A Record of the 2,710 Vessels and Their Builders, Operators and Namesakes, with a History of the Jeremiah O'Brien 129 (2014).

admiralty is indirectly familiar with Robins due to *Robins Dry Dock & Repair Co. v. Flint.*[31]

B. Plaintiff's Name

The opinion mentions that Koistinen served as a fireman and watertender aboard the JOHN N. ROBINS;[32] spoke only broken English;[33] and was hired in New York City.[34] It otherwise provides no details about him.

However, in Ancestry.com's "Crew Lists" file, ship manifests from May 1947 show Koistinen serving as a wiper[35] aboard the S.S. MORMACPENN.[36] These manifests, together with ones from the

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[31]275 U.S. 303, 1928 AMC 61 (1927) (holding that if personal property is not physically damaged, the plaintiff cannot recover economic losses). For a further profile of Robins, see *John N. Robins*, N.Y. TIMES, Mar. 27, 1923, at 19.

[32]See Koistinen, 83 N.Y.S.2d at 298.

According to a 1943–44 government training manual entitled *Duties of Seamen in Ship's Engine Department*, available at http://www.usmm.org/engine.html [hereinafter Ship's Engine Department], a "fireman [o]perates [the] oil burning system to generate steam in [the] boilers and on small and medium sized vessels also acts as watertender. . . . Should the fireman through neglect or ignorance allow the water level in the boilers to drop below the lowest safe point, serious damage may occur with resultant loss of use of the boilers and stoppage of the ship's engine." This same manual defined a "watertender [as the crewmember who m]aintains [the] proper water level in [the] boilers and has charge of [the] firemen."

The manual pointed out that both firemen and watertenders were expected to stand watch in the engine room. It also, next to a photograph of a Liberty ship's engine, warned, "The safety of the ship is dependent to a considerable degree on you Firemen, Watertenders and Oilers, for one of the most important needs of a ship's power plant is a well trained and competent engine room crew. The best machinery is no better than the men who operate it and care for it."

[33]See Koistinen, 83 N.Y.S.2d at 299 ("[The] plaintiff . . . testified he could neither read nor write English; the difficulty in following his testimony given in broken English without the aid of an interpreter corroborated his ignorance of our language. . . .").

[34]See id., ("[T]he master further testified that the crew was procured from the Maritime Union in New York which supplied seamen on defendant's call. . . .").

[35]A wiper, who ranks below a fireman and a watertender, "[p]erforms manual labor in [the] engine department, such as cleaning and painting[,] and assists in repair work." Ship's Engine Department, supra note 32.

[36]Although Moore-McCormack Lines used "MORMACPENN" as the name of four different vessels, Koistinen served on the final one, which was delivered new to the company in 1946. See further, *Moore-McCormack MorMacPenn*, at http://www.moore-mccormack.com/Cargo-Liners/Mormacpenn.htm.

S.S. BRITA THORDEN (1941), S.S. BRAZIL (1945), S.S. SANTA (1947), and S.S. AMERICAN RANGER (1948), indicate that Koistinen was a Finnish national,[37] did not hold U.S. citizenship,[38] was born in 1910 (meaning he was 35 at the time of his injury), stood 5'7", and weighed between 154 and 188 pounds.[39]

Amazingly, the JOHN N. ROBINS's logbook, consisting of two volumes, is still extant.[40] It provides a wealth of information, beginning with the fact that Koistinen did, as the opinion states, serve as the ship's fireman and watertender.[41] In these positions Koistinen was rated "Very Good" (the highest possible rating) by George M. Marshall, Jr., the ship's master.[42]

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[37]Finland, of course, always has had a large proportion of its workforce engaged in shipping, with a substantial minority serving on foreign vessels. This was particularly true during the period between 1930 and 1960, when Finnish seamen could quadruple their salaries by working abroad. See, YRJÖ KAUKIAINEN, A HISTORY OF FINNISH SHIPPING 145–46, 174–76 (1993). In contrast, Finnish mariners now earn some of the world's highest pay, causing Finnish shipowners to regularly look for cheaper alternatives. See further, International Transp. Workers Fed'n & Finnish Seamen's Union v. Viking Line ABP & OÜ Viking Line Eesti (The Rosella), [2007] ECR 1-10779 (Case C-438/05) (strike over attempted reflagging of a Finnish ferry to take advantage of the cheaper labor costs in neighboring Estonia). For an interesting first-hand account of the modern Finnish merchant marine, see MIRA KARJALAINEN, IN THE SHADOW OF FREEDOM: LIFE ON BOARD THE OIL TANKER (2007).

[38]One of the AMERICAN RANGER manifests includes Koistinen's Alien Registration number (A5958231; expiration date April 19, 1956). As has been explained elsewhere, "Alien registration was required in the United States beginning in 1940 for resident aliens. . . . Alien Registration requirements applied to all aliens over the age of fourteen, regardless of nationality and regardless of immigration status." *Alien Registration*, ENCYCLOPEDIA OF GENEALOGY, at http://www.eogen.com/ AlienRegistration.

[39]Koistinen's fluctuating weight no doubt had something to do with when his measurements were taken—like most deckhands, he would have been heavier at the start of a voyage and lighter by its end due to the physical nature of his duties.

[40]The logbook [hereinafter "1 JNR Logbook" and "2 JNR Logbook"] now resides in the files of the National Archives in Fort Worth. See, e-mail from Ketina Taylor, Archivist—The National Archives at Fort Worth, to the author, dated Dec. 21, 2016, at 12:02 p.m. (copy on file with the author). For a detailed explanation of how it and other logbooks came to be held by the government, see National Maritime Center, *United States Merchant Vessel Logbooks*, Apr. 1992, at https://www.uscg.mil/nmc/ records_request/pdfs/ Reference-Information-Paper-77.pdf.

[41]See 1 JNR Logbook, supra note 40, at 5, line 24 ("List of Crew and Report of Character").

[42]Id. For an obituary of Marshall, accompanied by a photograph, see *George M. Marshall Jr., 92, Former Resident*, NEW CANAAN ADVERTISER (Conn.), May 24, 2012, at

According to the logbook, the voyage began in Mobile on Thursday, December 13, 1945, and ended in New Orleans on Monday, March 18, 1946.[43] On Sunday, February 3, 1946, the ship docked in Split. Located on the eastern shores of the Adriatic Sea, the city has been an important seaport since the Middle Ages.[44] In 1992, when Yugoslavia disintegrated,[45] Split became part of the new nation of Croatia.[46]

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http://ncadvertiser.com/6207/george-m-marshall-jr-92-former-resident/. As it indicates, Marshall gave up the sea after the JOHN N. ROBINS returned home:

> Born in Brooklyn, NY in 1919, George was inspired by his sea captain grandfather and went to sea at the age of 17. From 1938 to 1946 he served in the U.S. Merchant Marine on ships operated by the United States Lines, American President Lines and American Export Lines . . . rising from deck cadet to . . . [m]aster.
>
> He graduated from the U.S. Merchant Marine Academy at Kings Point in the Class of 1942. In 1944, he was appointed to [the] command of the ship SS Charles Carroll at the age of 24, one of the youngest shipmasters to have served in the U.S. Merchant Marine during World War II.
>
> Captain Marshall completed his undergraduate degree at New York University. During his business career he advanced to senior vice president of the Atlantic Mutual Insurance Company in charge of the international insurance operations [and also served as] Presidente de Consejo for Union de Seguros, S.A. in Mexico City, Mexico.
>
> Following early retirement, he joined the staff at the Maine Maritime Academy in Castine. He served as special assistant to the superintendent as well as Director of Development, Director of Placement, Director of the Cadet Shipping Training Program, the First Director of the Center of Advanced Maritime Studies and Chairman of the Development Council. Following his second retirement, he served as a SCORE volunteer in both [its] Bangor and Ellsworth offices.

Id.

[43]1–2 JNR Logbook, supra note 40.

[44]See, ROBERT STALLAERTS, HISTORICAL DICTIONARY OF CROATIA 298 (3d ed. 2010). See also, *Port of Split*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at https://en.wikipedia.org/wiki/Port_of_Split.

Like all seaports, Split always has had a "red light" district. Currently, prostitutes in Split operate out of Strossmayer (Dardin) Park, which is about a mile from the port. See, *Things to Do in Split: "Subdued" Red Light District in Split*, CROATIA TRAVEL BLOG, Jan. 12, 2015, at http://splitcarhire.com/blog/subdued-red-light-district-in-split/.

[45]The break-up, which was set in motion by the 1980 death of President Josip Broz Tito, is chronicled in, e.g., CAROLE ROGEL, THE BREAKUP OF YUGOSLAVIA AND ITS AFTERMATH (2004 rev. ed.).

[46]See, CROATIA: "PREHISTORY TO PRESENT" 255–56 (Paul F. Kisak ed., 2015).

On Monday, February 4, 1946, Koistinen, having been granted shore leave, withdrew $5.00 from his shipboard "cash account,"[47] the equivalent today of $61.34.[48] At the official exchange rate, $5.00 was worth 250 dinars; at the black market exchange rate, however, $5.00 was worth 1,500 dinars.[49] To put these figures into perspective, a three-room apartment in Zagreb during this time could be rented for 750 dinars a month, a loaf of bread cost seven dinars, and 10 *Zeta* cigarettes (a local brand) went for five dinars.[50]

Once off the ship, Koistinen headed into town. As the opinion mentions, he went to two bars; in the second one, he met a prostitute. The logbook chronicles the rest of his ordeal:

> 2/4/46—3:00 p.m.—Split, Yugoslavia
> Eino Koistinen, W.T. F.M. [Water Tender Fire Man], while ashore in the city of Split jumped out of a window and fractured his left foot. He was taken to [a] hospital for treatment. Details as per medical report on file.
> 2/6/46—8:00 a.m.—Split, Yugoslavia
> Nathaniel B. Dent, Wiper, is hereby promoted to Acting W.T. F.M., to replace E. Koistinen who is incapacitated.
> 2/7/46—6:00 p.m.—Split, Yugoslavia

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[47]See, 1 JNR Logbook, supra note 40, at 29 (composite of multiple signed receipts under the heading "Eino J. Koistinen in account with S.S. John N. Robins").

[48]See, Morgan Friedman, *The Inflation Calculator*, at http://www.westegg.com/inflation/ [hereinafter *Inflation Calculator*] ("What cost $5 in 1946 would cost $62.46 in 2016.").

[49]See, Biljana Stojanović, *Exchange Rate Regimes of the Dinar 1945–1990: An Assessment of Appropriateness and Efficiency* 198, 203, paper presented at "The Experience of Exchange Rate Regimes in Southeastern Europe in a Historical and Comparative Perspective" (Second Conference of the South-Eastern European Monetary History Network (SEEMHN)), Apr. 13, 2007, available at https://www.oenb.at/dam/jcr:dceeca43-b473-407e-8586-d81a3ae554cd/stojanovic_tcm16-80905.pdf (explaining that at the end of 1945, the official exchange rate was $1.00 = 50 dinars but the black market exchange rate was $1.00 = 300 dinars).

[50]See, S.D. Zagoroff et al., The Agricultural Economy of the Danubian Countries, 1935–45, at 359–61 (1955).

> Eino Koistinen, W.T. F.M., was brought back up to the ship from the hospital and he was placed in the ship's hospital for return passage to the USA.[51]

C. Defendant's Name

Finding information about AEL was easy. As its detailed Wikipedia page explains:

> [The] Export Steamship Corporation was organized in 1919 and began operating cargo services to the Mediterranean from New York. The word "American" was added in the 1920s to emphasize its ties to the U.S. In 1931, [the company] placed in service four cargo-passenger liners, Excalibur, Excambion, Exeter and Exochorda, known as the "Four Aces." The timing of [this] new service [proved] unfortunate [due to] the beginning of the Depression. [As a result, t]he company went through various reorganizations and became the American Export Lines in 1936. During World War II[,] American Export Lines operated transports for the U.S. War Shipping Administration. In 1964, it merged with Isbrandtsen Co. to become the American Export-Isbrandtsen Lines. . . .
>
> American Export Lines (AEL) . . . re-emerged after the dissolution of the American Export-Isbrandtsen Lines in 1973. . . . After heavy losses and unable to meet crippling debt payments, AEL went into bankruptcy in July 1977, with Farrell Lines buying its port operations in New York City and its remaining ships a year later. . . . Farrell Lines was acquired by Royal P & O Nedlloyd in July 2000. In turn, . . . Royal P & O Nedlloyd was acquired by [the] A.P. Moller-Maersk Group in August 2005.[52]

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[51]2 JNR Logbook, supra note 40, at 13–14. For the text of the medical report mentioned in the 2/4/46 entry, see infra note 151.

Nathaniel B. Dent, the 18-year-old crewmember who took over for Koistinen on the voyage home, was from Evergreen, Alabama. After leaving the merchant marines in 1947, he joined the Scott Paper Company ("SPC") in Mobile. Except for a brief stint in the U.S. Air Force during the Korean War, Dent remained with SPC until his retirement in 1989. See, *Nathaniel B. Dent*, MOBILE PRESS-REG., Mar. 22, 1994, at B3.

