

FORTY-FIVE YEARS OF TEACHING ADMIRALTY LAW

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Friday, September 16, 1966 was my last day as a proctor and advocate for the venerable admiralty law firm of Haight, Gardner, Poor & Havens in lower Manhattan. Monday morning, September 19, 1966 was my first lecture in Torts to 120 first-year law students at Fordham Law School at Lincoln Center. Over the next forty-five years, I also taught Admiralty, Bankruptcy, Aviation, International Business Transactions, Public International Law, Interethnic Conflict, and Supreme Court History.

When I was invited to teach at Fordham, I knew that the School needed someone to teach Torts, but I inquired about teaching Admiralty. The Dean was agreeable, noting that Admiralty had not been taught at the school since 1920. (Admiralty was part of the original third-year curriculum when the school opened in 1905).

I was fortunate to have had a splendid course in Admiralty at Boston University, taught by the late Roger A. Stinchfield, Clerk of the First Circuit Court of Appeals,¹ using Sprague and Healy's 1950 *Cases on the Law of Admiralty*;² the course was full of practical problems derived from cases in the court.

The week after my June 1957 law school graduation, I was about to be drafted into the Army as my student deferment had ended. Not relishing the prospect of a foxhole in Korea, I rushed to join the Naval Reserve and was sent to Officer Candidate School and Naval Justice School to become a JAG officer. The admiralty course became crucial during my service on the legal staff of the Destroyer Force of the Atlantic Fleet at Newport—six lawyers to deal with 240 ships and 50,000 personnel—because my work was principally as Counsel to Formal Investigations of collisions, groundings, fires and explosions—disasters of all kinds. I was later selected to be an instructor at the Naval Justice School where I taught Criminal Procedure, Evidence,

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1. See Roger A. Stinchfield, *Recent Books Worthy of Note*, 37 B.U. L. REV. 540, 540 n.* (1957) (book review).

2. GEORGE C. SPRAGUE & NICHOLAS J. HEALY, *CASES ON THE LAW OF ADMIRALTY: SELECTED FROM DECISIONS OF AMERICAN & ENGLISH COURTS* (Am. Casebook. Ser., 1950).

Administrative Law, and Substantive Criminal Law—a foretaste of my career as a professor of law.

Leaving active duty in June 1962, I started admiralty practice part-time for Haight, Gardner, Poor & Havens in New York City, while obtaining the Master of Laws degree in International Law at Columbia University. (I remained in the inactive Naval Reserve for the next thirty-two years, retiring as Captain, JAGC, USN in 1993). I began to work full time at Haight in June 1963, principally with the late Charles S. Haight on collisions and one early oil pollution case. The clients were mostly Scandinavian shipowners and their insurers (both hull and protection and indemnity [P&I]). One case proved to be a graduate course in comparative law. Our Norwegian client's ship collided with an American ship off Le Havre, France, doing little damage to the American vessel but putting a hole below the waterline in our client's ship that proceeded into Le Havre where she capsized at the pier—a total loss of ship and cargo, but no lives were lost.³ Litigation followed in New Orleans and New York in the United States (begun by cargo interests), in France (begun by the Port Administration), in Norway (a dispute between the hull insurer and the P&I), and in England—where the collision was tried before the Admiralty Judge and two of the Elder Brethren of Trinity House.⁴ The result in England was that both were to blame, fifty-fifty,⁵ which is what we had advised four years earlier. Our opponent insisted on 100-0 in his favor. Appeals were made in France, England, and both the Second and Fifth Circuits—changing very little.⁶

With this war chest of stories, I began to teach Admiralty Law at Fordham, using the 1965 Healy and Currie casebook.⁷ Of my first eighteen students, five became very active in Admiralty practice and have had very successful careers. In fact, my students have become partners in Admiralty firms in New York, on both coasts and the Gulf, and one is now President of the Maritime Law Association of the United States (Patrick J. Bonner '78).⁸

Today's law students are different; they have been brought up with technology and sources of research undreamed of in 1966. Admiralty students have not changed much—still past or future officers of the Navy or Coast Guard, legal historians, interns in transportation law, and present or future small boat owners. In 1989, Fordham introduced the Master of Laws

3. Petition of A.S. J. Ludwig Mowinckels Rederi, 268 F. Supp 682, 685 (S.D.N.Y. 1967).

4. The Lucile Bloomfield, [1966] 1 W.L.R. 1525 (Eng.).

5. Petition of A.S. J. Ludwig Mowinckels Rederi, 268 F. Supp. at 686.

6. See, e.g., Petition of Bloomfield S.S. Co., 422 F.2d 728 (2d Cir. 1970); Bloomfield S.S. Co. v. Haight, 363 F.2d 872 (5th Cir. 1966).

