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THE MARITIME LAW ASSOCIATION OF
THE UNITED STATES

REPORT OF COMMITTEE ON MERCHANT MARINE
HEARINGS AND PROCEDURE

April 4, 1944

John W. Griffin, Esq.,
President, Maritime Law Association
80 Broad Street
New York, N. Y.

Dear Mr. Griffin:

As I understand that it is proposed to send copies of your letter of September 30th, 1943 to the Commandant of the Coast Guard, and Admiral Waesche's letter of October 12th, 1943; to the members of our Association, it may be advisable to give you a short report from our Committee on matters pertaining to the Merchant Marine Inspectors' hearings and procedure, in advance of our annual meeting.

Subsequent to your letter of September 30th, 1943 to the Commandant of the Coast Guard setting forth the conclusions on various matters which our Committee reached with representatives of the Coast Guard, and Admiral Waesche's letter to you in which he stated that the conclusions arrived at as a result of our joint conference were accurately stated in your letter of September 30th, 1943, no further conference has been held with the Coast Guard. It is the unanimous opinion of our Committee that unless some member or members of the Association have additional specific points upon which it is desired that we make further representations to the Coast Guard, that nothing further should be done by your Committee and that the Committee should be discharged.

Sincerely yours,

(s) ANTHONY V. LYNCH, JR.
*Chairman, Committee on Merchant
Marine Hearings and Procedure*

THE MARITIME LAW ASSOCIATION OF
THE UNITED STATES

September 30, 1943.

The Commandant
United States Coast Guard
Washington, D. C.

*Re: Committee on Merchant Marine Inspectors
Hearings*

Dear Sir:

Referring to the conference between representatives of this Association and representatives of the U. S. Coast Guard, held at New York on June 25, 1943, I am informed that, as a result of the conference, the following conclusions were reached:

1. The Coast Guard will continue its present practice of sending investigators on board merchant marine vessels to interview officers and crews with respect to marine casualties. These investigators will not take formal statements, but will merely make informal notes of their interviews and then file a report of their investigation with their superior officers. Thereafter, in the average case, the matter will be considered closed, no testimony will be taken and, of course, there will not be any transcript of testimony available to private counsel. The personal notes made by the investigators and their subsequent report to their superiors will be considered confidential and will not be available to counsel.
2. Where the preliminary investigation indicates that the marine casualty is more serious than the average case, or where disciplinary action appears to be in order, formal investigations may be ordered. In such cases, the witnesses will be required, by subpoena, if necessary, to attend at the local office of the Coast Guard to testify under oath as to the circumstances attending the marine casualty. Where such formal investigations are conducted, private counsel will be permitted to attend while the witnesses from their client's vessels are testifying, but counsel will not be permitted to take any part in the proceedings, nor will they be permitted to be present when their opponent's witnesses are testifying. At the conclusion of such formal investigations, a transcript of the entire proceeding will be available to all interested counsel, including a transcript of the opponent's witnesses. The only exception to this practice will be in cases where the Coast Guard, in its sole discretion, considers that the tran-

script contains information which, if disclosed, might prejudice the national security. In such exceptional cases, counsel will only be permitted to obtain a transcript of the testimony given by their own witnesses.

The advantages and disadvantages of permitting counsel to ask their own witnesses additional questions, for the purpose of clarifying the record, was discussed, but no decision was reached. The Coast Guard Committee agreed to give that point further consideration and apparently recognized that its adoption might be helpful to the Coast Guard.

3. If, as the result of the preliminary investigation or as a result of the formal investigation, disciplinary action appears to be in order, charges will be preferred, in writing, against the licensed officers or certificated seamen involved. The defendants will be informed that they may be represented by counsel and such counsel as they may designate will be accorded all the privileges which defense counsel is customarily allowed. Furthermore, except where the national security may be involved, the trials will be conducted in public and anyone, including counsel for all interested parties may attend, but they will not be permitted to take part in the proceedings.

4. The foregoing procedure will be followed in all cases where private merchant vessels are involved.

5. Under the revised rules and regulations, as administered, the same procedure will be followed in cases involving a collision between a private merchant vessel and a public vessel of the United States, but the Coast Guard Committee agreed to give further special consideration to the problems involved in such cases. The Association Committee pointed out to the Coast Guard Committee the obvious unfairness of permitting the Coast Guard, pursuant to its merchant marine inspection duties, to interview private witnesses and obtain information which will be beneficial to the Coast Guard in its capacity of a claimant and potential litigant. It was conceded by the Coast Guard Committee that in the ordinary course of events any information which their investigators might obtain from private witnesses would be available to Government counsel for use in any litigation which might arise out of a collision between a private merchant vessel and a Coast Guard vessel, and the Coast Guard Committee agreed to give this problem special consideration in an attempt to work out some plan whereby private interests would be adequately protected in such cases. In any event, it was agreed that the mere fact that the financial interests of the United States might be prejudiced by a disclosure of the

transcript of record would not be considered, per se, prejudicial to the national security. Further conference will be held with respect to the problems discussed in this paragraph.

