

PRISON SHIPS

Robert M. Jarvis*

ABSTRACT

In 2026, New York City plans to close the VERNON C. BAIN, America's only currently-operating prison ship. Although prison ships have a long history, both in the United States and elsewhere, surprisingly little has been written about them. Accordingly, this article first provides a detailed overview of prison ships. It then surveys the U.S. case law generated by them.

KEYWORDS

Hulks, Prisoners, Prisoners of War, Prisons, Ships

CONTENTS

I. INTRODUCTION	283
II. DEFINITIONS AND SCOPE	284
III. HISTORY	288
<i>A. Use During Wartime</i>	288
1. <i>By Foreign Countries</i>	288
2. <i>By the United States</i>	292
<i>B. Use During Peacetime</i>	293
1. <i>By Foreign Countries</i>	293
2. <i>By the United States</i>	300
IV. U.S. CASE LAW	316
<i>A. Mere Mention Cases</i>	316
<i>B. Literary Effect Cases</i>	319
<i>C. Key Role Cases</i>	321
<i>D. New York City Cases</i>	324

* Professor of Law, Nova Southeastern University (jarvisb@nova.edu). The research for this article closed on August 15, 2020.

1. <i>HAROLD A. WILDSTEIN and WALTER KEANE</i>	324
2. <i>BIBBY RESOLUTION and BIBBY VENTURE</i>	326
3. <i>VERNON C. BAIN</i>	330
V. CONCLUSION.....	333

I. INTRODUCTION

On October 17, 2019, the New York City Council voted to close Rikers Island, one of the world’s largest and most brutal penal institutions,¹ and replace it with four new decentralized jails.² As part of the plan, which has a December 31, 2026 deadline, the City’s Department of Correction (“DOC”) intends to close the Vernon C. Bain Correctional Center.³ Known in everyday parlance as “The Boat,” the VERNON C. BAIN is America’s only current prison ship.⁴

¹ Rikers Island is a 415-acre island in the East River, located just off the Queens shore (the location of its only bridge—before it was built in 1966, all travel to the island was by boat). Due to a historical quirk, the island politically is part of the Bronx. It traces its beginnings to 1664, when Governor Peter Stuyvesant granted the then 87-acre island to a local farmer named Abraham Rycken. In 1884, the island was sold back to the City for \$180,000. Initially, the City used the island as a landfill (which caused it to expand to its present size). In 1935, the first jail opened on Rikers Island, replacing the City’s crumbling one (built 1832) on Blackwell (now Roosevelt) Island. Today, Rikers Island is home to 10 jails that hold, at any given time, 11,000-13,000 inmates. See SHARON SEITZ & STUART MILLER, *THE OTHER ISLANDS OF NEW YORK CITY: A HISTORY AND GUIDE* 200-01, 206 (3d ed. 2011).

By the 1970s, the jails on Rikers Island had become “notoriously overcrowded and explosive.” *Id.* at 200. Despite efforts to fix them, they remain cramped, chaotic, and dangerous. See, e.g., Benjamin Weiser, *Violence at Rikers Doubles Despite Efforts to Restrict Use of Force by Guards*, N.Y. TIMES, Aug. 7, 2020, at A21 (“[A] federal monitor appointed to oversee the troubled jail system has found that little progress has been made curbing the brutality of guards and that violent incidents have risen sharply since 2016. . . .”). See also HOMER VENTERS, *LIFE AND DEATH IN RIKERS ISLAND* (2019); MARY E. BUSER, *LOCKDOWN ON RIKERS: SHOCKING STORIES OF ABUSE AND INJUSTICE AT NEW YORK’S NOTORIOUS JAIL* (2015). As one would expect, COVID-19 has magnified Rikers’ many problems. See Sonia Moghe, *Inside New York’s Notorious Rikers Island Jails, “The Epicenter of the Epicenter” of the Coronavirus Pandemic*, CNN (May 18, 2020), <https://www.cnn.com/2020/05/16/us/rikers-coronavirus/index.html>.

² See The Council of the City of New York, Resolution 1091-2019 (Oct. 17, 2019), <https://legistar.council.nyc.gov/Legislation.aspx>. See also Matthew Haag, *New York City to Close Rikers for Jail Reform*, N.Y. TIMES, Oct. 18, 2019, at A1 (explaining that once the new jails are built, Rikers Island is expected to be turned into a public park). The Council’s decision marked the culmination of a years-long grass roots effort to shut Rikers Island. See Janos Marton, *#Closerikers: The Campaign to Transform New York City’s Criminal Justice System*, 45 *FORDHAM URB. L.J.* 499 (2018).

³ See The Council of the City of New York, *Report of the Finance Division on the Fiscal 2021 Preliminary Plan and the Fiscal 2020 Preliminary Mayor’s Management Report for the Department of Correction* 26 (Mar. 16, 2020), <https://council.nyc.gov/budget/wp-content/uploads/sites/54/2020/03/072-DOC.pdf> (“[T]he goal is to . . . complete construction of all four new facilities by 2026. After construction is complete, Rikers Island and the Vernon C. Bain Correctional Center will be closed.”).

⁴ For photographs of the vessel, see its Wikipedia page: https://en.wikipedia.org/wiki/Vernon_C._Bain_Correctional_Center. The DOC’s web site describes the VERNON C. BAIN as follows:

A five-story jail barge built in New Orleans to DOC specifications, the facility houses medium to maximum security detainees. Opened in the Fall of 1992, it is named for a former Warden who died in a car accident. It serves as the Bronx detention facility for intake processing.

There has been relatively little published about prison ships,⁵ and to date no one has collected the U.S. case law generated by such ships. This article seeks to fill both gaps.

II. DEFINITIONS AND SCOPE

Prison ships are vessels that have been converted by the government into floating jails.⁶

New York City Department of Correction, *Facilities Overview*, at <https://www1.nyc.gov/site/doc/about/facilities.page>. In a series of tweets dated Nov. 1, 2018, a Brooklyn public defender named Scott Hechinger described his first visit to the VERNON C. BAIN. See Scott Hechinger (@ScottHech), TWITTER (Nov. 1, 2018, 11:31 AM), <https://twitter.com/ScottHech/status/1057958412938592256>. Like others before him, he found the vessel “massive” and “foreboding.” *Id.*

Director Brian De Palma featured the VERNON C. BAIN in his 1993 movie *Carlito's Way*, even though the story is set in 1975. See *Carlito's Way (1993)—Goofs*, IMDB, at <https://www.imdb.com/title/tt0106519/goofs>. The pertinent scene can be viewed at <https://www.youtube.com/watch?v=fnluVzLMRBQ>. A documentary about the VERNON C. BAIN, titled *The Boat*, currently is in development. For the film's trailer, see THE BOAT (2020), <https://www.theboatmovie.com/>. See also *The Boat – Ivana Huciková*, IVANAHUCIKOVA.COM (2019), <https://ivanahucikova.com/The-Boat> (description of the project by the film's producer).