7. NICHOLAS J. HEALY & BRAINERD CURRIE, CASES AND MATERIALS ON ADMIRALTY (Am. Casebook Ser., 1965).

8. Patrick J. Bonner, *Welcome to the MLA*, MAR. LAW ASS'N OF THE U.S., <http://www.mlaus.org> (last visited Apr. 20, 2011).

program,⁹ which has over the years attracted students from: Greece, Norway, Sweden, Denmark, Russia, France, Germany, Spain, Italy, Israel, Turkey, China (both the People's Republic of China and Taiwan), Japan, Thailand, India, Mexico, Haiti, Canada, and Panama, requiring greater emphasis in the Admiralty course on the treaties of the Comité Maritime International (CMI), the International Maritime Organization (IMO), the United Nations Conference on Trade and Development (UNCTAD), and the United Nations Commission on International Trade Law (UNCITRAL).

For the past ten years, I have been joined in the teaching of the course by Adjunct Professor Howard M. McCormack, Counsel to the firm of Burke & Parsons and former president of the Maritime Law Association of the United States, who, like me, owes his introduction to the sea and the Rules of the Road to the United States Navy. Howard's experience extends to ship construction, arbitrations, and average adjusting. In the combination of theory and practice, we occasionally swap roles.

I have always recommended the groundbreaking treatise of Gilmore and Black¹⁰ to students, and I continue to find useful nuggets in Robinson's 1939 treatise¹¹ (installed in 5,000 United States ships during the Second World War). The one volume Schoenbaum treatise is, of course, more useful because of frequent updates in pocket parts.¹² Over the forty-five years of teaching, I have used as casebooks four editions of Healy and Sharpe,¹³ Lucas,¹⁴ and Robertson, Friedell and Sturley.¹⁵

There are three areas of the course where student role-playing enhances the presentation of doctrine and legal reasoning: collision, archaeological salvage, and cargo damage in the charter party context. The Robertson, Friedell & Sturley Casebook has the famous *Tricolor* three-ship collision in the English Channel in 2002 involving the IMO's Vessel Traffic Separation Scheme.¹⁶

9. FORDHAM LAW, MASTER OF LAWS PROGRAM 24 (2009), available at http://law.fordham.edu/assets/InternationalPrograms/Viewbook_09.pdf.

10. GRANT GILMORE & CHARLES L. BLACK, JR., THE LAW OF ADMIRALTY (2d ed. 1975).

11. GUSTAVUS H. ROBINSON, HANDBOOK OF ADMIRALTY LAW IN THE UNITED STATES (Hornbook Ser., 1939).

12. THOMAS J. SCHOENBAUM, ADMIRALTY & MARITIME LAW (Hornbook Ser., 4th ed. 2004).

13. NICHOLAS J. HEALY & DAVID J. SHARPE, CASES AND MATERIALS ON ADMIRALTY (Am. Casebook Ser., 1974); NICHOLAS J. HEALY & DAVID J. SHARPE, CASES AND MATERIALS ON ADMIRALTY (Am. Casebook Ser., 2d ed. 1986); NICHOLAS J. HEALY & DAVID J. SHARPE, CASES AND MATERIALS ON ADMIRALTY (Am. Casebook Ser., 3d ed. 1999); NICHOLAS J. HEALY, DAVID J. SHARPE & DAVID B. SHARPE, CASES AND MATERIALS ON ADMIRALTY (Am. Casebook Ser., 4th ed. 2006).

14. JO DESHA LUCAS, CASES AND MATERIALS: ADMIRALTY (4th ed. 1996).

15. DAVID W. ROBERTSON, STEVEN F. FRIEDEL & MICHAEL F. STURLEY, ADMIRALTY AND MARITIME LAW IN THE UNITED STATES (2d ed. 2008).

16. *Id.* at 353–61 (citing *Otal Invs. Ltd. v. M.V. Clary*, 494 F.3d 40, 47 (2d Cir. 2007)).

The case also addresses causation versus fault, heavy fog, excessive speed, absence of lookouts, Iron Mike (Automatic Pilot), and inexperience into which mixture the 1910 Collision Convention, logbook erasures, General Average, and presumption of fault are added.¹⁷

The second role-play, archaeological salvage, uses the basic facts of *Sea Hunt, Inc. v. Unidentified Shipwrecked Vessel*.¹⁸ We can speculate about claims by Cuba (1902 successor to Spain) in *La Galga* and Mexico (1821 successor to Spain) in the *Juno*.¹⁹ Additionally, we can add the United States, the states of Virginia and Maryland, and competing finders, salvors, discoverers, wreck removers, and insurers. Elements of the *Central America*,²⁰ *Titanic*,²¹ and *La Nuestra Senora de Atocha*²² wrecks can also be added, as well as the unconstitutionality of the 1987 Abandoned Shipwreck Act²³ and the recent UNESCO Treaty on Underwater Cultural Heritage.²⁴