6. The Coast Guard Committee also agreed to give further consideration to a procedure whereby transcripts of record, withheld for reasons of national security, may be released after a reasonable time, such as 60 or 90 days, i.e., when the release of the information contained therein would no longer be prejudicial to the national security.

7. Consideration was also given to the simplification of the procedure now used for the reporting by licensed officers of marine casualties. It developed at the meeting that Department of Commerce Form No. 924 has been superseded by Coast Guard Form No. 2692, the latter apparently being a form containing all the questions formerly included in form 924 and the form heretofore filed with the Collector of Customs. The Coast Guard Committee agreed that the present form (NCG 2692) is too cumbersome and the Association Committee was invited to submit a proposed revised form. Pending the adoption of a new form, the Coast Guard Committee agreed to recommend the following immediate changes:

- (a) The licensed officer making the report will not be required to acknowledge the report under oath.
- (b) The reporting officer will not be required to answer the following questions:
 - (1) Estimated value of vessel.
 - (2) Value of cargo.
 - (3) Amount of insurance on vessel.
 - (4) Amount of insurance on cargo.

The Association Committee is now considering further revision of the form for reporting marine casualties, but is not yet prepared to make any definite recommendations.

8. The Coast Guard Committee agreed to give further consideration to waiving the present requirement that a licensed officer applying for a remission or mitigation of penalty is compelled to deposit cash, check or money order, as a condition to the filing of the application for remission or mitigation of assessed fines and penalties. The Association Committee contended that the present requirement was unfair to the alleged offender and often made it impossible for him to file such an application.

9. The Coast Guard Committee agreed to meet with the Association Committee, from time to time, to discuss any problems arising out of the administration of the revised rules and regulations, such further meetings to be held at times and places mutually convenient.

On behalf of the Association, I wish to express to you our sincere appreciation of the spirit of cooperation evidenced by your representatives. We realize that the administration of rules and regulations governing the investigation of marine casualties in time of war presents many difficulties, and I wish to assure you on behalf of the members of the Association that we are prepared to cooperate with the Coast Guard so far as we are able to do so.

Very truly yours,

(s) JOHN W. GRIFFIN
President
Maritime Law Association of the
United States

UNITED STATES COAST GUARD
Washington

12 October, 1943

John W. Griffin, Esq.,
President, Maritime Law
Association of the United States
80 Broad Street
New York 4, New York

My dear Mr. Griffin:

I have your letter of 30 September, 1943, wherein you set forth the substance of the agreements reached at the conference between representatives of your association and representatives of the Coast Guard, held at New York on 25 June, 1943.

The conclusions arrived at as a result of such conference are accurately stated in your letter.

The procedures described in paragraphs one to four of your letter have been made effective.

The questions which your representatives raised concerning collisions between vessels of the Coast Guard and private vessels, are still under consideration. However, I appreciate the force of your point that in cases of this character it would be possible for the Coast Guard, since it is the agency of the government charged with responsibility for the investigation of marine casualties in the interests of safety at sea and, in that capacity authorized to compel the giving of testimony and other evidence, and also a potential claimant or defendant in proceedings to collect damages resulting from such collisions, to take unfair advantage of the private parties involved by using evidence obtained in its capacity as impartial investigator without making such evidence equally available to the private parties. I want to state categorically that in my opinion the taking of such an advantage would be unethical and beneath the dignity of the Federal Government, and I assure you that I shall do my best to establish a procedure which will insure against any abuse in this connection.

With respect to the release of transcripts which have been withheld for reasons of national security as mentioned in your para-

graph six, I am sure that you appreciate that it is rather difficult to determine just when information which is once classified may be released as non-prejudicial to the national security. However, if requests for such data which have been denied for reasons of national security, are renewed after a reasonable period, i.e. sixty or ninety days such requests will be reconsidered with a view to determining whether the need for secrecy any longer exists and, if not, the desired information will be released.

Final action on form C. G. 2692 will be held in abeyance until receipt of your further recommendations. In the meantime action will be taken to eliminate the requirements that the report be made under oath and contain the statements relating to the value of the ship and cargo and the amount of insurance carried thereon.

The procedure now in effect, which requires that a person charged with violation of the navigation laws make a deposit as a condition precedent to the consideration by the Coast Guard of a petition for remission or mitigation of the penalty involved, has been given careful study, with the result that Headquarters is of the opinion that no change should be made therein to eliminate the requirement of such deposit. However, Headquarters is giving consideration to a plan whereby the person reported for an alleged violation will be afforded an opportunity to explain his side of the case before the assessment and collection machinery is placed into effect.

The Coast Guard committee has reported to me the excellent spirit of cooperation displayed by representatives of your committee and I assure you that it is the disposition of the Coast Guard to do all that is reasonable and proper looking to the best interests of those with whom it deals in the administration of the laws which have been entrusted to it. It is understood, of course, that occasionally questions will arise concerning the Coast Guard's administration, and in those instances it is hoped that by conferences the solution to such problems may be found under circumstances of perfect sincerity and cordiality.

Very truly yours,

(S) R. R. WAESCHE
Vice Admiral, USCG
Commandant