IN THE MATTER OF MERCHANT MARINER'S DOCUMENT Z-739833-D AND ALL OTHER SEAMAN'S DOCUMENTS
Issued to: Juan Angel RODRIGUEZ,

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1679

Juan Angel RODRIGUEZ

This appeal has been taken in accordance with Title 46 United States Code 239(g) and Title 46 Code of Federal Regulations 137.30-1.

By order dated 28 April 1967, an Examiner of the United States Coast Guard at New York, New York, revoked Appellant's seaman's documents upon finding him guilty of misconduct. The specifications found proved allege that while serving as a bedroom steward on board the United States SS UNITED STATES under authority of the document above described, on or about 27 August 1966, Appellant

(1) wrongfully molested an eleven year old female passenger;

(2) wrongfully had in his possession a master key; and

(3) wrongfully, while off duty, entered a passenger area without permission.

At the hearing, Appellant was represented by professional counsel. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of certain witnesses and voyage records of SS UNITED STATES.

In defense, Appellant placed in evidence the testimony of five witnesses, and testified in his own behalf.

At the end of the hearing, the Examiner rendered a written decision in which he concluded that the charge and specifications had been proved. The Examiner then entered an order revoking all documents issued to Appellant.

The entire decision was served on 2 May 1967. Appeal was timely filed on 5 May 1967 and perfected on 15 August 1967.

FINDINGS OF FACT

On 27 August 1966, Appellant was serving as a bedroom steward on board the United States SS UNITED STATES and acting under authority of his document while the ship was at sea.

At some time between five and five-fifteen p.m. on 27 August 1966, Appellant accosted one Danielle Cottin, an eleven year old female passenger, persuaded her to accompany him to another deck, where he took her into a stores locker, and improperly touched the "shorts" she was wearing.

On immediate resistance, Appellant allowed the child to leave. The child made immediate complaint to her father who reported the matter to officers of the ship. By five-thirty a "line-up" of men dressed in the uniform the child had described had been ordered.

Appellant was among the half dozen in such uniform ordered to "line-up." The child immediately identified Appellant as her molester.

Appellant was immediately disrupted so that he could no longer work in passenger spaces. As a result of the disrupting he was

required to turn in his white jackets and keys. Among the keys which he surrendered was a pass-key, not of ship's origin, which admitted the bearer to the compartment to which the child had been taken. Appellant had no authority to have such a pass-key, nor did he have authority to enter the compartment concerned, or other compartments to which the pass-key gave access.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner.

Appellant's brief recites five major points which he urges as reversible errors by the Examiner. These will be spelled out in Appellant's own words in the several sections of the "*OPINION*" below in which they are discussed. Since some of Appellant's sub-points or sub-arguments do not lie properly under the principal points made, the "OPINION's" sections cannot be placed precisely in a one-to-one correspondence with Appellant's points. The "OPINION" extends to more sections than Appellant makes "Points" and discusses a matter not discussed by Appellant at all, his unauthorized possession of a pass-key, although Appellant urges dismissal of all specifications lodged against him.

APPEARANCE: Zwerling & Zwerling, New York, New York, by Sidney Zwerling, Esquire

OPINION

I

Appellant's first point is captioned "WITNESSES FOR THE PERSON CHARGED" and implies that the Examiner failed and refused to give any consideration to the testimony of such witnesses. Appellant quotes from the Examiner's opinion, as to such testimony, only this,

> "I am of the opinion that the testimony of Wade, Figuiera, Picceano and Favala were [*sic*] mistaken."

Appellant notes that the Examiner failed to mention another

witness for Appellant, one Fernandez, but assumes that there is no point in urging this fact because the Examiner would not have given any weight to the testimony of the witness he did not mention because he gave no weight to the testimony of the witnesses he did mention. The sentence that Appellant quotes from the Examiner's opinion apparently is intended to show that the Examiner's treatment of these witnesses was cavalier in the extreme, and that the Examiner's attitude toward this evidence was biased by this view of "a lovely little girl in Brussels," the "complaining" witness.

Faced with the fact, on review, that the Examiner in this case took the unusual step of going to Brussels to preside at a session of a hearing, I cannot but note that in cases when depositions on written interrogatories are taken of witnesses the usual complaint is that the Examiner did not have the opportunity to see and observe the demeanor of the witness.

To hear a complaint that an examiner was unduly influenced by having seen and heard a witness in person is obviously unusual.