The third role-play, this time on cargo damage, uses the facts of the Supreme Court's erroneous decision in *Vimar Seguros y Reaseguros S.A. v. M.V. Sky Reefer*.²⁵ We add seven cases on charter parties to the casebook information. We use Panamanian vessel owner and Liberian registered ship and Japanese time charterer with Tokyo arbitration of *Sky Reefer* and add a Moroccan voyage charter with London arbitration, Greek vessel manager, Cypriot crewing company, American Consignee, assorted Himalaya clauses, a shipboard fire, total loss of vessel and cargo with limitation proceedings in the United States and the United Kingdom.

17. *Otal Invs. Ltd.*, 494 F.3d at 47–50, 57–63.

18. 221 F.3d 634, 638 (4th Cir. 2000) (holding that Virginia was able to issue salvage contracts against the *La Galga* due to abandonment by Spain, but that Spain's action in entering into a 1763 treaty precluded abandonment and allowed it rights to the shipwreck of the *Juno*).

19. *La Galga* sailed out of Havana, Cuba, then a Spanish port, on her last voyage. *Sea Hunt*, 221 F.3d at 638–39. Similarly, the *Juno* had sailed from Veracruz, Mexico. *Id.* at 639.

20. *Columbus-Am. Discovery Grp. v. Unidentified Wrecked & Abandoned Sailing Vessel*, 56 F.3d 556 (4th Cir. 1995); *Columbus-Am. Discovery Grp. v. Atl. Mut. Ins. Co.*, 974 F.2d 450 (4th Cir. 1992).

21. *R.M.S. Titanic, Inc. v. Haver*, 171 F.3d 943 (4th Cir. 1999); *R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel*, 9 F. Supp. 2d 624 (E.D. Va. 1998); *R.M.S. Titanic, Inc. v. The Wrecked & Abandoned Vessel*, 924 F. Supp. 714 (E.D. Va. 1996).

22. *See, e.g., Fla. Dep't of State v. Treasure Salvors, Inc.*, 458 U.S. 670 (1982).

23. Abandoned Shipwreck Act of 1987, Pub. L. No. 100-298, § 1, 102 Stat. 432 (currently codified at 43 U.S.C. §§ 2101–2106 (2006)). *See* Anne G. Giesecke, *The Abandoned Shipwreck Act Through the Eyes of its Drafter*, 30 J. MAR. L. & COM. 167 (1999) (discussing the climate that led to the passage of the ASA and the issues that have been raised subsequently).

24. *See* Convention on the Protection of the Underwater Cultural Heritage, Nov. 6, 2001, 41 I.L.M. 40 (2002).

25. *Vimar Seguros y Reaseguros, S.A. v. M.V. Sky Reefer*, 515 U.S. 528, 530 (1995) (holding that arbitration clause in bill of lading for cargo of fruit damaged in transit did not violate the Carriage of Goods by Sea Act by increasing the costs of obtaining relief).

In May 1969, I attended the founding of the Journal of Maritime Law and Commerce, to which I have contributed twenty-two articles already and hope to add a few more.²⁶ That experience brought me into a close collaboration with the late Nicholas J. Healy and our joint effort, *The Law of Marine Collision* (1998).²⁷ My publications also include fifteen years as Editor of *Lloyds Maritime Law Newsletter (North American Edition)* that required an issue twice a month, as well as articles in *Il Diritto Marittimo*, *Le Droit Maritime Français*, and other American law reviews.

In 1970 I was asked to assist the late Ambassador Richard D. Kearney in preparing answers from the Department of State to questionnaires from the United Nations Conference on Trade and Development (UNCTAD) and the United Nations Commission on International Trade Law (UNCITRAL).²⁸