⁵ The best work I have found is Allan L. Patenaude, *Prison Ships*, in 1 ENCYCLOPEDIA OF PRISONS AND CORRECTIONAL FACILITIES 748-52 (Mary Bosworth ed., 2005). See also MITCHEL P. ROTH, *Convict Hulks*, in PRISONS AND PRISON SYSTEMS: A GLOBAL ENCYCLOPEDIA 67-8 (2006); Bryan Finoki, *Floating Prisons, and Other Miniature Prefabricated Islands of Carceral Territoriality*, SUBTOPIA (Jan. 6, 2008), <http://subtopia.blogspot.com/2008/01/floating-prisons-and-other-miniature.html>.

For a discussion of fictional prison ships, see *Prison Ship*, TV TROPES, <https://tvtropes.org/pmwiki/pmwiki.php/Main/PrisonShip> (citing examples in comic books, movies, television shows, and video games). See also Daisy Dunne, *The Panama Papers Jail*, DAILY MAIL (Apr. 19, 2017), <https://www.dailymail.co.uk/sciencetech/article-4425160/Game-Thrones-ship-designed-Panama-Papers-criminals.html> (story about three Paris architects who were inspired by the 2016 Panama Papers financial scandal to design a fanciful prison ship with cells made from paper).

⁶ The VERNON C. BAIN, however, was built to be a prison ship. See *supra* note 4. As far as I can tell, no other vessel—past or present—shares this dubious distinction.

My research has not revealed any privately-run prison ships. Nevertheless, numerous sources claim, without attribution, that in 1980 plans were made to turn the ITALIS, an aging ocean liner launched in 1939 as the AMERICA, into such a vessel. See, e.g., *The Story of the S.S. America*, SOMETIMES INTERESTING (Jun. 27, 2011), <https://sometimes-interesting.com/2011/06/27/the-ss-america/> (“The ship was sold to Intercommerce [sic—should be “Inter Commerce”] Corporation in 1980 and renamed the S.S. Noga. Intercommerce planned to convert the ship into a private contractor-operated prison ship. They intended to anchor the ship in Beirut, [Lebanon,] but this would never happen.”). The noted marine architect William A. Fox disputes this assertion, explaining that Inter Commerce intended to convert the NOGA into a hotel. See William A. Fox, *Passenger Liner Served Gallantly and Deserves to be Remembered*, DAILY PRESS (Newport News, VA), Aug. 31, 1989, at A15 (“She was sold to a Swiss firm and was renamed NOGA in hopes of putting her into service as a stationary hotel, but this never happened.”). A different observer, agreeing with Fox, attributes the confusion to a rumor that began circulating shortly before Inter Commerce's purchase:

If this occurs when they no longer are seaworthy, they are known as “prison hulks.”⁷

Except in passing, this article does not discuss the following related subjects:

1) “Convict ships,” which are vessels that transport banished convicts to their place of exile.⁸ From 1717 to 1776, for example, Great Britain used such ships to carry convicts to the United States.⁹ When the American Revolutionary War made further transportation impossible, the ships (after a brief interruption) began sailing to Australia (1788-1868).¹⁰

By the autumn of 1979 she was, once again, out of service, so [she] went back to her moorings in Perama Bay. [While there, rumors began to fly.] There [were] reports that the America would become a floating hotel in a West African port, then a “floating prison” at Galveston, Texas and even one wildly enthusiastic report that she would return to [the] New York waterfront, but as a restored “luxury hotel”—the Hotel America! In May 1980, she was sold to the Inter Commerce Corporation, a Swiss-backed arm of the Panamanian-flag company Noga d’Importation et d’Exportation. [R]enamed [the] Noga, she remained at her Greek moorings.

Ken Ironside, *History of the America/West Point/Australis/American Star, Pt. 2*, S.S. AUSTRALIS HOMEPAGE, <http://www.ssaaustralishomepage.co.uk/history1.html>.

⁷ See *Hulk Ships and Its Types: Ships that Didn’t Float*, MARINE INSIGHT, Dec. 12, 2019, <https://www.marineinsight.com/types-of-ships/hulk-ships-and-its-types-ships-that-didnt-float/>. As this source explains, the word “hulk” refers to any unseaworthy ship that continues to serve a purpose. In addition to prisons, hulks traditionally have been used as barracks, hospitals, storage depots, and work platforms. *Id.*

⁸ Historically, the “place of exile” was a remote penal colony. For a look at such institutions, see A GLOBAL HISTORY OF CONVICTS AND PENAL COLONIES (Clare Anderson ed. 2018).

Although the United States has never used convict ships (subject to the next paragraph), the 1927 movie *Captain Salvation*, set in 1840, brings the convict ship PANTHER to the New England town of Maple Harbor, where it embarks a prostitute named Bess Morgan, a shipwreck survivor who has been ostracized by the local citizenry. At the end of the movie, the PANTHER returns to Maple Harbor renamed the BESS MORGAN (the real Bess having died) and is turned into a floating ministry. See Keith Withall (writing as “keith1942”), *Captain Salvation, USA 1927*, EARLY & SILENT FILM (Nov. 3, 2018), <https://cinetext.wordpress.com/2018/11/03/captain-salvation-usa-1927/>.

In Flavell’s Case, 8 Watts & Serg. 197 (Pa. 1844), the defendant, an Irish national, was found guilty of second-degree murder and sentenced to 12 years imprisonment. Subsequently, however, the governor, persuaded that the defendant had been insane at the time of the crime, pardoned him “on the express condition that he be taken direct from the penitentiary on board the vessel which is to convey him [back to Ireland], there to remain until the vessel put to sea. . . .” *Id.* at 197. For reasons that are unclear, this condition was not carried out and the defendant was ordered to serve his full sentence. *Id.* at 199. In upholding the governor’s power to issue conditional pardons, the court wrote: “[C]onditional pardons are by no means strange to the jurisprudence of Pennsylvania, even though the condition [here] amounted to banishment or expatriation.” *Id.* at 198.

⁹ See, e.g., ANTHONY VAVER, *BOUND WITH AN IRON CHAIN: THE UNTOLD STORY OF HOW THE BRITISH TRANSPORTED 50,000 CONVICTS TO COLONIAL AMERICA* (2011); DON JORDAN & MICHAEL WALSH, *WHITE CARGO: THE FORGOTTEN HISTORY OF BRITAIN’S WHITE SLAVES IN AMERICA* (2007); PETER WILSON COLDHAM, *EMIGRANTS IN CHAINS: A SOCIAL HISTORY OF FORCED EMIGRATION TO THE AMERICAS* (1992).