It was definitely at the behest of the Appellant that the Examiner in this case went in person to hear the testimony of the absent witness (R-8), which normally would not be done.

It therefore ill-behooves Appellant now to claim that the Examiner's opportunity to see and hear the witness in person is somehow prejudicial to Appellant's case.

It also ill-behooves Appellant not to quote the record in its entirety. The Examiner gave four full pages of his opinion to analysis of the testimony given by witnesses for the Appellant before he announced his rejection of that testimony.

The key testimony in this case is of course that of the witness Danielle Cottin. If her testimony as to the molestation and her identification of Appellant are believed, it follows that testimony of another to the effect that Appellant was at the time in question at another place and so could not have performed the acts alleged must be rejected. Miss Cottin's testimony is inherently plausible; her identification of Appellant was firm and immediate. Under cross-examination by Appellant's counsel,

presented with ten photographs selected by counsel, she unhesitatingly selected the one of Appellant to reaffirm her identification.

On the other hand, the testimony of the witnesses called by Appellant had certain qualities which, measures against even weaker evidence than is found here, would authorize an examiner to accord little weight to it.

As a technical curiosity it may be noted that not one witness called by Appellant testified under oath before the Examiner on direct examination as to what he saw or did at the material times. Counsel was permitted to elicit from each witness the fact that he had given a statement to a union delegate within a day after complaint was made against Appellant, and that "thus and such" was the content of the statement then made. Strictly speaking, this does not add up to sworn testimony at hearing that "thus and such" was true. If it were necessary to follow this line of reasoning to a logical conclusion, some attention might have to be given to a portion of the testimony of the witness Wade. "So I told him, I told him to see the delegate. I say `when something happen to you, you see the delegate. That's the one you see.' So the delegate start asking for some statements, we saw the man in the room," (R. 71). This could be the starting point of an inference that the statements were not to be statements of fact, but statements given to fill a need. But the matter need not be pursued.

In deference to Counsel's apparent belief that his mode of presentation strengthened the credibility of the witnesses, I will accept the evidence, as did the Examiner, as if it had been directly given.

The whole theory of Appellant's case is expressed in his own testimony, that from 4:45 to 5:15 he was in the messroom, that he met the witness Picciano at 5:15 at their linen locker on U-deck, at which time he borrowed Picciano's cart. With the cart he proceeded to an elevator where at 5:30 he met Fernandez who accompanied him down to the linen room where he was issued linen. Thus, if the trier of facts accepted this as true, "alibi" is established. The trier of facts did not accept all this. Because of the importance of this case, I proceed to make an independent analysis of the testimony on behalf of Appellant.

To begin with, it is noted that when precise times are identified by witnesses, consideration must be given to the circumstances and details which might tend to confirm the precision of the time measurement. As a second preliminary point, it is noted that when two witnesses testify that two things which had to occur sequentially occurred at precisely the same time, the accuracy of one or both of these identifications must be rejected. Thus when Figueira says that Appellant left the messroom at 5:15 and Picciano says that he met Appellant at their linen locker on U-deck at 5:15, both cannot be correct, one must be incorrect, and both may be wrong. The same is true when Fernandez says he was joined by Appellant in the elevator at 5:30 and Fafvala says he issued linen to Appellant at the linen room at 5:30. The testimony of each witness must be evaluated in establishing the possibilities in each case.

As a starting point, the testimony of Wade tends to place Appellant in his own room prior to 4:30. Appellant places his entry into the messroom at 4:33. (R-101).

Since the time spent in the messroom is of the utmost importance to Appellant's case, some of his testimony is quoted:

"Q. What time did you start eating?

A. I started to eat about a quarter to 5:00.

"Q. Does it ordinarily take you a half-hour to eat?

A. Yes, in the evening all the time I take about a half-hour because I take my time. Sometimes I speak with the other fellows, and I used to stay there until 5:15 because I wanted to get my dinner." (R-101, 102)

Even from the mouth of Appellant himself this is not a claim to have been in the messroom until 5:15 on 27 August 1966, but is no more than an assertion of what he "sometimes" did and "used to" do.