[52]*American Export-Isbrandtsen Lines*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at https://en.wikipedia.org/wiki/American_Export-Isbrandtsen_Lines. A variety of AEL artifacts (including brochures, glassware, schedules, and signs) can be viewed on the web

D. Plaintiff's Lawyers' Names

A Google search of William L. Standard turned up his *New York Times* obituary, which described him as "a lawyer who specialized in the welfare of merchant seamen," "a senior partner in the firm of Standard, Weisberg, Heckerling & Rosow," the "first legal counsel [of the National Maritime Union of America ("NMU")]," and the author of a book entitled *Merchant Seamen: A Short History of Their Struggles*.[53] Given that Standard was the NMU's lawyer and Koistinen was a union member,[54] it seems safe to assume that Standard represented Koistinen at no charge to Koistinen.[55]

A similar search for Louis R. Harolds turned up his *New York Times* obituary, which reads much like Standard's.[56]

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site of the Hoboken Historical Museum. See http://hoboken.pastperfectonline.com/bysearchterm?keyword=American+Export+Lines.

[53]*William L. Standard, 78, A Lawyer for Seafarers and Writer on War, Dies*, N.Y. TIMES, May 7, 1978, at 36. For a review of Standard's book, which traces the history of maritime unions in the United States, see Joseph P. Goldberg, *Sailor Take Warning*, N.Y. TIMES, Nov. 2, 1947, at BR26.

During its existence, Standard's firm underwent a series of name changes:

William L. Standard, 1947–57
Standard, Weisberg, Harolds & Malament, 1957–61
Standard, Weisberg & Harolds, 1961–67
Standard, Weisberg, Heckerling & Rosow, 1967–93
Standard Weisberg, P.C., 1993–99

In 1999, the firm disbanded and the partners went their separate ways. See, e-mail from Arthur J. Liederman, Former Partner, Standard Weisberg, P.C. (New York City), to the author, dated Jan. 8, 2017, at 10:14 p.m. (copy on file with the author).

[54]See supra note 34 (explaining that Koistinen got his job through the NMU's New York City hiring hall). For a detailed history of the NMU, see, Ahmed A. White, *Mutiny, Shipboard Strikes, and the Supreme Court's Subversion of New Deal Labor Law*, 25 BERKELEY J. EMP. & LAB. L. 275 (2004).

[55]Standard's NMU papers are housed at Cornell University, but they do not contain anything about Koistinen or his case. See, *Guide to the William Standard Papers, Collection Number: 5258*, Kheel Center for Labor-Management Documentation and Archives, Cornell University Library, at http://rmc.library.cornell.edu/EAD/ htmldocs/KCL05258.html.

[56]See, Louis R. Harolds, Lawyer, 54, Dies: Admiralty Specialist was Active in Trial Association, N.Y. TIMES, Mar. 15, 1967, at 47.

E. Defendant's Lawyers' Names

I already was familiar with Haight's, which is where I began my legal career in the early 1980s. By the time of Koistinen's lawsuit, it had existed for more than a century and had been involved in nearly every important maritime case tried in New York City.[57] As for John Osnato, Jr., a Lexis search brought up his *New York Times* obituary, which advised that he had graduated from Columbia University Law School and had spent his career at Haight's.[58]

F. Judge's Last Name

In all of the reporters, the opinion's author is simply listed as "Carlin, J." As it turns out, there only was one Carlin on the City Court in New York in 1948: Frank A. Carlin.

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[57]A formal history of Haight's has not, to my knowledge, been prepared. However, its development can be quickly sketched out. The firm traces its roots to Francis B. Cutting (1804–70), who was admitted to the New York bar in 1827 and soon built a thriving admiralty practice. At his death, many of his clients moved to Vose & McDaniel. John G. Vose (1829–74) and William V. McDaniel (1826–84) had met each other while they were apprentices in Cutting's office and had formed a partnership in 1860. In 1869, they took Everett P. Wheeler (1840–1925) into the firm. Wheeler later became partners with Harold G. Cortis (1860–1931). In 1903, when Charles S. Haight (1870-1938) was promoted to partner, the firm became known as Wheeler, Cortis & Haight. In 1911, the firm was reorganized as Haight, Sanford, Smith & Griffin. Subsequently, the firm changed its name to Haight, Smith, Griffin & Deming; then to Haight, Griffin, Deming & Gardner; then to Haight, Deming, Gardner, Poor & Havens; and finally to Haight, Gardner, Poor & Havens. In 1997, Haight's ceased to exist when it became part of Holland & Knight, a much bigger law firm based in Florida. See, David Segal, *Law Firm Merger Creates One of Nation's Largest; Holland & Knight Combines with Haight, Gardner*, WASH. POST, Aug. 1, 1997, at G3. The details of the merger and its aftermath are described in MICHAEL L. JAMIESON, REMEMBRANCES: MY LIFE WITH CHESTERFIELD SMITH, AMERICA'S LAWYER 1964–2003, at 108–19 (2d ed. 2004).

[58]See, *John Osnato, Jr.*, N.Y. TIMES, Jan. 7, 2000, at A17. At the time Koistinen began his suit against AEL in 1947, Osnato was an associate at Haight's; he was elevated to partner in 1951. Compare, 2 MARTINDALE-HUBBELL LAW DIRECTORY 1884 (1950) with 2 MARTINDALE-HUBBELL LAW DIRECTORY 2034 (1951). In STUART M. SPEISER, LAWYERS AND THE AMERICAN DREAM (1993), Speiser, discussing actress Jane Froman's 1953 lawsuit against Pan Am (which Osnato helped to defend), called Osnato "one of Haight Gardner's most experienced personal injury defense lawyers." Id. at 116.

A family tree in Ancestry.com posted by Tammy Dannemann of New Jersey (presumably a relative) advises that Frank Anthony Carlin was born on February 4, 1888, the youngest child of Bernard and Isabella Carlin.[59] Other details in the tree include the names of his siblings (Susan b. 1882, Bernard b. 1884, and Isabella b. 1885); his wife's name (Irene); and the names of his children (Ann and Bernard).[60]

Ancestry.com also includes copies of Carlin's World War I and World II draft registration cards. In his World War I card (dated June 5, 1917), Carlin describes himself as being of medium height and build, with blue eyes and light-colored hair. He lists his occupation as "lawyer," indicates that he is working for the firm of Deyo & Bauerdorf at 111 Broadway,[61] and seeks a deferment because he is his mother's sole source of support.[62] His handwriting is unusually large, the script is extremely ornate, and the overall impression is of a man writing quickly and without hesitation.

Carlin's undated World War II card shows him as City Court judge and lists his office address as 52 Chambers Street. It appears that someone else filled out the card for him, because the lettering is small, block-printed, and crabbed. The back of the card gives his height as 5'7", his weight as 185 pounds, his hair color as brown-gray, his eyes as blue, and his complexion as light. It also notes that he has a distinctive birthmark on his right cheek (but does not describe it).

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[59]See, http://person.ancestry.com/tree/15269316/person/29794626556/story.

[60]Id. Carlin's son Bernard followed in his father's footsteps. In 1955, after earning his law degree from Fordham University, he was admitted to the New York bar and went on to have a long career in Manhattan. See, *Bernard Carlin Obituary*, at http://www.legacy.com/Obituaries.asp?Page=LifeStory&PersonId=112848859 (indicating that Bernard died in 2008).

[61]Both Robert E. Deyo and Charles F. Bauerdorf trained under David Dudley Field, the originator of the Field Code, and their firm was a direct successor to his. See, *Robert Emmet Deyo '64*, 34 PRINCETON ALUMNI WKLY. 150 (Nov. 14, 1923).

[62]As his military discharge card in Ancestry.com makes clear, Carlin's request was denied. After being inducted into the Army in July 1918, he was assigned to an engineering regiment. In December 1918, having remained stateside, he mustered out as a private (first class).

Searching on Google produced both Carlin's *New York Times* obituary (which includes a photograph from 1937)[63] and a *New York Times* article about his funeral, which was attended by 300 mourners and took place at St. Raphael's Roman Catholic Church in mid-town Manhattan.[64] According to these pieces, Carlin died at the age of 66 after suffering for several months from an unspecified illness.

Google also uncovered an alumni newsletter from Fordham University law school that carried news of Carlin's death: "City Court Justice Frank A. Carlin, '14, died December 10th. Judge Carlin, 66, attended Xavier High School and College. He served as an Assemblyman and was a Municipal Court Justice before elevation to the City Court."[65]

In Google Books, there is a copy of the Record on Appeal in a libel case brought by New York State Assemblyman Millard E. Theodore against the *Daily Mirror* newspaper.[66] One of the exhibits is Carlin's trial testimony (Theodore had called him as a character witness). At the outset of his testimony, Carlin described his professional background:

> Q. You are now a judge of what court?
> A. City Court of the City of New York.
> Q. And that is the court in civil jurisdiction just below the Supreme Court?
> A. I would say it is quite below it. The jurisdiction is limited to $3,000.
> Q. Well, it is the next court under this?
> A. Yes.

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[63]See, *Frank Carlin, 66, City Court Justice: Assemblyman from 1923 to 1930 Dies—Ex-Teacher Was on Bench 23 Years*, N.Y. TIMES, Dec. 11, 1954, at 13 [hereinafter FAC Obituary] (as this piece explains, Carlin taught at Manhattan's P.S. 51 from 1920 to 1923). Another such search turned up his widow's obituary. See, *Mrs. Frank A. Carlin*, N.Y. TIMES, Apr. 7, 1963, at 85.

[64]See, *Jurists Attend Carlin Rites*, N.Y. TIMES, Dec. 15, 1954, at 31.

[65]*Necrological*, 5 Advocate: BULL. FORDHAM L. ALUMNI ASS'N 8 (July 1955).

[66]See, Theodore v. Daily Mirror, Inc., Clerk's Index No. 1964–1935, Record on Appeal (New York State Supreme Court, Appellate Division—First Department) (available in Google Books using the query "Frank A. Carlin" and "Municipal Court" and "City Court").

Q. And how long have you been a judge of that City Court?
A. Since February 2nd of this year [1937].
Q. And prior to February 2nd of this year were you a judge of another court in the City of New York?
A. Judge in the Municipal Court from January 1st, 1931, until February 2nd of this year.
Q. Now, previously to your election to the Municipal Court bench as a judge in 1931, were you a member of the Assembly?
A. I was a member of the Legislature for seven years [1923–30].[67]

Carlin, a Democrat, moved from the Municipal Court (the city's small claims court since 1934) to the City Court in 1937 when a vacancy arose and Governor Herbert H. Lehman picked Carlin to fill it.[68] Although unsuccessful in his 1938 effort to win a seat for a full term,[69] he had better luck in 1939.[70]

Carlin was an extremely popular and respected jurist. Just after being elected to the City Court, he was feted by his colleagues at the fashionable Alango Restaurant.[71] When his 10-year term ended in 1949, he received endorsements for a second term from the Association of the Bar of the City of New York, the

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[67]Id. at 201–02. Despite Carlin's testimony, Theodore lost. On appeal, however, he was granted a new trial because he had been asked improper questions about his finances during cross-examination. See, Theodore v. Daily Mirror, Inc., 26 N.E.2d 286 (N.Y. 1940).

While serving in the legislature, Carlin also practiced probate law in Manhattan. See, e.g., In re Martin's Estate, 237 N.Y.S. 529 (Surr. Ct. 1929), aff'd as modified, 243 N.Y.S. 603 (App. Div. 1930), rev'd, 174 N.E. 643 (N.Y. 1931); In re Koehler's Estate, 235 N.Y.S. 476 (Surr. Ct. 1929); *Babe Ruth is Denied Guardianship of Child*, BROOKLYN DAILY EAGLE, Mar. 27, 1929, at 18 ("Babe Ruth's adopted daughter, Dorothy Helen, had a special guardian appointed yesterday to protect her interests in the estate of Mrs. Helen M. Ruth [Babe Ruth's first wife]. Frank A. Carlin, lawyer, 132 Nassau St., Manhattan, was named by Surrogate O'Brien. In her will Mrs. Ruth left $5 each to three sisters and the residue of the estate to the adopted child.").

[68]See, Names Carlin for Judge: Lehman Picks Municipal Justice to Fill City Court Vacancy, N.Y. TIMES, Jan. 29, 1937, at 9.

[69]See, City is Sued for Salary: Ex-Justice Carlin Demands Confirmation to Court Post, N.Y. TIMES, Nov. 22, 1938, at 25.

[70]See, *Justice Carlin Sworn In*, N.Y. TIMES, Dec. 22, 1939, at 10.

[71]See, *Associates Honor Frank Carlin*, N.Y. TIMES, Dec. 17, 1939, at 14. Although Alango no longer exists, the site (43 Murray Street) remains in use as an eatery. The current incarnation is Woodrows, an upscale bar and grill. See, http://www.woodrowsnyc.com.