¹⁰ It is estimated that 162,000 convicts were transported to Australia. See, e.g., THOMAS KENEALLY, *A COMMONWEALTH OF THIEVES: THE IMPROBABLE BIRTH OF AUSTRALIA*

Portugal also resorted to transportation, shipping convicts to Brazil (1755-1822) and, when that country ceased being an option, to Africa (1822-1932).¹¹

The French likewise used ships to transport convicts to Cayenne, better known as Devil's Island, their penal colony in French Guiana (1854-1946).¹²

2) "Deportation ships," a term that now usually refers to the ships Great Britain used to send back Jews caught trying to illegally enter Palestine (1933-48).¹³ In 1947, the deportees on the OCEAN VIGOR managed to get a letter to the United Nations Special Committee on Palestine begging for help. It was signed:

(2006); ROBERT HUGHES, *THE FATAL SHORE: A HISTORY OF THE TRANSPORTATION OF CONVICTS TO AUSTRALIA, 1787-1868* (1987); CHARLES BATESON, *THE CONVICT SHIPS 1788-1868* (2d ed. 1969).

¹¹ See Tim Coates, *Portuguese Empire: Convicts and Their Labour*, at 6 (Feb. 2017), <http://convictvoyages.org/wp-content/uploads/2017/02/Portuguese-Empire.pdf> ("From 1755 until Brazil's independence in 1822, . . . 12,000 convicts were sent overseas. In Africa from 1822 to 1881, some 11,000 more convicts were sent, increasingly to Angola. During the period [that Portugal's] two penal institutions were functioning [in Angola and Mozambique] (1881-1932), they received between 16,000 and 20,000 convict laborers."). See also Timothy J. Coates, *The Depósito de Degredados in Luanda, Angola: Binding and Building the Portuguese Empire with Convict Labour, 1880s to 1932*, 63 INT'L REV. SOC. HIST. 151 (Aug. 2018) (Spec. Issue).

In 1929, a group of prisoners being transported to Angola tried to take over their ship:

The Colonial Office reported today that a serious mutiny among convicts on a Portuguese prison ship bound for the African penitentiary at Loanda, Angola, had been quelled only after desperate hand-to-hand fighting.

The reports said the convict ship Guinea was conveying 126 long-term prisoners when the outbreak came. The ship was within five miles of the coast when the convicts made a wild dash for freedom, savagely attacking the guards and crew.

Portuguese Convicts Mutiny on Prison Ship, N.Y. TIMES, Dec. 29, 1929, at 20. For another such incident, see *Captives Seize Prison Ship*, N.Y. TIMES, Aug. 24, 1912, at 5 ("Details have been received of the mutiny of royalist prisoners who were being deported to Africa on board the steamer Malange. . . . The mutineers intended to sail for a South American port, but the Portuguese cruiser Beira happened to be in the vicinity . . . and sent a party of bluejackets aboard the Malange under cover of her guns. The mutineers surrendered after a short resistance.").

¹² See ALEXANDER MILES, *DEVIL'S ISLAND: COLONY OF THE DAMNED* (1988). It is estimated that the French sent 56,000 convicts to Devil's Island, of whom 10% survived their sentences. See Benjamin F. Martin, "Devil's Island," in 1 *FRANCE AND THE AMERICAS: CULTURE, POLITICS, AND HISTORY* 372-74 (Bill Marshall ed. 2005). Upon the island's closing, ships were used to bring the last convicts home. See, e.g., *Prison Ship at Casablanca*, N.Y. TIMES, Apr. 22, 1947, at 16 ("The French cargo ship Boulogne-sur-Seine arrived today at Casablanca, Morocco, from New Orleans, with 523 convicts, mostly North Africans, released in French Guiana. Some had been imprisoned for thirty years.").

¹³ For a comprehensive look at such ships, see GERALD ZIEDENBERG, *BLOCKADE: THE STORY OF JEWISH IMMIGRATION TO PALESTINE* (2011). As another source points out, Jewish commandos regularly tried to sabotage the deportation ships and had a fair amount of success doing so. See *Haapala-Palmach Military Operations*, PALMACH, <http://palmach.org.il/en/history/database/?itemId=5029>.

“The immigrants aboard the prison ship *Ocean Vigor*.”¹⁴

3) “Slave ships,” which from 1440 to 1870 forcibly carried 12 million Africans to the New World.¹⁵

4) Vessels used to take guards and prisoners to and from offshore prisons.¹⁶ In *Abrahams v. United States*,¹⁷ for example, employees at the United States Penitentiary on McNeil Island in Puget Sound, Washington unsuccessfully sued for extra pay to compensate them for the time they spent riding to and from the island aboard a Federal Bureau of Prisons (“FBOP”) boat.¹⁸

Lastly, the COVID-19 pandemic has resulted in hundreds of ships being detained at sea.¹⁹ Their plight has generated countless news stories with the words “floating prison” in their headlines.²⁰

¹⁴ See *Refugees Smuggle Message to UNSCOP Off Prison Ship*, JEWISH TELEGRAPHIC AGENCY (Aug. 21, 1947), <https://www.jta.org/1947/08/21/archive/refugess-smuggle-message-to-uncscop-off-prison-ship>.

¹⁵ See HUGH THOMAS, *THE SLAVE TRADE—THE STORY OF THE ATLANTIC SLAVE TRADE: 1440-1870* (1997). For a further discussion of such ships, see, e.g., SOWANDE M. MUSTAKEEM, *SLAVERY AT SEA: TERROR, SEX, AND SICKNESS IN THE MIDDLE PASSAGE* (2016); MARCUS REDIKER, *THE SLAVE SHIP: A HUMAN HISTORY* (2007); STEPHANIE SMALLWOOD, *SALTWATER SLAVERY: A MIDDLE PASSAGE FROM AFRICA TO AMERICAN DIASPORA* (2006).

¹⁶ As explained *supra* note 1, in the 19th century New York City’s main jail was on Blackwell Island. In 1842, Charles Dickens, the noted English author, visited the City and used part of his time to tour the island, which also housed the City’s mental asylum, orphanage, and poor house:

I was taken to these Institutions by water, in a boat belonging to the Island jail, and rowed by a crew of prisoners, who were dressed in a striped uniform of black and buff, in which they looked like faded tigers. They took me, by the same conveyance, to the jail itself.

CHARLES DICKENS, *AMERICAN NOTES FOR GENERAL CIRCULATION* 110 (1842). For a further look at Blackwell Island, see STACY HORN, *DAMNATION ISLAND: POOR, SICK, MAD, AND CRIMINAL IN 19TH-CENTURY NEW YORK* (2018).