26. Nicholas J. Healy & Joseph C. Sweeney, *Basic Principles of the Law of Collision*, 22 J. MAR. L. & COM. 359 (1991); Nicholas J. Healy & Joseph C. Sweeney, *Establishing Fault in Collision Cases*, 23 J. MAR. L. & COM. 337 (1992); Nicholas J. Healy & Joseph C. Sweeney, *The Starboard Hand Rule Under the 1972 Collision Regulations*, 23 J. MAR. L. & COM. 263 (1992); Paul B. Larsen, Joseph C. Sweeney, Patrick J. Falvey & David C. Davis, *The 1991 Diplomatic Conference on Uniform Rules for Operators of Transport Terminals*, 21 J. MAR. L. & COM. 449 (1990); Paul B. Larsen, Joseph C. Sweeney, Patrick J. Falvey & Joanne Zawitoski, *The Treaty on Terminal Operator Liability in International Trade*, 25 J. MAR. L. & COM. 339 (1994); Joseph C. Sweeney, *An Overview of Commercial Salvage Principles in the Context of Marine Archaeology*, 30 J. MAR. L. & COM. 185 (1999); Joseph C. Sweeney, *Collisions*, 31 J. MAR. L. & COM. 251 (2000); Joseph C. Sweeney, *Crossing the Himalayas: Exculpatory Clauses in Global Transport—Norfolk Southern Railway Co. v. James N. Kirby, Pty Ltd.*, 125 S. Ct. 385, 2004 AMC 2705 (2004), 36 J. MAR. L. & COM. 155 (2005); Joseph C. Sweeney, *Happy Birthday, Harter: A Reappraisal of the Harter Act on its 100th Anniversary*, 24 J. MAR. L. & COM. 1 (1993); Joseph C. Sweeney, *Limitation of Shipowner Liability: Its American Roots and Some Problems Particular to Collision*, 32 J. MAR. L. & COM. 241 (2001); Joseph C. Sweeney, *Rumpelheimer v. Haddock: Port to Port*, 31 J. MAR. L. & COM. 551 (2000); Joseph C. Sweeney, *The Admiralty Law of Arthur Browne*, 26 J. MAR. L. & COM. 59 (1995); Joseph C. Sweeney, *The Lexington*, 39 J. MAR. L. & COM. 65 (2008); Joseph C. Sweeney, *The Prism of COGSA*, 30 J. MAR. L. & COM. 543 (1999); Joseph C. Sweeney, *The Silver Oar and Other Maces of the Admiralty: Admiralty Jurisdiction in America and the British Empire*, 38 J. MAR. L. & COM. 159 (2007); J.C. Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part I)*, 7 J. MAR. L. & COM. 69 (1975); J.C. Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part II)*, 7 J. MAR. L. & COM. 327 (1975); J.C. Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part III)*, 7 J. MAR. L. & COM. 487 (1976); J.C. Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part IV)*, 7 J. MAR. L. & COM. 615 (1976); Joseph C. Sweeney, *The UNCITRAL Draft Convention on Carriage of Goods by Sea (Part V)*, 8 J. MAR. L. & COM. 167 (1976); Joseph C. Sweeney, *UNCITRAL and The Hamburg Rules—The Risk Allocation Problem in Maritime Transport of Goods*, 22 J. MAR. L. & COM. 511 (1991); Joseph C. Sweeney, *Tribute, Nick Healy: January 4, 1910–May 20, 2009*, 40 J. MAR. L. & COM. 471, 472–74 (2009).

27. NICHOLAS J. HEALY & JOSEPH C. SWEENEY, *THE LAW OF MARINE COLLISION* (1998).

28. See Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part I)*, *supra* note 26, at 69; Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part II)*, *supra* note 26, at 327; Sweeney, *The Uncitral Draft Convention on Carriage of Goods*

Ambassador Kearney was concerned about conflicting advice he had received from the practicing bar. This was the beginning of my apprenticeship as a diplomat over the next twenty-five years, representing the United States at three diplomatic conferences: 1978, Hamburg, United Nations Convention on Carriage of Goods by Sea;²⁹ 1979, Brussels, SDR Protocol to the Hague Rules;³⁰ and 1991, Vienna, Terminal Operators in International Trade (O.T.T. Convention).³¹ I spent eight years in the negotiation and drafting of the 1978 Hamburg Rules,³² and although thirty-three nations have ratified or acceded to them, I consider the inability to break the stalemate on this treaty a dismal failure. Nevertheless, I learned a great deal about international law that I have been able to convey to the students.

I like to think that I have made the law better through my students, demonstrating to them a love of the subject and a respect for its intellectual strengths.

by Sea (Part III), *supra* note 26, at 487; Sweeney, *The Uncitral Draft Convention on Carriage of Goods by Sea (Part IV)*, *supra* note 26, at 615; Sweeney, *The UNCITRAL Draft Convention on Carriage of Goods by Sea (Part V)*, *supra* note 26, at 167.

29. United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules), Mar. 31, 1978, 1695 U.N.T.S. 3.

30. Protocol Amending the International Convention for the Unification of Certain Rules of Law Relating to Bills of Lading, Dec. 21, 1979, 1412 U.N.T.S. 146.

31. United Nations Convention on the Liability of Operators of Transport Terminals in International Trade, Apr. 19, 1991, 30 I.L.M. 1503.

32. United Nations Convention on the Carriage of Goods by Sea, *supra* note 29.