The confused testimony of Figueira also attempts to place Appellant in the messroom from 4:45 to 5:15. He said first that

for ten years Appellant had come into the messroom at 4:45 - 4:50. (R-79). Then, after he stated that he had seen Appellant on 27 August 1966 in the mess hall, the following appears in the record:

> EXAMINER: I didn't understand him saying he saw him on that particular day. His statement was the man Rodriguez would be in the messroom about 4:45 or 5:00 o'clock every day. Is that correct?
>
> WITNESS: Always.
>
> "BY EXAMINER:
>
> Q. Is that what you say?
>
> A. Always a quarter-to-five.
>
> "BY COUNSEL:
>
> Q. I will rephrase the question.
>
> A. A quarter-after-five, twenty-after-five, take a half-hour to eat anyhow.
>
> "EXAMINER: What time did he start his meal?
> WITNESS: He start his meal at 4:30 every meal, and the ship start 4:30 every meal, lunchtime start 11:30.
>
> COUNSEL: I don't think that question was quite clear, Mr. Norris." (R-80)

Of course, the question was nothing if not clear. It was the answer that troubled Counsel, who quickly got the witness back on the track:

> "Q. Did you see Mr. Rodriguez in your mess hall August 27th?
>
> A. Yes.

"Q. What time did he come in?

A. A quarter-to-five.

"Q. Did he eat?

A. Yes.

Q. What time did he leave the mess hall?

A. About a quarter-after-five." (R-80,81)

The pin-point accuracy of this witness as to time of arrival and departure of Appellant on the date in question is challenged not only by his reliance on habit and custom and by his own contradictory statement, "He start his meal 4:30, every meal . . ." but by Appellant's just as precise placement of his entry into the messroom at 4:33.

It is now recalled that the witness Fernandez, agreeably to Appellant's own testimony, places them in the elevator at 5:30. The witness Picciano appears to place Appellant at their linen-locker at 5:15. Picciano did not recall the date, but identified the meeting as having occurred on the day on which complaint was made against Appellant. (R-68). Two replies later he appears to reaffirm his certainty of the date by the sudden recollection that that was the first day he and Appellant had worked together. (The cogency of this recollection is somewhat diminished by the testimony of Wade: "I went to the shop and he was there with Mr. Picciano, the room steward he works with in the same deck. They work together." (R-73). Wade's ready statement that he recognized two men who worked together on 27 August would be impossible if that had been the first day they worked together). In view of Picciano's statement that he and Appellant were together for no more than a minute (the time it took him to unload his truck and turn it over to Appellant), and in view of Appellant's own testimony that he took the truck and went directly to the elevator, there is ample reason to conclude that the meeting occurred not earlier than 5:25.

The testimony of the witness Favala is entirely irrelevant but characteristic of the evidence marshalled on Appellant's behalf. Once Appellant is placed on the elevator at five-thirty, nothing thereafter matters, because the complaint of molestation had already been lodged before that time. Favala seems to testify at two points (R-64,65) that Appellant was on the line to pick up linen at 5:15, because it was Appellant's practice to be on line at 5:15. He also testified that his earlier statement to the delegate was that he saw Appellant at the linen room at 5:30, and in answer to Counsel's question at the hearing, "Is it your statement that on August 27, 1966, at approximately 5:30, you issued linen to Mr. Rodriguez? he replied "Yes sir."

The difficulties with the "5:15" reference in this testimony only point up the weaknesses in the structure of Appellant's case. Even Appellant did not want a witness who was willing to place him at the linen room at 5:15 (because it was his habit) when he had other witnesses who could place him truthfully at the linen room after 5:30.

The entire case for Appellant, then, far from creating an air-tight "alibi," leaves the way open for belief, by the trier of facts, that on 27 August 1966:

(1) he entered the messroom at 4:33,

(2) he did not, as he "sometimes" did or "used to" do, use a half-hour for dinner,

(3) he left the messroom before 5:00, and

(4) his movements from about 5:00 to about 5:25 are unaccounted for, except in the testimony of Miss Cottin.

The trier of facts has so found, and I cannot say as a matter of law that his acceptance of the substantial evidence against Appellant and rejection of the evidence in behalf of Appellant was such that it was arbitrary or capricious, nor that the evidence upon which he did base his findings was not substantial evidence no matter how many witnesses testified apparently to the contrary.

Appellant's first point is rejected.

II

Appellant's second point is labeled, "GOVERNMENT WITNESS LIED UNDER OATH."

The argument here is that:

> (1) The Cabin Class Chief Steward lied when he testified that he had no suspect in mind when he ordered the "line-up" in this case, and
>
> (2) he lied again when he denied having "investigated" a similar incident aboard UNITED STATES some months earlier (with a different crew member involved).