Citizens Union, and the New York County Lawyers Association[72] and won re-election handily.[73]

A Westlaw search generates 67 reported opinions by Carlin from his time on the City Court.[74] The bulk of these cases involve insurance, labor, and personal injury matters. By the time he decided *Koistinen*, Carlin had published three admiralty opinions involving, respectively, COGSA,[75] passengers,[76] and the Jones Act.[77] Foreshadowing *Koistinen*, and reflecting the clubby nature of admiralty practice in New York City during this time, the defendant in the COGSA case was represented by Haight's, the defendant in the passengers' case was AEL, and the plaintiff's counsel in the Jones Act case was Standard.

None of the rhetorical flourishes that characterize *Koistinen* are on display in these opinions, which read as one would expect. Indeed, Carlin rarely resorted to outlandish prose. But he did do so in a 1941 case called *Cordas v. Peerless Transp. Co.*[78] Like

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[72]See, *Candidates for the Bench*, N.Y. TIMES, Nov. 3, 1949, at 28. In its endorsement, the NYCLA called Carlin "exceptionally well qualified." See, *County Lawyers Laud Carlin*, N.Y. TIMES, Oct. 12, 1949, at 31.

[73]See, *Vote for Appeals Judge, Borough Presidents, Amendments; Results in the Suburbs*, N.Y. TIMES, Nov. 10, 1949, at 7 ("Because Justice Frank A. Carlin, the incumbent, had Republican, Democratic, Liberal and Fusion nominations the vote was not tabulated. The only other candidate was Martin Raphael, American Labor.")

[74]Westlaw also contains one case from Carlin's time on the Municipal Court bench. See, Landau v. Wollman, 258 N.Y.S. 947 (Mun. Ct. 1932) (rejecting a claim that a stock broker negligently executed a trade).

Despite his prodigious output, the only decision mentioned in Carlin's obituary is an unpublished one (Bergman v. Berna) involving gambling paraphernalia: "In a typical decision in 1948, Justice Carlin ruled that persons who sold pinball machines on credit could not expect the New York courts to help collect for them." FAC Obituary, supra note 63. The case's facts are more fully described in *Court Refuses Aid in a Pinball Case: Justice Carlin Balks at Helping to Collect for Devices Sold on Credit Here*, N.Y. TIMES, Oct. 26, 1948, at 64.

[75]See, Lowendahl v. Norwegian Shipping & Trade Mission, 32 N.Y.S.2d 744, 1944 AMC 1195 (N.Y. City Ct. 1942).

[76]See, Isaac v. Thos. Cook & Son, Wagons-Lits, 42 N.Y.S.2d 277 (N.Y. City Ct.), rev'd, 45 N.Y.S.2d 683 (App. T. 1943).

[77]See, Proctor v. Sword Line, 83 N.Y.S.2d 288, 1948 AMC 1046 (N.Y. City Ct. 1948).

[78]27 N.Y.S.2d 198 (N.Y. City Ct. 1941). The opinion begins: "This case presents the ordinary man—that problem child of the law—in a most bizarre setting. As a lowly chauffeur in defendant's employ he became in a trice the protagonist in a breach-bating

Koistinen, it has bizarre facts,[79] is both loved[80] and hated,[81] and has gained lasting fame through its inclusion in law school

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drama with a denouement almost tragic." Id. at 199. Later, Carlin asks: "If the philosophic Horatio and the martial companions of his watch were 'distilled almost to jelly with the act of fear' when they beheld 'in the dead vast and middle of the night' the disembodied spirit of Hamlet's father stalk majestically by 'with a countenance more in sorrow than in anger' was not the chauffeur, though unacquainted with the example of these eminent men-at-arms, more amply justified in his fearsome reactions when he was more palpably confronted by a thing of flesh and blood bearing in its hand an engine of destruction which depended for its lethal purpose upon the quiver of a hair?" Id. at 201.

[79]The case arose when a robber, who was being chased by one of his victims, hailed a taxi. As soon as the driver realized what was going on, he jumped out. With no one at the wheel, the vehicle ran onto the sidewalk and injured a pedestrian named Mary Cordas and her children. Finding Peerless (the cab company) blameless, Carlin reluctantly granted its motion to dismiss. Id. at 202 ("The court is loathe to see the plaintiffs go without recovery even though their damages were slight, but cannot hold the defendant liable upon the facts adduced at the trial.").

[80]See, e.g., http://www.uclalawreview.org/bons-mots-buffoonery-and-the-bench-the-role-of-humor-in-judicial-opinions/ ("Given the harrowing facts of Cordas, Justice Carlin could have drafted a humorless order. By writing humor into the opinion, however, the judge exposed his personality and lightened what was an otherwise dramatic situation."); http://law2.umkc.edu/faculty/profiles/glesnerfines/bateman.htm ("[A] wonderful piece[] of story telling").

[81]See, e.g., TOM GOLDSTEIN & JETHRO K. LIEBERMAN, THE LAWYER'S GUIDE TO WRITING WELL 180 (1989) ("Here is the unintentionally hilarious opening paragraph of an opinion by Justice Frank A. Carlin of the City Court of New York in 1941. . . ."); http://lawhaha.com/the-%E2%80%9Cemergency-doctrine%E2%80%9D-according-to-shakespeare/ ("A unanimous Strange Judicial Opinions Hall of Fame opinion is Cordas v. Peerless Transp. Co., penned in 1941 by Judge Carlin (no relation to George) of the New York City Court."); http://www.ukiahdailyjournal.com/article/ZZ/20121126/NEWS/121126237 ("The case is entitled Cordas v. Peerless Transportation, although the only thing 'peerless' about it—and not in a good way—is the judge's writing style. Cordas was decided in 1941 by Justice Frank Carlin, who apparently didn't write many opinions—something for which those who have to read a lot of court opinions can always be thankful."); http://legallyboundblog.blogspot.com/2006/09/not-all-judges-are-good-writers.html ("You'd think good writing skills would be a prerequisite for a judge. I've certainly read my share of well-reasoned, well-written court decisions, but there are always exceptions to the rule. Take, for instance, Justice Carlin of the City Court of New York, New York County who wrote a decision for Cordas v. Peerless Transp. Co. in 1941."); http://www.dennis-jansen.com/blog/a-breath-bating-drama-or-the-most-poorly-written-opinion-ever/ ("The language is so ridiculous that it's *awesomely* bad.") (italics in original); https://twitter.com/wprater51/status/646086099438338048 ("Cordas v. Peerless Transportation Co. reads like Oscar Wilde vomited a thesaurus. And not in a good way.").

casebooks and study aids.[82] In contrast, no such notice has been taken of the two other cases in which Carlin gave voice to his inner muse.[83]

G. Court's Name

As explained above, part of what piqued my curiosity in the first place was Koistinen's seemingly-odd choice of forum. In fact, the City Court had been hearing maritime cases since 1800:

> The City Court of the city of New York is . . . one of the oldest courts in the State . . . [having been created b]y an act passed in 1778 entitled "An Act for the more speedy recovery of debts to the value of ten pounds[.]"
>
> . . . .
>
> In 1800 jurisdiction was conferred of actions by seamen against the owner, master, or commander of any vessel in the merchant service for wages or services performed on board "notwithstanding such wages or compensation shall exceed the sum of $25." Jurisdiction was also conferred to determine actions brought by the owner, master, or commander of any vessel in the merchant service against any seaman or mariner for services to be performed on board. The law also provided that nothing therein contained should be held to confer power to hear admiralty causes or create maritime jurisdiction. Jurisdiction of actions of assault and battery and false imprisonment committed on board ship was also conferred. . . . This was the first act which conferred jurisdiction upon this court for marine causes. . . .

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[82]See, Michael L. Richmond, *The Annotated Cordas*, 17 NOVA L. REV. 899, 899–900 (1993).

[83]See, Mueller v. Emigrant Indus. Sav. Bank, 41 N.Y.S.2d 799, 801 (N.Y. City Ct. 1943) ("[T]he law reports teem with instances of the persistent spouse thrusting his near relative on the unwilling mate who has other ideas about where true happiness may lodge; the in-law on the distaff side is the 'eight ball' of domestic tranquility and the wary neophyte in the matrimonial temple always veers from the rear thereof"), and Yashar v. Yakovac, 48 N.Y.S.2d 128, 130 (N.Y. City Ct. 1944) ("From a day beyond which the memory of man runneth not there has come down to those of a bibulous bent the ancient adage concerning the swallow's inability to blithely ascend the empyrean upon a single wing."). Mueller concerned the validity of an intra-family assignment, while Yashar was a personal injury action.

> In 1807 . . . [the court was divided into two courts known respectively as] the Assistant Justice's Court . . . with a limited jurisdiction of $25, and the Justice's Court . . . wherein the sum or balance due, or thing demanded, should exceed $25 and not exceed $50. . . .
> In 1817 an act was passed authorizing the arrest of ships and vessels, on process issuing from the Justice's Court. . . .
> The [Justice's] court was reorganized in 1819 . . . [and its name changed to] the Marine Court of the city of New York. . . . By this act it was also provided that the Assistant Justice's Court should not have jurisdiction of marine causes. . . .
> The Marine Court of the city of New York possessed some of the attributes of a court of record and was treated by statute as a court of record. Nevertheless, . . . it was not a court of record in the strict legal sense of the term, like courts of general common-law jurisdiction. . . . So it was held that the Marine Court had but a special and limited jurisdiction, both as to cases and parties. . . .
> By . . . the Laws of 1872, the Marine Court of the city of New York was declared a court of record . . . [and by] the Laws of 1875, the jurisdiction of the Marine Court was still further enlarged and regulated. By the Code of Civil Procedure, adopted in 1876, the jurisdiction . . . and the modes of proceeding . . . were clearly defined. . . . By . . . the Laws of 1883 the name of the Marine Court of the city of New York was changed to the "City Court of New York."[84]

As noted on Carlin's World War II draft card, by the time Koistinen's case was filed the City Court was housed at 52 Chambers Street, the so-called "Boss Tweed Courthouse":

> The old New York County Courthouse, commonly known as [the] Tweed Courthouse, is located on the north side of City Hall Park,

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[84]SAMUEL SEABURY, THE LAW AND PRACTICE OF THE CITY COURT OF THE CITY OF NEW YORK 1–5 (1907). As Seabury makes clear, id. at 152, the City Court was not an admiralty court but instead heard cases pursuant to the "Saving to Suitors" clause contained in the Judiciary Act of 1789 (now codified at 28 U.S.C. § 1333).

Seabury served as a judge on the City Court from 1901 to 1906, when he won a seat on the Supreme Court. In 1914, he was elected to the Court of Appeals, but resigned in 1916 to run for governor (he lost). In 1931, he became chief counsel to an anti-corruption probe that shook up local politics. For a further look at Seabury's career, see *Samuel Seabury Dies on L.I. at 85: His Investigations in '30's Led to Resignation of Walker as Mayor*, N.Y. TIMES, May 7, 1958, at 1.

> behind City Hall, on Chambers Street between Centre Street and Broadway.
> The courthouse was the first permanent government building erected by the City after the completion of City Hall. The building is notable not only for the unparalleled artistry of its design and decoration, but also for its association with one of New York's greatest political scandals. . . .
> Construction began after the City of New York awarded a commission to design the building to Long Island native John Kellum in December 1861. . . . Kellum died in 1871, and German architect Leopold Eidlitz, notable for his work on the New York State Capitol building, was hired in 1876 to finish the project. . . .
> The courthouse is the legacy of Tammany Hall boss William M. Tweed (1823–1878), who used the construction project to embezzle large sums of money from the budget. In 1873 "Boss" Tweed was tried and convicted in an unfinished courtroom in this building and sentenced to 12 years in prison. Afterwards construction proceeded at a very slow pace and it was not until 1881 that the courthouse was finally completed.
> The New York County Supreme Court used the space until 1929, and then the building housed the City Court until 1961, when that court moved to 111 Centre Street. After that, the former courthouse was used as a municipal office building.
> In 1999, an extensive two-year restoration began to return the building to its original grandeur. . . . Today the building serves as the headquarters of the Department of Education. . . . The building has been seen in a number of film productions including *The Verdict*, *Dressed to Kill*, *Kramer vs. Kramer*, and *Gangs of New York*.[85]

As Carlin indicated during his testimony in the *Theodore* case, the City Court could hear a case so long as the damages did not exceed $3,000.00.[86] Koistinen's action, which, as will be recalled, resulted in a judgment of $187.20,[87] was well below this limit.

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[85]*The Tweed Courthouse*, at http://www.nyc.gov/html/dcas/html/about/man_tweed.shtml.

[86]In today's terms, this is the equivalent of $50,000.00. See *Inflation Calculator*, supra note 48.

[87]See supra note 7. Koistinen's judgment now would be worth $1,862.26. See *Inflation Calculator*, supra note 48.