¹⁷ 1 Cl. Ct. 305 (1982).

¹⁸ *Id.* at 311-12. For another such case, see *Giles v. United States*, 157 F.2d 588 (9th Cir. 1946), *cert. denied*, 331 U.S. 813 (1947).

¹⁹ In a June 8, 2020 press release, the International Labor Organization estimated that 150,000-200,000 seafarers were “trapped on board ships around the world because of measures to contain the COVID-19 virus.” See https://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_747293/lang--en/index.htm.

²⁰ See, e.g., Solarina Ho et al., *Floating “Prison” as Countries Bar Canadian Cruise Staff from Getting Home*, CTV NEWS, May 7, 2020, at <https://www.ctvnews.ca/health/coronavirus/floating-prison-as-countries-bar-canadian-cruise-staff-from-getting-home-1.4928892>; *Coronavirus: How a Luxury Cruise Became “A Floating Prison” During Quarantine in Japan*, AP, Feb. 7, 2020, at <https://www.scmp.com/news/asia/east-asia/article/3049422/coronavirus-how-luxury-cruise-became-floating-prison-during>.

In August 2020, crewmembers in Miami sued the Bahamas Paradise Cruise Line, claiming that its delay in repatriating them constituted false imprisonment. See *Janicijevic v. Classica Cruise Operator, Ltd.*, Case No. 1:20-cv-23223-BB (S.D. Fla.) (filed Aug. 4, 2020) (paragraph 21 of the complaint reads in pertinent part: “The crew were unnecessarily kept on the ships for months on end, many thousands of miles away from their homes and families. Remarkably, there are still crewmembers effectively

III. HISTORY

A. USE DURING WARTIME

1. By Foreign Countries

Prison ships have been used, most famously, to house prisoners of war (“POWs”).²¹ During the American Revolutionary War (1775-83), for example, the British operated prison ships in Charleston, New York, Norfolk, and Savannah, as well as off the coast of Florida and in Canada.²² While 6,800 Americans were killed in battle, 11,500 perished on these ships,²³ with most of the deaths occurring in New York.²⁴ Since 1908, a large memorial, known as the Prison Ship Martyrs’ Monument, has occupied a central spot in Brooklyn’s Fort Greene Park.²⁵

During the War of 1812, the British again used prison ships. In one notable incident, the British seized the MAGNET, an American vessel, and brought her to Halifax, Nova Scotia.²⁶ In the ensuing prize proceedings,²⁷ the British government asked that the MAGNET be released, even though she had not yet been adjudged prize, so that she could be used as a POW ship.²⁸ The government also asked that a cache of small arms and a cargo of wood be released, even though they too had not yet been declared prize, insisting that they also were urgently needed.²⁹

held hostage on the ship. This egregiously delayed repatriation is tantamount to false imprisonment of the crew.”). For a copy of the complaint, see 2020 WL 4491952.

²¹ For a general discussion of POWs, see ARNOLD KRAMMER, PRISONERS OF WAR: A REFERENCE HANDBOOK (2008).

²² See Greg Daugherty, *The Appalling Way the British Tried to Recruit Americans Away from Revolt*, HISTORY (Jan. 31, 2020), <https://www.history.com/news/british-prison-ships-american-revolution-hms-jersey>.

²³ See *American Revolution Facts*, AMERICAN BATTLEFIELD TRUST, <https://www.battlefields.org/learn/articles/american-revolution-faqs>.

²⁴ See LARRY LOWENTHAL, HELL ON THE EAST RIVER: BRITISH PRISON SHIPS IN THE AMERICAN REVOLUTION (2009). The most notorious of these vessels was the JERSEY. See ROBERT P. WATSON, THE GHOST SHIP OF BROOKLYN: AN UNTOLD STORY OF THE AMERICAN REVOLUTION (2017); THOMAS DRING, RECOLLECTIONS OF LIFE ON THE PRISON SHIP JERSEY (David Swain ed. 2010). For fictional accounts of the JERSEY, see MICHAEL GRISI, SHIP OF DEATH (2011); EVERETT T. TOMLINSON, IN THE HANDS OF THE RED COATS: A TALE OF THE JERSEY SHIP AND THE JERSEY SHORE IN THE DAYS OF THE REVOLUTION (1900).

²⁵ See *Taft and Hughes at Martyrs’ Shaft: President-Elect, Governor, and 20,000 Onlookers Dedicate Monument to Prison Ship Victims*, N.Y. TIMES, Nov. 15, 1908, at 1. See also *Fort Greene Park: Prison Ship Martyrs Monument*, NYC PARKS, <https://www.nycgovparks.org/parks/fort-greene-park/monuments/1222> (describing the monument as consisting of a “Doric column 149 feet in height” upon which sits “a bronze urn”). Both the park and the monument are described further in *Sierra Club v. Department of Parks and Recreation of the City of New York*, 2020 WL 109675, at *2 (N.Y. Sup. Ct. 2020).

²⁶ See Maurice N. Davison, *Family Touched by the War of 1812*, 139 SEA HISTORY 6 (Summer 2012) (letter to the editor explaining that the MAGNET, which was bringing Irish immigrants to New York, was seized just three days short of her destination).

²⁷ See *The Curlew*, (1812) Stewart’s Vice-Adm. Cas. (Nova Scotia) 312.

²⁸ *Id.* at 312-13

²⁹ *Id.*

After observing that the government's requests were highly unusual,³⁰ the court granted the arms and wood petitions, explaining that the war had created exigent circumstances that permitted it to deviate from its normal procedure.³¹ It then turned to the MAGNET and reached the same conclusion:

A third petition is from Vice-Admiral *Sawyer*, likewise stating "that in consequence of the *United States* having declared war, it has been necessary for His Majesty's service that a prison ship should be provided for the safe keeping of prisoners of war, who [have] now become very numerous, that a ship called the *Magnet*, which is now held in the custody of this Court as a prize taken from the *Americans* is a ship well calculated for a prison ship, and that His Majesty's service requires the said ship to be immediately employed for that purpose, there being no other suitable vessel to be now obtained. He therefore prays that the said ship may be delivered over to such officers as the said vice-admiral shall appoint to take charge of her for his majesty's use, upon the same terms as proposed in the other petition[s]."³²

This petition depends upon the same principles [as the previous two petitions and therefore is granted].³²

Closer to home, the British used POW ships in numerous conflicts, including the Napoleonic Wars (1803-15),³³ the Second Boer War (1899-1902),³⁴ World War

³⁰ *Id.* at 314-22.

³¹ *Id.* at 322-24.

³² *Id.* at 324 (italics in original).