A. The evidence adduced on appeal to support the first allegation is in the testimony of the witness McCrann. After Muchulsky, Cabin Class Chief Steward, had testified that he had no single person in mind as suspect when he ordered McCrann to arrange for a line-up, McCrann testified under cross-examination as follows, as quoted in Counsel's brief in support of his contention that Muchulsky lied:

> "Q. Mr. McCrann, you stated before Mr. Muchulsky had someone in mind as to who he wanted to include in this line-up. Did he tell you the person's name?
>
> A. No, he just told me the man was on duty and I went and got that man and brought him up.
>
> "Q. And he was included in the line-up?
>
> A. Yes sir.
>
> "Q. And that man was someone other than Mr. Rodrigues?
>
> A. Right, I'd like to tell you right now that Rodriguez wasn't a man that I went looking for at all. He just happened to be there and I informed him to come along.

> If he hadn't been in the office he probably wouldn't have been up in the lounge."

Even if the conclusion of the witness McCrann, that Mr. Muchulsky had a particular person in mind as suspect, were admissible or probative evidence, the circumstances defeat the drastic conclusion demanded by Appellant.

It is obvious that an officer in the position of Mr. Muchulsky, ordering a general round-up of crewmembers uniformed in a certain way, would automatically include the man on duty right at that time. It would have been ridiculous not to have included him because he was obviously in the described uniform at the time. To attempt to infer from the testimony of McCrann, who said he was told to include the man on duty in the line-up, that Muchulsky lied when he said he had no suspect in mind when he ordered the gathering for the line-up and said that the man on duty in the area should be included, is such an obvious straining of the evidence that Counsel's accusations of perjury are unfounded.

B. Appellant makes a second point, that Muchulsky "denied investigating a similar incident on March 20, 1966 . . ." and "when counsel for the Person Charged attempted to put the said log entry into evidence . . . Mr. Norris refused to accept it."

The log entry of March 20, 1966 I have sighted. The Examiner did not err in refusing to accept it in evidence, nor would it, if accepted into evidence, have proved that Mr. Muchulsky was a liar under oath. It would have shown only that Muchulsky had been summoned to attend a line-up, not that he had "investigated" anything.

C. In this connection generally, it is noted that when the Examiner pointed out to Counsel that his offer of the document in evidence was untimely, since he had had the opportunity to cross-examine Mr. Muchulsky when he was on the stand, Counsel replied that he did not have the information available at the time.

Counsel said: "I request an adjournment to recall Mr. Muchulsky" (R-125). The Examiner immediately replied, "What date do you want?" Counsel asked for a recess to make a "check." When the hearing resumed, Counsel declared, "Mr. Examiner, I

reconsidered and I don't intend to call Mr. Muchulsky."

Appellant, having been given the opportunity to confront the witness again, but now in possession of a document which he insists, on appeal, was important, and having specifically waived a recall of the witness, cannot now attempt to fabricate a reversible error in this situation.

III

Appellant's third point reads "THE HEARING EXAMINER'S ERRONEOUS RULINGS AND UNORTHODOX CONDUCT PREJUDICED THE DEFENSE OF THE PERSON CHARGED." Despite the broad sweep of this statement only one ruling by the Examiner is cited.

The witness Wade (like the other witnesses) had testified that he had made an earlier statement. In reply to a question by the Examiner he stated that he had signed the statement. At the Examiner's request, Counsel showed him a copy of the statement. Counsel offered the statement in evidence. The Examiner rejected it. It is asserted that this was error, that "The Examiner considered a written document, but it is not in anyway [*sic*] reflected in the record."

There are only two possibilities with respect to this written statement; either it was consistent with the testimony given by the witness or it was not. If it was consistent, it would merely have been cumulative as evidence, and the sponsor of a witness has no right, absent an attack *via* a prior inconsistent statement, to prove an earlier consistent statement. If the written statement was inconsistent with the oral testimony, the Examiner did Appellant a favor by not admitting it.

There was no error here.

IV

The fourth point is that "THE HEARING EXAMINER WRONGFULLY REFUSED TO ALLOW THE PERSON CHARGED TO HAVE A COPY OR HEAR HEARING EXAMINER'S EXHIBIT D." (Exhibit D was a tape recording of the Brussels session).