Even more important, the City Court was a place Standard felt comfortable in, as shown by the large number of suits he litigated there on behalf of injured seamen.[88]

In 1947, Koistinen's case was one of the approximately 10,000 new cases filed at the City Court.[89] In 1962, pursuant to an amendment to the New York State Constitution, the City Court and the Municipal Court were merged to form the Civil Court.[90]

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[88]In addition to the previously-mentioned Proctor case, see supra note 77, see, e.g., Allen v. Boland, 94 N.Y.S.2d 81, 1950 AMC 574 (App. T. 1949) (appeal from City Court); Murganti v. Panama Canal Co., 167 N.Y.S.2d 811, 1957 AMC 1886 (N.Y. City Ct. 1957); Clark v. American Export Lines, Inc., 1955 AMC 1820 (N.Y. City Ct. 1955), rev'd, 150 N.Y.S.2d 826 (App. T. 1956); Hamilton v. Luckenbach S.S. Co., 114 N.Y.S.2d 490, 1952 AMC 854 (N.Y. City Ct. 1952); Pastor v. Standard Fruit & S.S. Co., 109 N.Y.S.2d 714 (N.Y. City Ct. 1951); Burns v. Blidberg Rothchild Co., 91 N.Y.S.2d 55, 1949 AMC 1540 (N.Y. City Ct. 1949); Ganem v. Bernuth Lembcke Co., 82 N.Y.S.2d 777, 1948 AMC 1178 (N.Y. City Ct. 1948); Cohen v. American Petroleum Transp. Corp., 68 N.Y.S.2d 250, 1947 AMC 336 (N.Y. City Ct. 1947); Miller v. Swann, 28 N.Y.S.2d 247 (N.Y. City Ct. 1941); Hopkins v. Moore-McCormack Lines, 22 N.Y.S.2d 72 (N.Y. City Ct. 1940), aff'd mem., 28 N.Y.S.2d 710 (App. Div. 1941). See also, Phillips v. Curran, 30 N.Y.S.2d 18 (N.Y. City Ct. 1941), a case in which Standard acted as counsel for the president of the National Maritime Union, who was being sued by an officer of one of the union's local chapters.

[89]See, STATE OF NEW YORK, FOURTEENTH ANNUAL REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK 125 (1948) (reporting that 9,858 new cases were filed in the City Court during the period July 1, 1946-June 30, 1947) and STATE OF NEW YORK, FIFTEENTH ANNUAL REPORT OF THE JUDICIAL COUNCIL OF THE STATE OF NEW YORK 135 (1949) (reporting that 11,922 new cases were filed in the City Court during the period July 1, 1947–June 30, 1948). In New York County (Manhattan), where Koistinen's case was heard, the respective numbers were 5,046 and 5,956. Id. Based on the reported disposition rates, it normally took about a year for a case to work its way through the City Court. Id.

[90]See, *Civil Court History*, at http://nycourts.gov/courts/nyc/housing/ civilhistory.shtml ("The Civil Court of the City of New York was established on September 1, 1962 as a result of the merger of the City Court and the Municipal Court of the City of New York. This merger was part of a statewide court reorganization in response to Gov. Thomas E. Dewey's Tweed Commission, which issued its recommendations in 1958."). See also, Senator Daniel G. Albert, *The New State-Wide Court System*, 9 NASSAU LAW. 6, 11 (May 1962) ("A new New York City Civil Court is established to replace the Municipal Court and City Court of the City of New York. . . . The Civil Court's jurisdiction is fixed at $10,000—an increase over the $6,000 jurisdiction of the City Court and the $3,000 jurisdiction of the Municipal Court. The Committee expects that this change will ease the calendar congestion in the Supreme Court.").

One result of this change is that many of the City Court's case files no longer exist, including the one for *Koistinen*.[91]

III
LATER PROCEEDINGS

Commentators who write about *Koistinen* always proceed on the assumption that matters ended with Carlin's decision. For example, a poster using the alias "WaldemarExkul," in an otherwise excellent summary of the case (including correctly identifying the poem that Carlin miscited), closed by saying, "and American Export Lines had to pay up."[92]

In fact, matters did *not* end with Carlin and AEL did *not* pay up. Although neither the official reporter (*Miscellaneous Reports*) nor the West reporter (*New York Supplement—Second Series*) did so, in 1952 *American Maritime Cases* informed readers that there had been a new development in the case. Its "post-script" (for lack of a better word) begins with the heading "State of New York, Supreme Court, Appellate Term—December 1951." In full, it then reads as follows:

> AGENTS AND BROKERS—1184. W.S.A. General Agency.
>
> Pending appeal, this action was dismissed on motion on the authority of *McAllister vs. Cosmopolitan*, 337 U.S. 783, 1949 A.M.C. 1031, on the ground that the action had been mistakenly brought against the W.S.A. Agent, and not against the United States as employer of the seaman.

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[91]See, e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Dec. 9, 2016, at 1:05 p.m. (copy on file with the author) ("I spoke with Theresa in the Manhattan Civil Court Clerk's Office (646-386-5600), and according to her supervisor, they only keep case files for 25 years."); e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Dec. 28, 2016, at 6:29 p.m. (copy on file with the author) ("Ken Cobb at NYC Municipal Archives confirmed that they don't have records from City Court.").

[92]"WaldemarExkul," *Koistinen v. American Export Lines*, Feb. 25, 2006, at http://everything2.com/title/Koistinen+v.+American+Export+Lines?author_id=1325311# WaldemarExkul.

Attorneys and Law Firms

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JOHN OSNATO, of HAIGHT, DEMING, GARDNER, POOR & HAVENS, for Defendant.

NOTE: Upon the trial in City Court, before CARLIN, J., reported at 1948 A.M.C. 1464, it was held that the employer-WSA Agent was responsible to pay maintenance and cure to a seaman who was injured during shore leave in a foreign port, when he jumped out of the window of the room of a lady when a man suddenly appeared in a threatening attitude at the door.[93]

Because of its odd verbiage, the post-script is somewhat difficult to decipher. The abbreviation "W.S.A." is a reference to the War Shipping Administration ("WSA"). The WSA was set up in 1942 to oversee all of the nation's shipping matters except shipbuilding.[94] It remained in existence until Sunday, September 1, 1946, at which time its duties again became the responsibility of the U.S. Maritime Commission.[95]

As for the rest of the post-script, it is most easily understood by turning to the appellate court's case file.[96] Among other items, the

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[93]Koistinen v. American Export Lines, Inc., 1952 AMC 2066, 2066 (N.Y. App. T. 1951). AMC's readers earlier had been alerted that an appeal was pending. At the end of the AMC version of Koistinen there appears the following editors' insertion: "[Note: An appeal has been taken.]" See, 1948 AMC at 1469. This sentence is missing from the other reporters.

[94]See, Exec. Order No. 9054 (Feb. 7, 1942).

[95]See, Pub. L. No. 79492, 60 Stat. 481, at § 202 (July 8, 1946).

[96]See, Koistinen v. American Export Lines, Inc., Index No. 44946 (New York State Supreme Court—Appellate Term—First Department) [hereinafter App. T. Case File] (copy on file with the author).

Because of its age, and the fact that it has not been digitized, the file must be ordered from the court's warehouse. See, e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Dec. 27, 2016, at 8:37 p.m. (copy on file with the author) ("Found an entry for Eino J. Koinstinen v American Export Lines in the index at New York County Supreme Court Record Room: index #44946, 27 November 1951."); e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Jan. 5, 2017, at 10:45 p.m. (copy on file with the author) [hereinafter Ottman 1/5/17 E-mail] ("I spoke with a clerk from the NY Co.

file contains three affidavits that collectively explain what happened after Carlin issued his ruling.

In an affidavit by Harolds dated November 23, 1951, we begin to get the story:

> [A] judgment in the City Court of the City of New York was duly entered in the office of the Clerk of that court on the 4th day of June, 1948, in favor of the plaintiff-respondent and against the defendant-appellant.
>
> [O]n the 17th day of June, 1948 defendant-appellant appealed from the said judgment to the Appellate Term of the Supreme Court, First Department and served notice of such appeal on William L. Standard, attorney for plaintiff-respondent herein, and filed same in the office of the Clerk of the County of New York.
>
> That by stipulation between the attorneys for the plaintiff-respondent and the attorneys for the defendant-appellant it was agreed that the appeal in the above entitled action would remain in status quo until a decision was reached in the case of Cosmopolitan Shipping Company v. McAllister[,] 337 U.S. 783, 1949, then pending in the U.S. Supreme Court. In June of 1949 the Supreme Court of the United States ruled in the McAllister case supra that a general agent could not be sued as a proper party where the United States was the owner of the vessel and the steamship company was acting as general agent.
>
> One of the points raised on appeal by the defendant-appellant is that it was a general agent acting on behalf of the United States of America. Congress by enabling legislation in December of 1950 permitted seamen who had sued the general agent and thereby were proceeding against an improper party, to renew their action in the U.S. District Court in Admiralty against the United States of America.
>
> The United States District Court has recently indicated that unless the prior action at law against the general agent was dismissed prior to the filing of the libel solely on the ground that the general agent was the improper party to be sued, the U.S. District Court could not properly entertain jurisdiction.
>
> . . . .
>
> WHEREFORE your deponent respectfully requests that the judgment in the lower court be reversed solely on the ground that the defendant-

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Supreme Court record room at 60 Centre St. to make sure that the file that they retrieved from storage contained everything that they had[.]").

> appellant herein was the general agent acting on behalf of the United States of America.[97]

A few words need to be said about Harolds's affidavit to make it fully intelligible. As he states, in June 1949 the U.S. Supreme Court, in a case known as *Cosmopolitan Shipping Co. v. McAllister*,[98] held that seamen (like Koistinen) who had been injured on WSA ships (like the JOHN N. ROBINS) and had sued only the vessel's general agent (like AEL) had made a mistake.[99] What they should have done was sue the United States, because it, rather than the general agent, was the seaman's employer.[100]

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[97]Affidavit of Louis R. Harolds, dated Nov. 23, 1951, available in App. T. Case File, supra note 96.

[98]337 U.S. 783, 1949 AMC 1031 (1949).

[99]As even Justice Reed, the author of McAllister, had to concede, responsibility for these "mistakes" rested with the Court:

> This case, like Hust v. Moore-McCormack Lines, 328 U.S. 707, 66 S.Ct. 1218, 90 L.Ed. 1534, and Caldarola v. Eckert, 332 U.S. 155, 67 S.Ct. 1569, 91 L.Ed. 1968, presents questions concerning the liability for injury to third persons of a general agent who, under the terms of the wartime standard form of agency agreement, GAA 4-4-42, manages certain phases of the business of ships owned by the United States and operated by the War Shipping Administration. . . .
> The Hust case went on the theory that the general agents for the United States under the same standard service agreement were employers of the injured seaman, Hust, for the purposes of liability under the Jones Act. . . .
> The Caldarola case undermined the foundations of Hust. . . . Caldarola held that the general agents under the standard form contract were not in possession and control of the vessel so as to make them liable under New York law to an invitee for injuries arising from negligence in its maintenance. . . .
> Hust was decided June 10, 1946; Caldarola June 23, 1947. Certainly from the latter date, the danger of relying on Hust was apparent to the world though it must be admitted there was enough uncertainty in the law properly to give concern to Congress. Notwithstanding there may be some undesirable results in overruling Hust, such as loss of rights under the Suits in Admiralty Act by reliance on Hust, we think that in view of Caldarola, the uncertainty as to remedies that the two decisions generate, and the desirability of clarifying the position of the United States as an employer through the War Shipping Administration, [Hust] should be and is overruled.

McAllister, 337 U.S. at 785, 787, 793-94 (internal citations and footnotes omitted).

[100]According to Justice Reed, this conclusion was inescapable due to the process the federal government had used at the beginning of the war to take control of the merchant marine:

As a result of *McAllister*, Koistinen suddenly had a serious problem. His judgment against AEL now was certain to be overturned on appeal, but he could not file a new lawsuit against the United States. Such an action could only be brought under the Suits in Admiralty Act ("SIAA"),[101] and it, of course, contains a two-year statute of limitations.[102] Koistinen's two years, as measured from the date of his accident, had run out on Wednesday, February 4, 1948.

In the course of his opinion in *McAllister*, Justice Reed noted that efforts were under way in Congress to help seamen in Koistinen's position:

> Although Congress has not enacted legislation to make entirely clear the remedies of W.S.A. seamen against the United States for torts, there has been an effort to do so. H.R.4873, 80th Cong., 2d Sess., sought to do so by amending the Suits in Admiralty Act, § 5, so as to make the remedy in admiralty of that act exclusive as to the same subject matter so as to protect the general agent from suits such as Hust or Caldarola. The bill was passed by the House June 8, 1948, 94

> At the time of the wartime requisition of the privately owned merchant fleet the government administrative agencies concerned gave careful study to the question of whether the crews were to be employees of the shipping companies or of the United States. There were outstanding many collective bargaining agreements between the private shipping companies and the maritime unions. It was manifestly undesirable to disturb these existing agreements and for the government to negotiate new ones. Yet it was essential that the masters and crews be government employees in order to obviate strikes and work stoppages, to insure sovereign immunity for the vessels, and to preserve wartime secrecy by confining all litigation concerning operation of the vessels to the admiralty courts where appropriate security precautions could be observed. The service agreements, therefore, provided that the officers and men to fill the complement of the vessel should be procured by the general agent through the usual channels upon the terms and conditions customarily prevailing in the services in which the vessels were to be operated. These men, however, were to be hired by the master of the ship and were to be subject to his orders only. The responsibility of employing the officers, so the Regulations show, was vested exclusively in the master, and the men so hired became employees of the United States and not of the general agent.
>
> Id. at 798–99.