³³ Many of the French POWs later told lurid stories about their captivity. See, e.g., LOUIS GARNERAY, *THE FLOATING PRISON: THE EXTRAORDINARY ACCOUNT OF NINE YEARS CAPTIVITY ON THE BRITISH PRISON HULKS DURING THE NAPOLEONIC WARS* (Richard Rose transl. 2003) (1851). The accuracy of their descriptions has been questioned. See, e.g., W. BRANCH JOHNSON, *THE ENGLISH PRISON HULKS* (rev. ed. 1970).

For a case in which an American seaman was held as a POW by the British during the Napoleonic Wars, see *Cotteral v. Cummins*, 6 Serg. & Rawle 343 (Pa. 1821) (explaining, *id.* at 345, that the plaintiff's imprisonment lasted from March 22 to May 1, 1810). Although the case does not reveal why the plaintiff was released, it is likely that the British let him go once they realized he was an American. (In 1810, the United States officially was neutral by virtue of the Non-Intercourse Act of 1809, Pub. L. 10-24, 2 Stat. 528.)

³⁴ In describing his visit to the prison hulk PENELOPE at Simon's Bay (South Africa), one reporter wrote:

The majority of the prisoners are sleek, contented, and indifferent. They told me that they thought the war would be a picnic, that they would rush Natal [Province] before the imperial troops arrived, that Great Britain would be involved in foreign complications, and that they would be able to dictate terms from Pietermaritzburg [Natal's capital] and Durban [Natal's principal city]. They [expected] to view the Cape peninsular as conquerors, not from a prison-ship.

Grim Realities of War, N.Y. TIMES, Dec. 22, 1899, at 3. See also *Treatment of Boer Prisoners: What a Cunard Line Purser Who Was on the Catalonia Says*, N.Y. TIMES, May 20, 1901, at 7 (explaining that the passenger ship "Catalonia was stationed at

I (1914-18),³⁵ and World War II (1939-45).³⁶

Durban, Simons Town and Capetown at various times. She was utilized as a prison ship, and generally had on board about 600 prisoners of war.”)

³⁵ At the beginning of the war, for example, the British detained thousands of aliens in Portsmouth Harbor:

By early 1915, following the initial round-up, there were 4,000 men and women on prison ships in Portsmouth Harbour. This was reminiscent of the treatment of French and American prisoners of war in the late eighteenth and early nineteenth centuries, and there was an outcry locally. The protestors were concerned not so much about the welfare of the internees but by the security risk. These people were in custody in the middle of Portsmouth dockyard which was itself at the heart of the Inner Defence Area. Surely this was imperiling the nation’s security? In an answer to a question in the House of Commons from local MP, Lord Charles Beresford, the First Lord of the Admiralty, Winston Churchill, admitted that the situation was not ideal but that they were doing their best to find alternative accommodation. He was as good as his word. Within two weeks, the local papers were able to report that prison ships had gone from the harbor and those at Motherbank would be emptied soon and their occupants sent to camps.

SARAH QUAIL, PORTSMOUTH IN THE GREAT WAR 41-42 (2014).

³⁶ In July 1940, for example, the press reported:

The United Kingdom’s first “evacuated” prisoners of war stepped to Canadian soil on a sunny summer’s day, ending a voyage of tense days and nights climaxed by death on the high seas. One prisoner went to an unknown fate while en route by diving through a porthole. . . .

The exact number of prisoners and interned enemy aliens shifted to Canada from the United Kingdom could not be made known.

The United Kingdom Government requested Canada to receive them because of the danger they might present in the British Isles should the Motherland be invaded.

T.R. Walsh, *First Shipload of German Prisoners of War Arrives from Overseas*, OTTAWA EVENING CITIZEN, July 2, 1940, at 13. Like the number of prisoners, the ship’s name could not be printed because of censorship restrictions. As a result, the paper could say only that “in pre-war days[, the vessel] was a passenger liner operating between Quebec and Montreal and British ports[.]” *Id.*

One day later, the ARANDORA STAR, another British ship headed to Canada with German POWs, was sunk by the notorious German submarine U-47. See Sam Robertson, *Big Prison Liner is Torpedoed: Ship on Way to Canada Sunk by Nazis*, OTTAWA EVENING J., July 3, 1940, at 1. (In March 1941, U-47 disappeared. To date, an official cause has not been established. For a further discussion, see DOUGIE MARTINDALE, GÜNTHER PRIEN AND U-47: THE BULL OF SCAPA FLOW (2018).)

By the time the war ended, 34,000 German POWs had been transferred to Canada. For a further discussion, see *Prisoner of War Camps in Canada*, THE CANADIAN ENCYCLOPEDIA, <https://www.thecanadianencyclopedia.ca/en/article/prisoner-of-war-camps-in-canada>.

In the Russian Civil War (1918-19), POW ships known as “death barges” were used by both sides.³⁷ During World War II, POW ships were used by both the Germans³⁸ and the Japanese.³⁹ Because they did not display Red Cross-markings,

³⁷ See, e.g., VOLKER R. BERGHAIN, *EUROPE IN THE ERA OF TWO WORLD WARS: FROM MILITARISM AND GENOCIDE TO CIVIL SOCIETY, 1900-1950*, at 49 (2008) (“In early July 1918 Boris Savinko established a terror regime in the city of Yaroslav during which he herded some 200 hostages on a ‘death barge’ on the Volga River where they were left to perish.”).

Prior to the civil war, the Tsarist government had used prison ships for more standard purposes:

A prison-ship arrived from Odessa in Vladivostok the day before my departure. It was the *Voronzoff*, a magnificent Clyde-built ship, with airy and roomy quarters. She was the finest-looking ship I saw in the far east, and yet I was assured that she was not an exception, but rather the type of the Russian volunteer fleet.

I went on board of the prison-ship well before she came to anchor. Though in from a voyage of nearly fifty days, and after experiencing severe weather continuously for the past two weeks, I found the vessel and the convict quarters as clean and as sweet as are the steerage compartments on our own Atlantic steamers at the end of a voyage of less than a week. Of course I would have these adjectives to be understood in a relative sense only.

There were no “political” on board. There were about 1100 convicts, and, judging from their appearance, the great majority of them were criminals of the lowest and most degraded category. I could not conceal my surprise at the smallness of the guard that stood watch over them, and the absence of fear that seemed to be entertained of the possibility of an outbreak. With the exception of three men, who, as punishment for misconduct during the voyage, were chained to the deck, the convicts were free to move about, it appeared, pretty much as they pleased. The guard of soldiers certainly did not number twenty men, who went about generally unarmed; and the sailors of the ship, who were not armed at all, seemed to be on the best of terms with the convicts, with whom they sat and talked, and even played cards. The convicts, judging from their faces, seemed all to belong to one and the same class of confirmed and hardened criminals, but ethnically it was the most varied assortment of types of the races of the human family that I remember to have seen.