Appellant's brief asserts, "The Examiner on his own motion and over the objection of counsel for the Person Charged put Hearing Examiner's Exhibit D into evidence."

Something of an inconsistency appears in Appellant's position here. At the second meeting after the session held at Brussels, Counsel made the statement, "The tape is in evidence." (R-45) The Examiner declared that it was not. It is true that a few minutes later, when the Examiner declared that he was making the tape an exhibit, Counsel objected. Since Counsel had earlier, albeit erroneously, assumed that the tape was in evidence without objection, there is a possibility that objection was made for the sake of objecting. However, to consider Appellant's point as framed, to have provided Appellant with a "copy" of the Exhibit would have required the reproduction of the tape on another tape, and I find it not unreasonable for the Examiner to have failed to do so.

As to allegation that the Examiner refused to allow Appellant's Counsel to hear the tape, the record shows that this is simply not true. The Examiner stated, "If you want to listen to it, I have no hesitancy whatever on inviting you and Mr. Ricard to listen to the playback of the tape." (R-144). Counsel did not choose to avail himself of the opportunity.

V

Some further comments about this tape are in order.

At one point in the proceedings, Appellant's Counsel conveyed the impression that he believed that the Coast Guard Merchant Marine Detail Officer at Rotterdam, who served as Investigating Officer at the Brussels session, had provided the tape recorder for his purposes. To correct this impression, the Examiner placed in evidence a copy of a letter he had addressed to that officer, containing instructions on how to set up the session of the hearing. Included was an instruction to furnish a tape recorder of high quality. Counsel objected on the grounds that his communication has no validity, since he had no notice of it. While it would have been more prudent for the Examiner to have provided a copy of the letter to Counsel at the time it was sent, the text

of the letter itself shows that there was no prejudice to Appellant in the failure to have done so. Nothing in the letter deals with the merits of the case, only with the mechanics of setting up the hearing.

In discussing this letter, both on the record of hearing and in his brief, Appellant makes much of the fact that the Examiner had expressed his intent to have a meeting with Appellant's Counsel and the Coast Guard officer the day after the Brussels session to review the transcript of proceedings; but the meeting was never held. It is true, as Appellant claims, that the Examiner appears to place the blame upon Counsel, because of his immediate departure from the room after the taking of testimony was completed. It is also true, as Appellant urges, that his Counsel could not be blamed for leaving the scene, since he had no notice that a meeting was in the Examiner's contemplation. But the time and space devoted to this argument are wasted because the meeting was not held anyway. Nothing prejudicial to Appellant occurred.

This discussion of the letter and the meeting, inserted into Appellants brief under his Point Four, is diversionary from the real issue of the validity of the tape recording and of the transcription of it made by the Examiner. When an experienced court reporter attempted to reduce the taped proceedings to "stenotype" notes, he could not do so. The Examiner then dictated to this court reporter what he, the Examiner, heard from the tape. The transcript made from this was entered as Examiner's Exhibit F.

Since the Examiner admits that the tape recording was deficient, I reject as evidence in this record both the tape recording (Examiner's Exhibit "B"), which I have not attempted to listen to, and the "transcript" purportedly made from it (Examiner's Exhibit "F").

VI

Appellant's last stated assignment of error is: "THE HEARING EXAMINER DISCUSSED TESTIMONY OF WITNESS WITH THE GOVERNMENT OUTSIDE THE HEARING ROOM."

This issue was first raised by Counsel on the record in these words: "Before I get to that, at the end of the last hearing,

there were questions directed at some of the inaccuracies of the testimony, and just before we adjourned Lieutenant Whaley made a remark on the record as to the fact that Miss Cottin in her testimony failed to state that the person charged attempted to unzip her shorts, instead the testimony read in the record, touched my shorts." (R-44) In the following colloquy, Counsel makes it clear that he wondered how the Investigating Officer knew that there was a question of "unzip" or "touch" since he had not been present at Brussels. The Examiner made a comment that he thought it was he himself who had raised the question.

The first disturbing element here is that although all present were talking about something that had occurred "on the record" at the previous meeting, it is quite clear that whatever occurred at the earlier meeting took place during a hiatus labeled "(Off-the-record discussion)." (R-41) The dangers of such "off the record" discussions have been pointed out before. Decision on Appeal No. 1578. Here we have no way of knowing how the matter was raised, or who said what. The question was raised however, and an issue on appeal has been created.