[101] 46 U.S.C. app. §§ 741–752 (now recodified at 46 U.S.C. §§ 30901–30918).

[102] See, 46 U.S.C. app. § 745 (now recodified at 46 U.S.C. § 30905).

Cong.Rec. 7388-89, but was not passed by the Senate. H.R. 483 and 4051 of the 81st Cong., 1st Sess., to the same effect are now pending. In H.R.Rep.No.2060 on H.R.4873, the Committee on the Judiciary said, p. 2:

'Then the Supreme Court on June 23, 1947, handed down its decision in Caldarola v. Eckert, 332 U.S. 155, 67 S.Ct. 1569, 91 L.Ed. 1968, which clarified, in the opinion of the committee, the rule previously announced so as to make it plain that the agent while liable for the negligence of its own employees was not liable for the negligence of the civil-service masters and crews with whom the United States manned the vessels. For the negligence of those, the United States was the only responsible party. The committee believes that litigants should not be made the victims of the legal confusion regarding the proper remedy in such cases, and are not responsible for the conditions brought about by the lack of clarity in the opinions of the Supreme Court. Legislative relief is requisite not only to save to litigants possessing meritorious claims their right to a day in court, but also to settle the question of remedy in future cases.'[103]

On Wednesday, December 13, 1950, Congress finally approved a relief bill known as Public Law 877 ("PL 877");[104]

[S]ection 5 of the Suits in Admiralty Act (41 Stat. 525, 46 U.S. Code 741–745), approved March 9, 1950, as amended, is hereby amended to read as follows:
SEC. 5. That suits as herein authorized may be brought only within two years after the cause of action arises. . . .
Provided further, That the limitations contained in this section for the commencement of suits shall not bar any suit against the United States brought hereunder within one year after the enactment of this amendatory Act if such suit is based upon a cause of action whereon a prior suit in admiralty or an action at law was timely commenced and was or may hereafter be dismissed solely because improperly brought against any person, partnership, association, or corporation engaged by the United States to manage and conduct the business of a vessel

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[103]McAllister, 337 U.S. at 794 n.14.
[104]See, Pub. L. No. 81–877, 64 Stat. 1112 (Dec. 13, 1950).

> owned or bareboat chartered by the United States or against the master of any vessel[.][105]

Thus, under PL 877, Koistinen had until Thursday, December 13, 1951 to: 1) have his suit against AEL dismissed *solely* on the ground that it was an improper party;[106] and, 2) file a complaint in

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[105]64 STAT. at 1112. The bill's legislative history can be found at 1951 AMC 148 (1951) ("Federal Legislation; Suits in Admiralty Act (1950 Amendment); Exclusive Remedy—Extension of Time for Suit—No Interest Allowed Prior to Filing Suit"). In advocating for the bill, the Senate Judiciary Committee stressed its limited effect:

> The bill merely amends section 5 of the Suits in Admiralty Act so as to lift the bar of the statute of limitations in a few cases where litigants were mistaken as to the identity of the operator of certain Government vessels . . . . In order to prevent any future recurrence of the past mistakes as to the rights of seamen and others where vessels operated by the Government are involved, the bill additionally declares in express statutory terms the existing law as established by decisions of the courts. It is provided that where suit is authorized against the United States it is exclusive of any other action by reason of the same subject matter against the agent or employee of the Government agency involved.

Id. at 149–50.

Not surprisingly, the U.S. Department of Justice vigorously opposed relief. In a letter dated April 8, 1949 and signed by Peyton Ford, an assistant to U.S. Attorney General Tom C. Clark, it advised:

> The Department of Justice has in the past opposed proposals to lift the bar of limitations in cases where claimants who are subject to no disability have misconceived their rights and have failed to institute suit against the United States within the period provided by law. Generally speaking, to relieve claimants in any such circumstances might serve as a precedent for similar action in every case where a claimant has failed to exercise diligence in instituting suit in the manner and within the time limitations provided by law. Likewise, this Department has invariably insisted upon the exclusive character of the remedy by suit against the United States under the Public Vessels and Suits in Admiralty Acts. . . .
>
> Accordingly, it is the view of the Department of Justice that the enactment of [a relief bill] is undesirable.

Id. at 154-55.

[106]As Harolds alluded to in his affidavit, the requirement that the action against the general agent had to be dismissed solely on the ground that it had been an improper party became a point of contention in many cases. See, e.g., Morgan v. United States, 229 F.2d 291, 293, 1956 AMC 302 (2d Cir. 1956), cert. denied, 351 U.S. 952 (1956) (new suit against the United States not permitted—dismissal of action against general agent was due to seaman's failure to appear at calendar call); Cohen v. United States, 195 F.2d 1019, 1952 AMC 873 (2d Cir. 1952) (new suit permitted); Slemp v. United States, 112 F. Supp. 351,

the U.S. District Court for the Southern District of New York seeking damages from the United States.

As will be recalled, Carlin's opinion had decided two issues: 1) Koistinen's injury was not the product of immorality, but instead was a reasonable attempt to get away from the "man with the menacing mien";[107] and, 2) AEL was liable because it was the agent of an undisclosed principal.[108] In order to satisfy PL 877, Koistinen needed the appeals court to ignore both of these findings. In an affidavit dated November 29, 1951, Morton J. Heckerling, one of Standard's associates,[109] laid out the reasons why doing so was appropriate:

> The defendant herein may urge that its appeal to this Court may raise issues in addition to the general agency issue. It is, however, your deponent's belief that in view of the fact that plaintiff concedes that the defendant herein is an improper party, [this] should be sufficient grounds to reverse the judgment of the lower Court without the further necessity of submission of printed briefs. The time for filing the action in admiralty against the United States of America will have expired on December 13th, 1951. An appeal perfected at this date by the defendant would mean that this Court would not render its opinion until after the December 13th deadline. The plaintiff would then be

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1953 AMC 1169 (S.D.N.Y. 1953) (new suit not permitted—dismissal was due to failure to prosecute); Burton v. United States, 109 F. Supp. 139, 1953 AMC 363 (S.D.N.Y. 1952) (new suit permitted); Soriano v. American Liberty S.S. Corp., 13 F.R.D. 455 (E.D. Pa. 1952) (new suit permitted); Cataldo v. United States, 108 F. Supp. 560, 1953 AMC 699 (S.D.N.Y. 1952) (new suit permitted); Kalil v. United States, 107 F. Supp. 966, 1952 AMC 1854 (E.D.N.Y. 1952) (new suit not permitted—dismissal was due to failure to prosecute); Nowery v. United States, 107 F. Supp. 223, 1952 AMC 1851 (E.D. Pa. 1952) (new suit not permitted—extended deadline not met); Jett v. United States, 1952 WL 82682, 1953 AMC 233 (S.D.N.Y. 1952) (new suit not permitted—dismissal was due to failure to prosecute); Parker v. United States, 104 F. Supp. 814, 1952 AMC 303 (E.D.N.Y. 1951) (new suit permitted); Sladich v. United States, 102 F. Supp. 461, 1951 AMC 2000 (S.D.N.Y. 1951) (new suit not permitted—dismissal was due to laches); Weilbacher v. United States, 99 F. Supp. 109, 1951 AMC 928 (S.D.N.Y. 1951) (new suit permitted—but only after seaman repaid sums received from general agent pursuant to negotiated settlement).

[107]See supra note 6.

[108]Id.

[109]Heckerling ended up spending his entire career at Standard, Weisberg and, as explained supra note 53, became a name partner in 1967. See further, *Heckerling—Morton J.*, N.Y. TIMES, Oct. 14, 1994, at B9.

> faced with the very problem he seeks to avoid by this motion, that is, the jurisdiction of the Admiralty Court could be questioned because the prior action at law had not been dismissed prior to the filing of the libel in the United States Court.[110]

On Tuesday, December 4, 1951, Osnato submitted a lengthy affidavit opposing Koistinen's motion. In addition to giving us the City Court index number,[111] it fills in the many gaps purposely left by Harolds and Heckerling in their affidavits:

> Your deponent makes this affidavit in opposition to the motion of the plaintiff-respondent dated November 27, 1951 and returnable on December 5, 1951, which motion requests this Honorable Court to dismiss the judgment filed in favor of the plaintiff-respondent against the defendant-appellant in the City Court of the City of New York on June 4, 1948, solely on the ground that the said defendant-appellant was the General Agent of the United States of America in relation to the s/s John N. Robins in February, 1946 when the plaintiff-respondent allegedly was injured while ashore in Split, Yugoslavia. The aforementioned motion now admits that American Export Lines, Inc., the defendant-appellant, is not the proper party to be sued in this action. When this action was tried in the City Court, New York County on April 14, 1948, your deponent tried the action on behalf of American Export Lines, Inc. without a jury before Justice Frank A. Carlin. On the trial your deponent urged that the complaint be dismissed and judgment entered for the defendant on two grounds. The first ground was that under the law the plaintiff had acted so improperly, immorally and had misconducted himself so willfully that he was not entitled to recover maintenance and cure. The second ground was that the action was improperly brought against American Export Lines, Inc., the General Agent for the United States of America, in that the United States of America owned, operated and controlled the s/s John N. Robins and was the actual employer of the plaintiff.

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[110]Affidavit of Morton J. Heckerling, dated Nov. 29, 1951, available in App. T. Case File, supra note 96.

[111]See, Ottman 1/5/17 E-mail, supra note 96 (explaining that the number—2891–1947—appears on the outside back cover of Osnato's affidavit).

The Court below rendered an opinion, a true copy of which is annexed hereto and a part hereof. Justice Carlin in that opinion ruled against the defendant on both of the aforementioned points.

The defendant-appellant filed a notice of appeal to this Honorable Court in June of 1948 and pursuant to instructions from the Attorney General of the United States, waited to perfect its appeal pending a clarification of the law by the United States Supreme Court.

In June of 1949 the United States Supreme Court in *Cosmopolitan Shipping Co.* v. *McAllister*, 337 U.S. 783, held that in cases such as the instant case the proper party defendant was the United States of America and thus, in effect, held that Justice Carlin had erred in the instant case.

The law layed down by the United States Supreme Court is so clear that your deponent has no doubt that on the appeal in the instant case this Honorable Court will reverse the City Court and find for the defendant-appellant on the General Agency point. The law, in fact, is so clear that the attorney for the plaintiff-respondent makes the instant motion to reverse the lower Court on the General Agency point. Ordinarily, your deponent would not oppose the instant motion but would consent to the reversal of the lower Court. However, your deponent, acting with the approval of the Attorney General of the United States, opposes the granting of this motion on the ground that the opinion of the lower Court is not only contrary to law but unjudicial and sanctions immorality and for that reason the appeal in the instant action should not be decided merely on the technical ground of General Agency but that this Honorable Court should reverse the lower Court on both grounds in order to further the ends of justice and establish the correct law on the maintenance point.

To reverse the lower Court solely on the General Agency point would be to leave a grossly improper statement of the law undisturbed and to condone immorality.

Your deponent respectfully requests this Honorable Court to examine the extraordinary opinion of the lower Court, a true copy of which is annexed hereto, and to deny this motion in all respects.

On the trial of the action the attorneys stipulated that if any maintenance was due it was due only for 36 days. The Court upon this stipulation entered judgement for the plaintiff for $187.20. In view of this almost insignificant amount involved, it is obvious that the attorneys involved in this action and, it may be said, the entire admiralty bar is more interested in the legal question involved than the amount of money at issue. Your deponent urges this Honorable Court, therefore, to consider in deciding this motion that the plaintiff-

> respondent cannot hope to obtain any monetary gain, regardless of the eventual outcome of this matter.
> This Honorable Court may ask itself why it should deny this motion and perhaps prevent the institution of a new suit against the United States of America in admiralty when the defendant-appellant has failed to perfect its appeal for such a long time. In answer to this your deponent states that the attorneys for both parties have for practical reasons tacitly consented to the delay in prosecuting this appeal. In fact, the attorney for the plaintiff-respondent has never made a motion to dismiss the appeal for failure to prosecute but delayed instituting suit against the United States even after he was given an additional year within which to institute said suit, until the very last moment.
> WHEREFORE, the defendant-appellant respectfully requests this Honorable Court to deny the motion of the plaintiff-respondent so that a full hearing on the merits may be had.[112]

As Carlin mentioned while testifying in the *Theodore* case,[113] the Supreme Court was (and still is) New York State's general trial court. In New York City, however, it also handled appeals from the City Court, with three Supreme Court justices sitting as the "New York State Supreme Court—Appellate Term."[114] On Friday, December 7, 1951, Justices Ernest E.L. Hammer,[115] Samuel H. Hofstadter,[116] and Morris Eder[117] summarily granted

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[112]Affidavit of John Osnato, Jr., dated Dec. 4, 1951, available in App. T. Case File, supra note 96 (underlining in original).