Stephen Bonsal, *Siberian Prisons*, 11 GREEN BAG 16, 17 (Jan. 1899).

³⁸ In a famous incident early in the war (Feb. 16-17, 1940), the British destroyer COSSACK intercepted the German freighter ALTMARK, which was carrying 299 British POWs, and forced it to release them. For a further discussion, see WILLI FRISCHAUER & ROBERT JACKSON, “THE NAVY’S HERE!”: THE ALTMARK AFFAIR (1955); Martin A. Doherty, *The Attack on the Altmark: A Case Study in Wartime Propaganda*, 38 J. CONTEMP. HIST. 187 (2003). As these sources report, the incident gave rise to the famous slogan “The Navy’s here!” (supposedly said by a member of the COSSACK’s boarding party while searching the ALTMARK for POWs).

³⁹ Conditions aboard Japan’s prison ships were so harsh that they became known as “hell ships.” See, e.g., LIVING IN THE SHADOW OF A HELL SHIP: THE SURVIVAL STORY OF U.S.

Allied forces often inadvertently bombed these vessels, causing thousands of casualties.⁴⁰ In 1949, the Geneva Convention was revised to prohibit POWs from being detained on ships except in emergencies.⁴¹

2. By the United States

The United States historically has not kept POWs on ships. Exceptions include the War of 1812⁴² and the Civil War (1861-65).⁴³ In both World War I and World War

MARINE GEORGE BURLAGE, A WWII PRISONER-OF-WAR OF THE JAPANESE (Georgianne Burlage ed., 2020); RAYMOND LAMONT-BROWN, SHIPS FROM HELL: JAPANESE WAR CRIMES ON THE HIGH SEAS (2002); JUDITH L. PEARSON, BELLY OF THE BEAST: A POW'S INSPIRING TRUE STORY OF FAITH, COURAGE, AND SURVIVAL ABOARD THE INFAMOUS WWII JAPANESE HELL SHIP ORYOKU MARU (2001).

⁴⁰ On May 3, 1945 (just five days before the war ended in Europe), for example, British airplanes sank two unmarked German ships carrying concentration camp prisoners: the CAP ARCONA and the THIELBEK. It is estimated that 7,400 prisoners died. See ROBERT P. WATSON, THE NAZI TITANIC: THE INCREDIBLE UNTOLD STORY OF A DOOMED SHIP IN WORLD WAR II (2016).

⁴¹ See, e.g., Winston G. McMillan, *Something More than a Three-Hour Tour: Rules for Detention and Treatment of Persons at Sea on U.S. Naval Warships*, ARMY LAW., Feb. 2011, at 31. As McMillan explains, several recent examples exist of POWs being detained at sea:

During the Falklands War in the early 1980's, the United Kingdom housed Argentine prisoners aboard the British warships based on practical concerns of being able to provide safer and more habitable temporary detention facilities. Likewise, during Operation Enduring Freedom (OEF), the United States placed Taliban and Al-Qaeda detainees on board amphibious assault ships for temporary detention and transit to more permanent land-based internment facilities. Later, during Operation Iraqi Freedom (OIF), due to operational exigencies on the battlefield, the amphibious assault ship USS *Dubuque* served as a temporary detention facility for captured Iraqi [POWs].

Id. at 36 (footnotes omitted).

⁴² See Paul Joseph Springer, *American Prisoner of War Policy and Practice from the Revolutionary War to the War on Terror* 63-64 (unpublished Ph.D. dissertation, Texas A & M University, 2006), <https://core.ac.uk/download/pdf/4270747.pdf> (explaining that in the War of 1812, “[t]he United States relied primarily upon privately owned vessels for prison ships, leasing the ships on a daily or monthly basis. . . . Conditions on the ships varied: [Michael McClary, the Marshal of New Hampshire, for example,] noted that prisoners under his care had received bedding but not blankets, as he was unsure of his responsibilities for prisoner comforts.”).

⁴³ See, e.g., GARY ROBERT MATTHEWS, BASIL WILSON DUKE, CSA: THE RIGHT MAN IN THE RIGHT PLACE 171-72 (2005) (describing conditions aboard the Union prison ship DRAGOON); *Affairs in the Rebel States*, N.Y. TIMES, Aug. 10, 1862, at 2 (“On arriving at Philadelphia the crew of [the Confederate schooner] *Catilina* were put on board the prison ship *Princeton*, where they were kept for twelve days. . . .”); Richard H. Holloway, *Riverboat Espionage: How a Confederate Officer Spied from the Decks of a Prison Ship*, HISTORYNET, <https://www.historynet.com/riverboat-espionage-how-a-confederate-officer-spied-from-the-decks-of-a-prison-ship.htm> (recounting a voyage aboard the Union prison ship POLAR STAR); *USS Grand Gulf*, NAVSOURCE ONLINE,

II, thousands of POWs were transported by ship to the United States and placed in prison camps located throughout the country.⁴⁴ During the War on Terror (2001 to the present), frequent allegations have been made that the United States is using Navy ships to hold and interrogate suspected terrorists.⁴⁵

B. USE DURING PEACETIME

1. By Foreign Countries

In peace time, prison ships have been used when land-based facilities have been full or otherwise unavailable. In 1775, for example, when the British suddenly were unable to transport convicts to the United States because of the American Revolutionary War, the government decided to use ships as a temporary solution:

The war with America brought an abrupt halt to the steady stream of convict ships that had been heading to its shores. What did not abate, however, was the flow of convicts sentenced to transportation by the courts, and a crisis in prison overcrowding soon began to loom.

<http://www.navsource.org/archives/09/86/86774.htm> (noting that the steamer GRAND GULF was used as a prison ship in New Orleans for several months in late 1865).

Shortly after the war ended, Union forces captured Jefferson F. Davis (the president of the Confederacy) in Georgia. Subsequently, he was taken by ship to Fort Monroe in Hampton Roads, Virginia. Years later, Confederate General Joseph Wheeler wrote about his failed attempts to free Davis during the voyage. See Joseph Wheeler, *An Effort to Rescue Jefferson Davis*, 34 CENTURY MAG. 85 (May 1898), <https://www.victorianvoices.net/ARTICLES/CIVILWAR/C1898B-JeffersonDavis.pdf>.

In Clive Cussler's 1992 novel *Sahara*, the scene is repeated but in reverse: near the end of the war, U.S. President Abraham Lincoln, having been betrayed by Secretary of War Edwin M. Stanton, is placed aboard the Confederate warship TEXAS, taken to Africa, and never heard from again. See *id.* at 679-82 (explaining that Stanton then hired John Wilkes Booth to assassinate an actor playing Lincoln).