Appellant's Counsel challenged the Examiner with having discussed with the Investigating Officer, off-the-record, the substance of the testimony taken in Brussels, specifically that the Examiner recollected the use of the word "unzip" while the stenographer's transcript used the word "touched." It is conceded, as Appellant's brief forcefully contends, that the Examiner at first denied conversation with the Investigating Officer except as to generalities about the "trip" and that, after the Investigating Officer had been called to testify about the conversation concerning the word "unzipped," the Examiner admitted that he had told the Investigating Officer of his intention to listen to the tape to see whether the word "unzipped" appeared on it.

It is conceded also that this conversation should not have taken place. There is, however, no reversible error. The findings of the Examiner use the word "touched" as it appeared in the primary transcript, and not the word "unzip" as he may have recalled it. No prejudice to Appellant appears.

VII

The most important matter raised by Appellant's brief is not framed as a special "Point" but is actually discussed under the point dealing with the Examiner's improper discussion of evidence off-the-record. This matter is, indeed, the only one raised by Appellant really worthy of serious consideration.

The question is, "Was the transcript of proceedings at Brussels so deficient as to fail to supply a record acceptable on review?"

It is noted that this question applies only to the process of review, not to the process of initial decision-making. This is not a case in which the reliability of a document placed before the Examiner is in question. Here the Examiner presided at a session of the hearing and Counsel was present. As in any ordinary case, the Examiner could have made his findings without a transcript at all. Prior to the Examiner's findings the only useful function of the transcript was to provide the Investigating Officer in New York, who had not been present at the Brussels session, with knowledge of what had occurred.

The question then is only whether what was produced before the Examiner in the way of oral testimony has been accurately reproduced for review.

The Examiner has, in effect, certified to me that the record presented on appeal is an accurate reproduction of the proceedings upon which he based his initial decision. Appellant now disputes this.

Only one specific contest is made. Appellant points out that the record shows that the witness Cottin testified that she had on some occasion seen Appellant cleaning staterooms A-25 and A-27.

Appellant provides a deck plan of UNITED STATES to prove that A-25 was "at the opposite end of the vessel," while there is no "A-27."

This, of course, does not necessarily attack the authenticity of the record, although it might reflect upon the recollection of the witness, two months later, on a relatively minor detail of irrelevant room identification.

Appellant does not suggest that the record is wrong in reflecting that the witness testified as to molestation nor that the witness promptly identified, out of ten photographs submitted by Appellant's counsel, the photograph of Appellant as her molester.

VIII

There is one further point to be discussed. While Appellant calls generally for a dismissal of the charge and all specifications, he does not mention anywhere, either on the record of hearing or in his brief, the specification dealing with wrongful possession by Appellant of a master key which would allow access to spaces aboard the ship where Appellant had no right to be.

Considering the trust reposed in a bedroom steward on a passenger vessel, and considering the high degree of responsibility owed to passengers on an American vessel, I am convinced that the mere possession of such a key by an unauthorized person, a key which he could put to no lawful use, would have been sufficient to justify a permanent banishment of the holder from the merchant marine as a menace to the safety of passengers, both in their persons and as to their property.

CONCLUSION

As to the principal offense involved here, we have a very simple case. a molestation of a minor female passenger was alleged. There was a "fresh complaint"; there was an immediate identification of the offender in the presence of witnesses. There was a record of complaint and identification in the vessel's official log-book. There was a later identification of the offender, by photograph, invited by Appellant himself, on the record of hearing.

The only defense was "alibi" and the evidence toward that end was not persuasive to the Examiner. It is even less persuasive to me.

It is concluded that the Examiner's decision was based on

substantial evidence, and that the evidence rejected by the Examiner was not rejected arbitrarily and capriciously.

It is concluded also that the evidence in this case relative to wrongful possession of a pass key by Appellant was not controverted, was substantial, was substantial, and provided adequate basis for the Examiner's findings upon the specification.

ORDER

The order of the Examiner dated at New York, New York, on 28 April 1967, is AFFIRMED.

W. J. SMITH
Admiral, U. S. Coast Guard
Commandant

Dated at Washington, D. C., this 29th day of February 1968.

INDEX

Molestation of passengers

indecent assault

Passengers

offense against

Proof

degree required

Record

held adequate

Witnesses

conflicts in testimony, resolved by Examiner
credibility of, judged by Examiner
waiver of cross-examination for credibility
***** END OF DECISION NO. 1679 *****

Top