[113]See supra text accompanying note 67.

[114]The New York State Supreme Court—Appellate Term should not be confused with the New York State Supreme Court—Appellate Division. The latter is the state's intermediate appellate court. For a further look at the respective roles of the Appellate Term and the Appellate Division at the time of Koistinen's appeal, see Bernard L. Shientag, *The Appellate Division, First Department[:] Its Jurisdiction, How It Functions in Conference, Briefs and Oral Arguments Presented to It*, 5 REC. ASS'N B. CITY N.Y. 377, 381–83 (1950).

[115]For a profile of Hammer, see *Ex-Justice Ernest Hammer, 85, of State Supreme Court Dead: Served from 1926 to 1954—Leader in Many Civic Projects in the Bronx*, N.Y. TIMES, Mar. 11, 1970, at 47. Having Hammer on the panel was a lucky break for Koistinen; as Hammer's obituary noted, he "once was hailed by George Meany, then head of the state Federation of Labor, for 'keen understanding of the trade union movement' and a 'friendly, liberal attitude toward the worker and his problems.'"

[116]For a profile of Hofstadter, see Samuel Hofstadter Dead at 75; Served on State Supreme Court: Justice, a Prolific Writer, Set Many Milestones on Bench—Succumbs to

Koistinen's request. In full, their unpublished "Order on Motion" reads as follows:

> The above-named plaintiff-respondent having by notice of motion dated the 27th day of November 1951 moved for an order dismissing the within appeal from a judgment of the City Court of the New York, county of New York, in favor of plaintiff against defendant solely on the ground that said defendant-appellant is the general agent of the United States, and not the proper party to be sued in this action; and for other relief[,]
> Now upon reading and filing said notice of motion and the affidavit of Morton J. Heckerling verified the 29th day of November 1951 in favor of said motion, and the affidavit of John Osnato, Jr., verified the 4th day of December 1951 in opposition thereto,
> IT IS ORDERED that the judgment in this action in favor of plaintiff against defendant be and the same hereby is reversed and the complaint dismissed, solely on the ground that defendant-appellant is a general agent of the United States, and not the proper party to be sued in this action; and the appeal is dismissed.[118]

Once the Appellate Term ruled as it did, matters proceeded as one would expect: Koistinen (through Standard) filed a lawsuit against the United States in the Southern District of New York (beating PL 877's one-year deadline by two days); the United States (by Osnato, acting first for U.S. Attorney Myles J. Lane of the Southern District of New York and later for his successors, J. Edward Lumbard and Paul W. Williams)[119] denied liability; a new

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Heart Attack, N.Y. TIMES, July 12, 1970, at 64. Having Hofstadter on the panel was another lucky break for Koistinen. European by birth, Hofstadter was particularly interested in cases in which one side or the other could claim fundamental unfairness; in his obituary, he was quoted as saying, "If a judge loses his capacity for indignation in the presence of injustice, he may not be less of a judge, but he is less of a man."

[117]For a profile of Eder, an expert in real estate law, see *Morris Eder Dead; A Retired Justice*, N.Y. TIMES, Oct. 20, 1973, at 34. Having been an assistant district attorney before taking the bench, Eder clearly was AEL's best hope for a vote in its favor.

[118]Order on Motion, dated Dec. 7, 1951, available in App. T. Case File, supra note 96.

[119]For profiles of Lane, Lumbard, and Williams, see Edward Hudson, *Myles J. Lane, Retired Judge and Ex-Prosecutor, is Dead*, N.Y. TIMES, Aug. 7, 1987, at A24; Nick Ravo, *J. Edward Lumbard Jr., 97, Judge and Prosecutor, is Dead*, N.Y. TIMES, June 7, 1999, at

bench trial was held (which, like the one before Carlin, took less than a day); Koistinen prevailed; and the government did not take an appeal. We know all this because the federal case file still exists[120] and the docket sheet[121] reads as follows:

> Dec. 11–51: Filed libel.
> Dec. 12–51: Filed affidavit of service upon USA.
> Apr. 18–52: Filed notice of appearance.
> May 16–52: Filed answer.
> May 20–52: Filed notice of examination before trial and interrogatory.
> Dec. 4–52: Filed notice of issue for trial.
> Apr. 8–53: Special pre-trial before Knox, Ch. J. Hearing held. Adj'd [adjourned] to 5/21/53.
> May 21–53: Special pre-trial before Knox, Ch. J. Trial Calendar.
> Apr. 5–54: Before Ryan, J. Trial began and concluded. Decision reserved.
> Apr. 12–54: Filed Opinion #21048. Judgment awarded to libelant for maintenance for 36 days. Respondent may have an exception to any ruling. Ryan, J.
> Apr. 14–54: Filed final decree. Libelant to recover from respt. [respondent] the sum of $162. with int. [interest] and costs in the sum of $35. Ryan, J.
> Apr. 15–54: Filed Bill of Costs. Costs taxed in the sum of $35. Clerk.

B9; Eric Pace, *Paul W. Williams, 94, U.S. Attorney, is Dead*, N.Y. TIMES, Aug. 7, 1997, at B9.

[120]See, Koistinen v. United States of America, Index No. Adm. 170–399 (U.S. District Court for the Southern District of New York) [hereinafter S.D.N.Y. Case File] (copy on file with the author). This case file also is not on-line. Instead, a copy must be ordered from the Federal Records Center in Kansas City. See, e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Jan. 10, 2017, at 5:58 p.m. (copy on file with the author).

[121]The docket sheet is available at the National Archives in New York City. See, e-mail from Lindsey M. Ottman, Principal, Ottman Research Services, LLC (New York City), to the author, dated Jan. 9, 2017, at 8:37 p.m. (copy on file with the author) ("The box that the docket was found in is labeled: 'RG 021, Records of District Courts of the United States, U.S. District Court for the Southern District of New York, Admiralty Dockets, 169–01 to 170–400, June 29, 1951 to December 11, 1951, Box 5, ARC ID 4662571, HM FY2010.'").

Aug. 28–57: Filed consent order satisfying decree. Clerk.[122]

Chief Judge John C. Knox, who held the 1953 pre-trial conference, and Judge Sylvester J. Ryan, who conducted the trial and issued the opinion, are well known figures. Knox served on the Southern District bench from 1918 to 1966 and was chief judge from 1948 to 1955.[123] Ryan's tenure was almost as long: he was on the Southern District bench from 1947 to 1981 and served as chief judge from 1959 to 1966.[124]

At the time of his appointment, Ryan, a protégé of the notorious Bronx political boss Edward J. Flynn,[125] was the Bronx's Chief Assistant District Attorney. As such, he came to his new position with no knowledge of admiralty law. Given the nature of the Southern District's caseload, however, he quickly became versed in the field, and by the time of Koistinen's trial he had published dozens of maritime opinions. One of these was *Weilbacher v. United States*, the first case to interpret PL 877's one-year extension provision.[126]

Ryan's opinion is unreported, which explains why no previous commentator has found it.[127] In full, it reads as follows:

> THE COURT: Gentlemen, at the conclusion of the trial of this case on Monday [April 5, 1954], I reserved decision so as to give me an opportunity to read and examine and consider the record upon which this case was submitted to me on trial. I have done this and I am now ready to give you my decision.

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[122]Docket Sheet, Eino J. Koistinen v. United States of America, Adm. 170–399 (U.S. District Court for the Southern District of New York).

[123]See, *John C. Knox, U.S. Judge, Dies at 84*, N.Y. TIMES, Aug. 24, 1966, at 51.

[124]See, Maurice Carroll, *Sylvester J. Ryan, 84, Dies; Judge in Coplon Spy Trial*, N.Y. TIMES, Apr. 11, 1981, at 47.

[125]For a profile of Flynn, see *Edward Flynn Dies on Visit in Dublin; Ill Several Years*, N.Y. TIMES, Aug 19, 1953, at 1.

[126]See supra note 106.

[127]Given the importance of the case to the admiralty bar, as made clear in Osnato's affidavit, see supra text accompanying note 112 ("In view of this almost insignificant amount involved, it is obvious that the attorneys involved in this action and, it may be said, the entire admiralty bar is more interested in the legal question involved than the amount of money at issue."), it is mystifying that the case was not reported.

This suit in admiralty is brought to recover maintenance during cure of an injury sustained by the libelant on February 4, 1946. At the time of injury libelant was employed as a seaman aboard the S.S. John N. Robins, which was owned and operated by the United States under a general agency agreement with American Export Lines.

In a prior suit upon this claim in the City Court of the City of New York, County of New York, libelant recovered judgment against the American Export Lines (1948 AMC 1464) which was reversed on appeal (1952 AMC 2066) on authority of McAllister v. Cosmopolitan (337 U.S. 783).

It has been stipulated that portions of the record in this prior suit are to be received as the trial record before this Court.

The injury out of which this suit arises occurred while libelant was on shore leave in Yugoslavia. He visited two barrooms; had imbibed three glasses of wine; met a woman and accompanied her to a house for immoral purposes. While with her in a room there he changed his mind and determined not to pursue his purpose further. He was led to this decision entirely by personal and not moral reasons. The woman demanded her hire; libelant refused payment. Her vociferous protest followed and a man appeared in the doorway of the room. Libelant, fearing bodily harm, jumped out of the window and landed some eight feet below, on the ground. Injury to his left foot was sustained by him in the fall.

[An] [e]xception to the general rule denies maintenance to a seaman where injury or sickness arises from his own vices or willful misconduct. Acts falling short of willful misconduct on the seaman's part will not relieve the ship owner of responsibility. Traditional examples of willful misconduct which will relieve the ship owner of liability are the contraction of venereal disease and injuries which occurred while the seaman is intoxicated.

I find that the proximate cause of libelant's injury was not his moral indiscretion. Physical punishment, death or grievous bodily injury is not contemplated as an expected sequence to adultery or fornication. While that accounts for his presence in the room, it was not the direct occasion of his hasty retreat through the window. It cannot be said that libelant should have expected and fairly anticipated that a man would appear in the doorway of the room and that libelant would thus be placed in a position which he felt offered imminent danger and peril to his safety.

Although libelant's decision to use the window resulted in injury, who can say what would have been his fate had he chosen the door as his means of exit? A decision by one in such peril to take one avenue of

> escape when another means might have been more safely followed does not interrupt the chain of causation.
>
> At the time of his injury libelant had abandoned his evil purposes and was solely concerned with extricating himself from a situation in which he feared that he faced great bodily danger. His only thought at that moment was self-preservation. It was this instinct, coupled with the desire to leave the house of assignation, which was the proximate cause of injury. These intentions are not such acts of misconduct as to relieve the ship owner of his obligation to provide maintenance.
>
> Judgment is therefore awarded to libelant for maintenance for a period of 36 days, at the rate of $4.50 per diem. Judgment may be submitted accordingly.
>
> Respondent may have an exception to my ruling.[128]

The opinion is dated Wednesday, April 7, 1954 (two days after the trial). Given its opening paragraph, and the fact that it was not filed until the following Monday (April 12th), it seems likely that Ryan delivered it orally and then had a stenographer type it up.[129] Although it essentially mirrors Carlin's opinion (minus Carlin's over-the-top language), it does deviate from it in one important respect. Instead of awarding maintenance at $5.20 a day, as Carlin had done,[130] Ryan opted for $4.50 a day, a reduction of nearly 13.5%.[131]

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[128]S.D.N.Y. Case File, supra note 120.

Given the wording of the opinion, as well as the stipulation mentioned in the fourth paragraph, it seems fair to conclude that no witnesses appeared before Ryan. Given the passage of time since the first trial (six years), and the small amount of money involved, this makes perfect sense. But it also means that Ryan was acting more like an appellate judge than a trial judge and did not get to personally observe Koistinen or ask him questions.

[129]I therefore have taken the liberty of correcting some obvious typographical errors in the opinion, such as the name of the ship, which appears at page 2 as "John M. Robbins."

[130]See supra note 7.

[131]According to Koistinen, it had cost him "five or six dollars" a day to support himself while he was recuperating from his injuries. See S.D.N.Y. Case File, supra note 120 (testimony of Eino J. Koistinen, at 32). Carlin had used $5.20 a day because that was the shoreside allowance rate ("SAR") specified in Article 5, § 13 of the WSA-NMU collective bargaining agreement (90 cents for breakfast, 90 cents for lunch, 90 cents for dinner, and $2.50 for lodging). Moreover, in a case he had decided just four months earlier, Carlin had awarded $5.20 a day. See Koistinen, 83 N.Y.S.2d at 30102 ("The question remaining is how much; cases have been cited which have variously held a range for maintenance between $2.50 to $4.00 a day; this court in the case of Proctor v. Sword Line, Inc., — Misc.