⁴⁴ Very little has been written about the 4,000 World War I POWs. The best source I have found is Leisa Vaughn, *The German Hun in the Georgia Sun: German Prisoners of War in Georgia* (unpublished M.A. dissertation, Georgia Southern University, 2016), <https://digitalcommons.georgiasouthern.edu/cgi/viewcontent.cgi?article=2456&context=etd>. As Vaughn points out, the majority of World War I POWs were held in camps in Georgia, with a smaller number sent to North Carolina and Utah. *Id.* at 29.

In contrast, numerous books have been published about the 425,000 World War II POWs, who were assigned to some 700 camps scattered across 45 states and the territory of Hawaii. See ARNOLD KRAMMER, NAZI PRISONERS OF WAR IN AMERICA (1979). For accounts of specific camps, see, e.g., GREGORY D. SUMNER, MICHIGAN POW CAMPS IN WORLD WAR II (2018); DEAN B. SIMMONS, SWORDS INTO PLOWSHARES: MINNESOTA'S POW CAMPS DURING WORLD WAR TWO (2016); ROBERT D. BILLINGER, JR., HITLER'S SOLDIERS IN THE SUNSHINE STATE: GERMAN POWS IN FLORIDA (2000).

⁴⁵ See, e.g., RONALD O'ROURKE, CONG. RES. SERV., RS22373, NAVY IRREGULAR WARFARE AND COUNTERTERRORISM OPERATIONS: BACKGROUND AND ISSUES FOR CONGRESS (2019); Marisa Porges, *America's Floating Prisons: The U.S. Navy Has Taken on a Curious New Counterterrorism Role*, ATL. MAG., June 27, 2014, <https://www.theatlantic.com/international/archive/2014/06/americas-floating-prisons/373577/>; Duncan Campbell & Richard Norton-Taylor, *US Accused of Holding Terror Suspects on Prison Ships*, GUARDIAN (London) (Jun. 1, 2008), <https://www.theguardian.com/world/2008/jun/02/usa.humanrights#>.

The immediate, and supposedly short-term, solution was to turn two of the hulks of old battleships berthed on the Thames at Woolwich into floating prisons for 100 inmates. At the same time, two pieces of parliamentary legislation were prepared which proposed longer-term remedies for the problem. The first, the Criminal Law Act of 1776, aimed to extend the use of shipboard prisons. It recommended that transportation be replaced by a period of hard labour lasting between three and ten years. . . . Although the Act made no explicit mention of shipboard prisons, the particular form of hard labour that it proposed—“removing sand, soil, and gravel from, and cleansing the River Thames”—makes it clear that was where its intent lay. Despite some objections, such as the possible nuisance caused to nearby residents, and concerns about the security of the vessels, the bill was passed in May 1776. . . .

In August 1776, the contract for supplying and managing the new prison ships, or hulks as they became known, was awarded to Duncan Campbell—one of the merchants who had previously been engaged in transporting convicts to America. Campbell’s initial contract was to provide a ship to house 120 prisoners for each of which he was to receive £32 a year. The first vessel he provided, the *Justitia*, was joined the following year by the *Tayloe*, the two then accommodating 240 prisoners. The *Tayloe* was soon replaced by the much larger *Censor*.

The ships were moored in the middle of the Thames at Woolwich Warren. . . . During the day, prisoners worked at dredging the river or providing labour for building works. At night they were crammed below decks, originally in beds, and then in pairs on low wooden platforms. . . . An experiment in using hammocks for beds was abandoned after it became apparent how difficult these were to use while wearing chains. . . .

Conditions on the hulks were dire, with ships sometimes housing up to 700 convicts. . . . In the first twenty years of their operation, the hulks received around 8,000 prisoners, of which almost a quarter died on board. As well as diseases, such as goal-fever, tuberculosis, cholera and scurvy, severe depression appears to have been common. . . .

By 1788 [when transportation resumed following the establishment of a new penal colony at Botany Bay in Australia], the [hulks] included the *Stanislaus* at Woolwich, the *Dunkirk* based at Plymouth, the *Lion* at Gosport, and the *Ceres* and *La Fortunee* at Langstone Harbour.⁴⁶

Even with transportation again available, Great Britain continued to use the prison hulks until 1857, when the Parliamentary act authorizing them⁴⁷ was not renewed.⁴⁸

⁴⁶ PETER HIGGINBOTHAM, *THE PRISON COOKBOOK* 43-4 (2010). For a further look at these hulks, see, e.g., Robert Shoemaker, *Convict Hulks*, DIGITAL PANOPTICON, https://www.digitalpanopticon.org/Convict_Hulks; Anna McKay, *A Day in the Life: Convicts on Board Prison Hulks*, CARCERAL ARCHIPELAGO (University of Leicester) (Oct. 10, 2017), <https://staffblogs.le.ac.uk/carchipelago/2017/10/10/a-day-in-the-life-convicts-on-board-prison-hulks/>.

⁴⁷ See *Hulks Act 1776*, 16 Geo. III, c. 43 (Eng.).

⁴⁸ See CHARLES CAMPBELL, *THE INTOLERABLE HULKS: BRITISH SHIPBOARD CONFINEMENT, 1776-1857* (3d ed. 2001).

Under a different statute passed in 1823,⁴⁹ British colonies were permitted to have their own prison hulks, and several availed themselves of this option, including, most notably, Bermuda (1824-63) and Gibraltar (1842-75).⁵⁰

Charles Dickens' 1861 novel *Great Expectations*, set in 1812, opens with a prisoner (Abel Magwitch) escaping from a Thames hulk and swimming to shore.⁵¹ When he is later captured, Philip "Pip" Pirrip (the orphan who is the story's main character) describes Magwitch's forced return to the vessel:

The something that I had noticed before clicked in the man's throat again, and he turned his back. The boat had returned, and his guard[s] were ready, so we followed him to the landing-place, made of rough stakes and stones, and saw him put into the boat, which was rowed by a crew of convicts like himself. No one appeared glad to see him, or sorry to see him, or spoke a word, except that somebody called as if to dogs, "Give way, you!" which was the signal for the dip of the oars. By the light of the torches we saw the black Hulk lying out a little way from the mud of the shore, like a wicked Noah's ark; cribbed, and barred, and anchored by massive rusty chains, the prison-ship was ironed like the prisoners.

The British maintained detailed rolls of hulk prisoners, and many now are available online. See Robert Shoemaker, *Hulks Registers 1801-1879*, DIGITAL PANOPTICON, https://www.digitalpanopticon.org/Hulks_Registers_1801-1879 (explaining that these lists "were kept by the Treasury to ensure contractors were correctly paid for the number of convicts kept on the hulks, and reimbursed for other expenses.").