On Wednesday, April 14, 1954, Ryan signed the final judgment. It directed the United States to pay Koistinen "the sum of $162.00 . . . with interest thereon at 4% from December 11, 1951, the date of filing of the libel in the sum of $14.58, with costs and disbursements taxed in the sum of $35.00, making a total of $211.58, with interest thereon at 4% until paid."[132]

The Southern District's case file includes selected portions of the testimony taken during the City Court proceedings, together with some of the exhibits. These items provide us with several additional bits of information:

1) Koistinen became a seaman in 1936.[133] By the time he joined the JOHN N. ROBINS, he was married (to a woman named Helli), had a child, and had a home in Haukipudas, Finland.[134]
2) Koistinen earned $843.47 during his time aboard the JOHN N. ROBINS. This figure consisted of his monthly base pay ($155.00), his daily bonus pay ($2.50), and 200 hours of overtime (at 85 cents per hour). From this amount AEL debited $83.77 for federal income taxes, $8.43 for Social Security contributions, $15.00 for advances (which included the $5.00 he took out immediately before going ashore), and $7.80 for commissary

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—, 83 N.Y.S.2d 288, held that $5.20 a day was a reasonable allowance for maintenance; considering the costs of living and lodging under the standards prevailing in the recent times involved in this claim which differ no whit from those obtaining now, the court adheres to its prior determination that $5.20 a day is a fair and reasonable allowance for maintenance.").

For his part, Osnato objected vehemently to using the SAR, claiming that it was irrelevant for maintenance purposes and that, based on recent court cases, the appropriate figure was $3.90-$4.00 a day. See, S.D.N.Y. Case File, supra note 120 (colloquy during testimony of AEL assistant to the port captain Louis C. Haggerty, Jr., at 90-95).

Haggerty was just beginning his career at the time he testified as AEL's records custodian. He later went to law school but spent most of his life working as an insurance executive. See further, *Louis Crimmins (Lou) Haggerty Jr.*, at http://www.legacy.com/obituaries/azcentral/obituary.aspx?n=louis-crimmins-haggerty-lou&pid=14328948.

[132]S.D.N.Y. Case File, supra, note 120 (Final Judgment, dated Apr. 14, 1954).

[133]Id. (testimony of Eino J. Koistinen, at 25).

[134]Id. (cross-examination of Eino J. Koistinen, at 50; Plaintiff's Exhibit 1: "American Export Lines, Inc., Report of Personal Injury").

Haukipudas is a small fishing village on the Gulf of Bothnia on the west coast of Finland. See, *Haukipudas*, WIKIPEDIA: THE FREE ENCYCLOPEDIA, at https://en.wikipedia.org/ wiki/Haukipudas.

items.[135] No deduction was made for the fact that Koistinen was unable to work during the trip's last six weeks.[136]

3) Koistinen joined the JOHN N. ROBINS in Mobile,[137] where the vessel loaded "general cargo" for what, officially, was WSA "Voyage 9."[138] The ship arrived in Split on Sunday, February 3,

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[135]S.D.N.Y. Case File, supra note 120 (Defendant's Exhibit B: "American Export Lines, Inc.—Pay Voucher—Statement of Earnings for Eino J. Koistinen for the period 12/15/45 to 3/18/46").

[136] Id. (testimony of George M. Marshall, Jr., at 69). Marshall was intensely questioned about this fact:

> Q. Now, you know that when a seaman is injured by reason of an act of his own wilfull misconduct and is unable to work as a result that he is not entitled to wages during the period he is unable to work. You know that, don't you?
> A. I am not sure that I do.
> Q. You don't know that?
> A. I know one condition, I am sure of one condition under which he is not entitled to pay.
> Q. And that is?
> A. Venereal disease requires that he is incapacitated as a result of acquiring venereal disease ashore we can stop his wages, but not being sure of any other points we paid his wages.
> Q. That is because venereal disease is considered an act of wilfull misconduct on the part of a seaman, is that right?
> A. Yes.
> Defendant's Counsel: I think this is getting into a discussion of law.
> Plaintiff's Counsel: I want to show an admission, namely by paying the man wages to the end of the engagement they realized that the man's injuries were not occasioned by wilfull misconduct.
> Witness: No, it wasn't that case at all, it was not being familiar with the law we played it safe, so to speak.
> Q. Was there doubt in your mind whether the man had been injured by wilfull misconduct?
> A. I certainly call it wilfull misconduct, we knew the story.
> Q. Yet you paid him wages to the end of the voyage?
> A. Yes, it was the charitable thing to do.

Id. (cross-examination of George M. Marshall, Jr., at 77-78).

[137]Id. (testimony of Eino J. Koistinen, at 24).

[138]Id. (deposition of Chief Engineer Walter B. Johansen, at 85).

Based on the records in Ancestry.com, Johansen was born in Bergen, Norway in 1919. After immigrating to the United States as a child, he went to sea in 1938. Following his time on the JOHN N. ROBINS, Johansen continued to be employed by AEL, serving on such ships as the EXBROOK and the EXANTHIA. He remained with the company until his retirement. (I was unable to find an obituary for Johansen. Although I did locate a

1946, and departed on Friday, February 8, 1946.[139] Contrary to what Carlin wrote in his opinion, Koistinen was not granted shore leave until Monday, February 4, 1946, and disembarked the vessel on that day at approximately 11:45 a.m.[140] Ryan, of course, got the date right in his opinion.

4) While drinking in the second bar he ventured into,[141] Koistinen was approached by a prostitute. She struck up a conversation with him using the line, "I like the sea."[142] After some small talk, the pair agreed on a price of 100 dinars.[143] The woman then took Koistinen to her home.[144]
5) Although both Carlin and Ryan intimated that Koistinen had a last-minute crisis of conscience, this is inaccurate. Koistinen changed his mind due to the woman's physical appearance, which he described in court as "dirty"[145] and sore-infested.[146]

Walter B. Johansen in New Jersey who was the right age, a letter I sent to him in February 2017 elicited no response.)

[139]S.D.N.Y. Case File, supra note 120 (testimony of George M. Marshall, Jr., at 66–67)

[140]Id. (testimony of Eino J. Koistinen, at 26).

[141]According to Koistinen, he had a total of three glasses of a sweet, port-colored wine but remained sober throughout his ordeal. The doctor who treated him immediately after his accident, however, thought otherwise. See infra note 151. Osnato attempted to use the doctor's report to prove that Koistinen's injuries were due to intoxication, but this argument failed to gain any traction. See, S.D.N.Y. Case File, supra note 120 (cross-examination of Eino J. Koistinen, at 45-48; when Osnato challenged Koistinen about his drinking, Koistinen shot back: "Mister, you drink three glasses of wine and come here and you are drunk?" Id. at 47.).

[142]Id. (testimony of Eino J. Koistinen, at 26).

[143]Id. (testimony of Eino J. Koistinen, at 27). At the official exchange rate, 100 dinars was the equivalent of $2.00; at the black market exchange rate, it was the equivalent of 33 cents. See supra note 49.

[144]S.D.N.Y. Case File, supra note 120 (testimony of Eino J. Koistinen, at 26).

Although prostitution had been legal in Yugoslavia before the war, by the time Koistinen visited circumstances were quite different. See, Vesna Nikolic-Ristanovic, *Yugoslavia*, in PROSTITUTION: AN INTERNATIONAL HANDBOOK ON TRENDS, PROBLEMS, AND POLICIES 351, 353-54 (Nanette J. Davis ed., 1993) ("After the war and following the socialist revolution in Yugoslavia, all brothels were closed, and the attitude toward prostitutes (as well as sexuality generally) became extremely repressive."). See also, JELENA BATINIĆ, WOMEN AND YUGOSLAV PARTISANS: A HISTORY OF WORLD WAR II RESISTANCE 195-96 (2015) (explaining that the communists began cracking down on prostitution in 1944 in an effort to foster military discipline and readiness).

[145]S.D.N.Y. Case File, supra note 120 (testimony of Eino J. Koistinen, at 27) ("I looked at her, she is very dirty, a good woman I am looking for. The woman is dirty, I no use

6) During his testimony, Koistinen explained that he did not know the man who appeared in the doorway, nor did he speak to him.[147]
7) When Koistinen jumped out of the window, he landed on a hard surface[148] and fractured his left heel and ankle,[149] making it

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her."). During cross-examination, Osnato asked Koistinen if he had noticed that the woman was "dirty" while they were still in the bar but could not elicit an intelligible response:

> Q. Mr. Koistinen, when you were in the room in Split, Yugoslavia, with this woman, you said that she was dirty, is that right?
> A. Yes.
> Q. Before you went to the room there was she dirty then?
> A. No, they have poor people there, poor people is always dirty, they look like no good-lookers.
> Q. When you met this woman in the bar she was just as dirty and looked just as bad as when you got her up in the room?
> A. I don't understand that, what do you mean?
> Q. When you met the woman in the bar was she dirty?
> A. No poor people are good-lookers, they are not very good-lookers, but nobody I saw very clean in the body and everything.
> . . . .
> Q. Was she clean?
> A. No, very poor people.
> Q. Was she clean?
> A. No, she had poor clothes on. Not very plain, looked like a working woman.
> Q. She was clean or not very clean?
> A. No, she was plain.
> [At this point Osnato dropped the question.]

Id. (cross-examination of Eino J. Koistinen, at 43-44).

[146]Id. (cross-examination of Eino J. Koistinen, at 45) ("Q. What did she have, sores on her? A. Yes. Q. You decided to leave then? A. Yes. Q. You didn't want to have anything to do with her? A. I don't know what you mean. Q. You didn't want to bother with her since she had sores on her body? A. Yes.").

As explained in the sources cited supra note 2, it is common for seamen to contract sexual diseases during visits to prostitutes. Indeed, in a study conducted during the time of Koistinen's misadventure, researchers found that Finnish seamen were 11-16 times more likely to be infected with gonorrhea than Finns who worked in other industries. See, Tauno Putkonen, *Gonorrhoea Among Merchant Seamen in Finland: Material Collected 1946–9, and the Official Measures to Prevent the Danger*, 4 BULL. WORLD HEALTH ORG. 121, 124 (1951).

[147]S.D.N.Y. Case File, supra note 120 (cross-examination of Eino J. Koistinen, at 44–45).

[148] Koistinen was unable to say what the surface was made of:

> Q. What did you land on, was it cement or dirt or grass?
> The Court: What was on the ground[?]

impossible for him to walk (although he was able to stand). Fortunately, two boys happened to pass by and took Koistinen to the hospital.[150]

8) At the hospital, Koistinen's foot was put into a cast.[151] By the time of trial, Koistinen was still experiencing pain.[152]

Witness: Concrete and stone, and they have everything, sand and gravel and everything what there is.

Q. Do you say it was concrete that was torn up with sand on it?

A. It was the pieces, broken pieces. I was in a hurry, I didn't look at the appearance of it, I wanted to get away so that I can't get killed. I hurry, I don't notice the appearance.

Id. (cross-examination of Eino J. Koistinen, at 48–49).

[149]Id. (testimony of Eino J. Koistinen, at 30).

[150]Koistinen described this bit of luck as follows:

Q. You landed on your feet?
A. Yes.
Q. Then what happened, did you fall down?
A. I know that the left leg, maybe that was down, it got broken.
Q. Did you lie down on the ground?
A. No, I could stand up.
Q. Where did you go then?
A. A couple of boys said, "Come to the hospital."
Q. A couple of boys came along?
A. Yes.
Q. Did you speak to them?
A. No.
Q. They took you to the hospital?
A. Yes.
Q. Did you walk to the hospital?
A. No, no.
Q. How did you get there?
A. They held me on each side.

Id. (cross-examination of Eino J. Koistinen, at 49).

The documents in the case file do not clearly identify which hospital Koistinen was taken to—they simply say "Town Civilian Hospital." In all likelihood, this was the municipal hospital, an imposing structure that now is an art museum. See, Gallery of Fine Arts, at http://nada4.wixsite.com/split-croatia/gallery-of-fine-arts ("The gallery recently (2009) relocated to new premises in the old hospital building (built 1792 as the first municipal hospital), completely refurbished to provide a fully modern exhibit space.").

[151]See, S.D.N.Y. Case File, supra note 120 (testimony of Eino J. Koistinen, at 31). According to the unidentified doctor who treated him, Koistinen's injuries were quite serious:

Multiple irregular fracture[s] of calcaneus [heel bone], left foot with large fracture of left foot with many bruises on skin. . . .

9) When questioned by the ship's officers, Koistinen initially claimed he had been hit by a car. When this lie fell apart, Koistinen admitted what really happened.[153]
10) Under normal circumstances, the JOHN N. ROBINS would have left Koistinen in Split. However, Koistinen insisted that he be allowed to return to the ship.[154] During the voyage home, Koistinen remained in the ship's infirmary.[155]
11) Upon arriving back in the United States, Koistinen spent a year recuperating in various marine hospitals before returning to work.[156] During his recovery, Koistinen relied on his personal savings to make ends meet.[157]

> [Patient was a] little drunk on arrival at Hospital. . . .
> Made X-Ray of foot, applied water packs to foot and confined patient to bed and hospital. Not possible to apply wire through heel for fracture due to bruises of the skin. Plaster applied from heel to below knee while patient in the state of sleeping. . . .
> Recommend he stay aboard ship which will carry him back to the United States.

Id. (Plaintiff's Exhibit 1: "Report of Physician or Surgeon," dated Feb. 7, 1946).

[152]Id. (testimony of Eino J. Koistinen, at 31). In addition to his foot pain, Koistinen mentioned that he suffered regularly from hemorrhoids and hyperhidrosis (i.e., excessive sweating). Id. (testimony of Eino J. Koistinen, at 52–53).

[153]Id. (deposition of Walter B. Johansen, at 85) ("Upon his return to the vessel I questioned him as to what happened. He said he was injured by an automobile while ashore. However, later when the statement was taken for the personal injury report he had changed his story.").

[154]As a foreign national, Koistinen feared staying in Yugoslavia:

> Q. Was that a usual thing, to bring an injured man back to the United States if he had been injured ashore in a foreign country?
> A. When a man is incapacitated to that extent it is not a usual custom to bring him back, but it was [what] he wanted us to do [] because he thought perhaps he might be spirited away into Europe somewhere due to his nationality, so I made special efforts to bring him back to the States, notwithstanding his incapacitation.

Id. (testimony of George M. Marshall, Jr., at 69).

[155]Id. (testimony of George M. Marshall, Jr., at 69) ("Q. Now, how long did he stay in the ship's hospital on the way back to the United States? A. He was in the ship's hospital from the time he was brought on board until he terminated the foreign articles at the port of New Orleans.").

[156]Id. (testimony of Eino J. Koistinen, at 31). While Koistinen was on the stand, Harolds read his medical treatment history into the record:

> Plaintiff's Counsel: With the permission of Mr. Osnato, if I could obtain it, I would like to read the dates he was in the various hospitals. He was in a hospital at Split, Yugoslavia, for a few days, then returned with the ship to New Orleans

12) At the time of the lawsuit, Koistinen was living at 1996 Madison Avenue (also known as 35 East 127th Street) in East Harlem (upper Manhattan).[158] Today, the site where the building stood is a vacant lot.[159]
13) Lastly, although he was not a U.S. citizen, Koistinen had a Social Security number (118-14-3664).[160]

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on March 18, 1946. He then received the following treatment, New Orleans Marine Hospital, March 18, 1946 to June 1, 1946, as an inpatient. Hudson and Jay Street, New York, Marine Hospital, June 11, 1946 to June 15, 1946, as an outpatient. . . . Staten Island Hospital, June 15, 1946, to October 31, 1946, as an inpatient. . . . He attended the Gladstone Rest Center from October 31, 1946, to November 29, 1946, then he was at the Staten Island Marine Hospital again November 29, 1946, to January 6, 1947, as an inpatient. Then he was again at Gladstone Rest Center from January 6, 1947, to February 7, 1947. Then he was back to the Staten Island Marine Hospital February 8, 1947, to February 17, 1947, as an inpatient. Then he was back to the Hudson and Jay Street Marine Hospital on February 17, 1947, to February 27, 1947, as an outpatient. He then returned to work as a member of the crew of the SS Mormacpenn, and returned again to the Hudson and Jay Street Marine Hospital following that employment for further outpatient care from October 10, 1947, to October 12, 1947, as an outpatient.

Id. (counsel's statement during testimony of Eino J. Koistinen, at 28–29).

[157]Id. (testimony of Eino J. Koistinen, at 31-32).

[158]Id. (testimony of Eino J. Koistinen, at 23). Although East Harlem now is known as "Spanish Harlem," at one time the area "boasted New York City's highest concentration of Finns and Norwegians." PHILIPPE BOURGOIS, IN SEARCH OF RESPECT: SELLING CRACK IN EL BARRIO 56 (2d ed. 2003).

[159] See, *Google Maps* (using the search term "1996 Madison Avenue, New York, New York"), at https://www.google.com/maps/place/1996+Madison+Ave,+New+York,+NY+10035/@40.8072428,-73.9419572,17z/data=!3m1!4b1!4m5!3m4!1s0x89c2f60b3c9a566b:0x44ca082717498b20!8m2!3d40.8072388!4d-73.9397685. See also, *Property Valuation of Madison Avenue, Manhattan, NY: 1996*, at http://www.city-data.com/ny-properties/assessments/Manhattan/M/Madison-Avenue-81.html#prop_1017520116 (providing information about the lot's square footage, market value, and tax assessment history).

[160]The number appears on Koistinen's pay voucher. See supra note 135. Based on its first three digits ("118"), the card was issued in New York. See, *List of Social Security Numbers*, at http://socialsecuritynumerology.com/prefixes.php.

There is no listing for Koistinen in the Social Security Death Index (also known as the Death Master File). This most likely means that he never applied for benefits, but it also could mean that his death was not reported to the Social Security Administration. See further, GEORGE G. MORGAN, HOW TO DO EVERYTHING: GENEALOGY 223 (4th ed. 2015).

With the foregoing in hand, I approached the Koistinen Family Association ("KFA") in Finland, which serves as a clearinghouse for anyone named "Koistinen."[161] Within just a few hours, it responded to my inquiry as follows:

> Eino Johannes Koistinen [was a] professional sailor [who was] born in Muuruvesi, Finland [on] 22 July 1910 [and died on] 29 September 1977 in Australia[. He] moved to Australia in 1945 as [a] sailor [but at the time of his death was a] metal worker[.] [His] first spouse [was] Helli Marja Järvelä[; his] second spouse [was] Anna Liiasa Piitulainen[, who he married in 1959 after divorcing Helli. The child referred to in the court records was a daughter named] Katri Marjatta Koistinen [who was] born 30 November 1939 in Haukipudas.[162]

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[161]As its website explains, the KFA was founded in 1992 to serve as "a contact forum for all members of the Koistinen family. The association organizes annual family meetings and collects genealogical material. It [also] publishes [the] information bulletin 'Koistinen[.]'" *Koistinen Family Association*, at http://www.koistiset.net/4.

[162]See, e-mail from Esko Koistinen, Chairman, Koistinen Family Association (Kuopio, Finland), to the author, dated Feb. 7, 2017, at 5:11 a.m. (copy on file with the author).

Koistinen became a naturalized Australian citizen on November 17, 1955. See, *Certificates of Naturalization*, COMMONWEALTH OF AUSTRALIA GAZETTE, May 10, 1956, at 1307 (listing Koistinen's address as 9 Claire Street, Alberton, South Australia). See also, http://www.naa.gov.au/ (National Archives of Australia – Item A446, 1955/23813 – "Application for Naturalisation – KOISTINEN Eino Johannes born 22 July 1910"). At the time of his death, Koistinen and Anna were living just outside Newcastle at 4 Cherry Road in Warners Bay, New South Wales. See, Ancestry.com (under "Australia, Electoral Rolls, 1903–1980 – New South Wales, 1977, Shortland, Warners Bay").

As has been explained elsewhere, many Finns immigrated to Australia after World War II:

> The first Finnish immigrants came to Australia in the 1850's to work in the gold mines of Victoria. . . .
>
> The second wave, some 20,000 Finns, came after the Second World War, again looking for a better life. Their immigration was encouraged and even assisted financially by Australia. Many of them came to work in construction and mining. With improving economic prospects at home and the end of assisted passage by Australia[,] Finnish immigration petered out in the early 1970's. Since then it has mostly been professionals of various kinds (expatriates) who have migrated to Australia, often on a temporary basis.
>
> Today there are approximately 30,000 people in Australia who claim Finnish descent.

This information, in turn, made it possible for me to obtain Koistinen's death certificate from the New South Wales Registry of Births, Deaths & Marriages.[163] Its differs in two small respects from the KFA's records, in that it lists Koistinen as having arrived in Australia in 1940 rather than 1945 and having been employed as a "cleaner" (*i.e.*, a janitor) rather than as a metal worker at the time of his death.[164] It also answers two final questions: what did Koistinen die of and where is he buried? As it explains, Koistinen committed suicide and he does not have a grave because his body was cremated.[165]

I also was able to find a notice of Koistinen's probate. It appeared in the *Sydney Morning Herald* and reads as follows:

> After 14 days from publication of this notice an application for Probate of the Will of Eino Johannes Koistinen dated 5th March 1964 late of Warners Bay Retired Labourer will be made by the Public Trustee. Creditors are required to send particulars of their claims upon the Estate to A.T. Harvey, Branch Manager, Public Trust Office, Crn. Newcomen and Scott Streets, Newcastle, N.S.W. 2300.[166]

Embassy of Finland (Canberra), *Finns in Australia*, at http://www.finland.org.au/public/default.aspx?nodeid=36162&contentlan=2&culture=en-US.

[163]See, e-mail from New South Wales Registry of Births, Deaths & Marriages (Sydney), to the author, dated Mar. 15, 2017, at 6:14 p.m. (copy on file with the author).

[164]See, New South Wales Register of Death – KOISTINEN, Eino Johannes, Registration No. 106387/1977, dated Oct. 10, 1977 (copy on file with the author) [hereinafter Koistinen Death Certificate].

The discrepancies between the KFA's records and Koistinen's death certificate may have something to do with the fact that the latter's "informant" was neither Anna nor Katri (Koistinen's wife and daughter), but rather Voitto O. Pokela, the pastor of the Finnish Lutheran Church in Northfield (a suburb of Adelaide). For Pokela's description of life in Australia amidst the Finnish diaspora, see VOITTO POKELA, JÄLKIÄ AUSTRALIAN SANNASSA [FOOTPRINTS IN AUSTRALIAN SAND] (1995). The book currently is being translated into English by Pokela's daughter. See, e-mail from Raili Tanksa, Proprietor, Soul Gifts (Adelaide), to the author, dated Mar. 16, 2017, at 2:14 a.m. (copy on file with the author).

[165]Koistinen Death Certificate, supra note 164 ("Cause of death: Asphyxia suffered when he hanged himself with the intention of taking his own life."; "Particulars of burial or cremation: "30th September, 1977 – Beresfield Crematorium."). The certificate also mentions that an inquest into Koistinen's death was held at Newcastle and that the coroner's findings were accepted on January 27, 1978. Id.

[166]*Legal Notices*, SYDNEY MORNING HERALD, Nov. 15, 1977, at 22.

Figure 1. Eino J. Koistinen with his first wife Helli in their yard in Adelaide (1952-53) (photo courtesy of the Finnish Institute of Migration).

On the web, there is a photograph from 1952-53 that shows Koistinen and Helli in their yard in Adelaide.[167] With the kind permission of the Institute of Migration in Turku, Finland, it is reproduced in Figure 1.

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[167]See, http://www.migrationinstitute.fi/gallery/Australia/Henkilot%20-%20People/Parikuvat%20-%20Pairs/slides/AUS_0714.html.

For a photograph of Koistinen during his days as a Haukipudas vocational school student (where he learned carpentry), see http://www.migrationinstitute.fi/gallery/Suomi%20-%20Finland/Sekalaiset%20-%20Miscellaneous/slides/SUOMI_023.html (Koistinen is on the right).

For a photograph of Koistinen during a 1961 family outing to Australia's Lake Glenbawn, see http://www.migrationinstitute.fi/gallery/Australia/Henkilot%20-%20People/Ryhmakuvat%20-%20Groups/slides/AUS_0715.html (Koistinen is in the center).

I am indebted to Dr. Markku Karkama for positively identifying all three of these photographs. See, e-mail from Dr. Markku Karkama, Counsellor—Finnish National Board of Education (Helsinki), to the author, dated Feb. 6, 2017, at 1:08 p.m. (copy on file with the author).

IV
CONCLUSION

There is, of course, no way to know what Carlin had in mind when he decided to write *Koistinen* as he did. There also is no way to know what Koistinen and the various lawyers thought when they received his opinion.[168] What can be said for sure is that they have become part of the admiralty lore of law schools. And as it turns out, we have been telling our students only half their tale.[169][170]

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[168]One suspects they at least chuckled. But maybe not. See, e.g., Marshall Rudolph, Note, *Judicial Humor: A Laughing Matter?*, 41 HASTINGS L.J. 175 (1989) (arguing that no matter how funny an opinion might be to readers, it is likely to be viewed by the parties and their lawyers as disrespectful).

[169]We also have been citing their case incorrectly. I therefore suggest that in the future we use some version of the following: Koistinen v. American Export Lines, Inc., 83 N.Y.S.2d 297, 1948 AMC 1464 (N.Y. City Ct. 1948), rev'd, 1952 AMC 2066 (N.Y. Sup. Ct. App. T. 1951), subsequent proceedings at Koistinen v. United States, Index No. Adm. 170–399 (S.D.N.Y. 1954) (unreported decision; available at 48 J. MAR. L. & COM. 243 (2017).

[170]The author has acknowledged several individuals who assisted in this article. For a list of these Acknowledgments see www.jmlc.org.