⁴⁹ See Male Convicts Act, 4 Geo. IV, c. 47 (Eng.).

⁵⁰ Prison hulks also were used in Antigua, Australia, Barbados, Canada, Ireland, Malta, and South Africa. See Patenaude, *supra* note 5, at 749. See also Graham E. Watson, *Royal Navy Hulks Overseas, 1800-1976*, <http://www.gwpda.org/naval/rnhulks.htm>.

For a look at the Bermuda and Gibraltar prison hulks, see, e.g., Katy Roscoe, *Cosmopolitan Convicts? 19th-Century Convicts in Bermuda and Gibraltar*, HAKLUYT SOCIETY, Nov. 29, 2019, <https://hakluytsociety.wordpress.com/2019/11/29/cosmopolitan-convicts-19th-century-convicts-in-bermuda-and-gibraltar/>; Anna McKay, *Conceptualising Islands in History: Considering Bermuda and Gibraltar's Prison Hulks*, CARCERAL ARCHIPELAGO (University of Leicester), Mar. 8, 2016, <https://staffblogs.le.ac.uk/carchipelago/2016/03/08/conceptualising-islands-in-history-considering-bermuda-and-gibraltars-prison-hulks/>. The final years of the Bermuda and Gibraltar hulks is the subject of Chapter 10 (pages 257-81) of Hilary M. Carey's *Empire of Hell: Religion and the Campaign to End Convict Transportation in the British Empire, 1788-1875* (2019). (The chapter is titled: "Floating Hells": Bermuda, Gibraltar and the Hulks, 1850-1875.)

For two pieces focusing just on the Bermuda hulks, see Jim Downs, *The Gay Marriages of a Nineteenth-Century Prison Ship*, NEW YORKER, July 2, 2020, <https://www.newyorker.com/culture/culture-desk/the-gay-marriages-of-a-nineteenth-century-prison-ship> (describing the six-and-a-half years that George Baxter Grundy, a London lawyer convicted of forgery, spent on a Bermuda prison ship); Clare Anderson, *The Convict Hulks of Bermuda*, CARCERAL ARCHIPELAGO (University of Leicester), June 26, 2014, <https://staffblogs.le.ac.uk/carchipelago/2014/06/26/the-convict-hulks-of-bermuda/>. For a web site dedicated to Bermuda's prison hulks, see <http://www.bermudahulks.com/>.

⁵¹ A pair of wry observers have pointed out the impossibility of Magwitch doing so: "One mystery of the novel is how Magwitch, the convict, manages to swim to shore from the Hulks with a 'great iron' (a shackle) on his leg. The answer may be that Dickens (a good swimmer himself) intended to endow Magwitch with superhuman power." JOHN SUTHERLAND & JOLYON CONNELL, *THE CONNELL GUIDE TO CHARLES DICKENS'S GREAT EXPECTATIONS* 67 (2018).

We saw the boat go alongside, and we saw him taken up the side and disappear. Then the ends of the torches were flung hissing into the water, and went out, as if it were all over with him.⁵²

That the hulks were much feared is made clear by a story recounted in a remembrance of Baron Ellenborough, the Lord Chief Justice of King's Bench (1802-18):

Some magistrate of Middlesex had sent a young man on board a tender, which lay off the Nore to receive impressed men, for the heinous crimes of sitting in his cart on the high road, and of insolence when summoned before them, the legal penalty for the first offence being a fine of ten shillings. He was kept on board the prison-ship seven days, and brought his action for false imprisonment. Lord Ellenborough summed up strongly in favour of exemplary damages. "This is a case that calls for ample justice. A young man, in driving his cart, commits an offence for which he is fineable, instead of which he is imprisoned without any authority of law, and afterwards put on board a prison-ship; there is nothing a magistrate ought to guard so much against as the playing with the liberty of the subject. There can be no excuse for the conduct of the defendant. The plaintiff is entitled to ample justice from a jury of his country; you will therefore, gentlemen, take the case into consideration and give him those damages that you think will make him ample compensation for the injuries he has sustained." The jury very properly awarded 500l.⁵³

Prison hulks were not limited to Great Britain. In France, for example, prisoners were used as "galley rowers" ("galley slaves") from the 16th to the 18th centuries.⁵⁴ When changes in naval warfare made such ships obsolete, they were turned into prison hulks, primarily at Toulon.⁵⁵

In modern times, Great Britain repeatedly has used ships to detain political prisoners in Northern Ireland: 1920s (ARGENTA),⁵⁶ 1940s (AL RAWDAH),⁵⁷ and

⁵² CHARLES DICKENS, *GREAT EXPECTATIONS* 60 (Cambridge Edition 1881) (1861).

Fans of the book now regularly seek out the places mentioned in it, including Magwitch's watery cell. See, e.g., William Atkins, *A Journey into Pip's World of "Great Expectations,"* N.Y. TIMES, Nov. 11, 2018, at 7 (Travel) ("[I]t's past 4 p.m. by the time I reach Egypt Bay. I arrive sunburned and windblown, my lips taut and salty. The provenance of the bay's name is unclear. . . . What is known is that this sandy inlet was an ancient landing place, and favored by smugglers in the 19th century. Beyond the mudflats, [my guide] says, is where the prison hulk was from which Magwitch escaped[.]").

⁵³ *Life of Lord Ellenborough*, 11 LAW MAG. QUART. REV. JURIS. 312, 355-56 (1834).

⁵⁴ See PAUL W. BAMFORD, *FIGHTING SHIPS AND PRISONS: THE MEDITERRANEAN GALLEYS OF FRANCE IN THE AGE OF LOUIS XIV* (1974).

⁵⁵ One of the most famous Toulon prison hulks was the THÉMISTOCLE, which was burned by the British captain William Sidney Smith during the Siege of Toulon (1793) with 260 prisoners aboard. See JOHN GIFFORD, *THE HISTORY OF FRANCE* (1797). As Gifford notes, most of the prisoners managed to escape, but "a few who were in fetters . . . perished in the explosion." *Id.* at 334. For a further recounting of the battle, see BERNARD IRELAND, *FALL OF TOULON: THE LAST OPPORTUNITY TO DEFEAT THE FRENCH REVOLUTION* (2005).

⁵⁶ See DENISE KLEINRICHERT, *REPUBLICAN INTERNMENT AND THE PRISON SHIP ARGENTA 1922* (2001).

⁵⁷ See *The Al Rawdah Prison Ship, 1940-41*, TREASON FELONY BLOG (Aug. 31, 2019), <https://treasonfelony.wordpress.com/2019/08/31/the-al-rawdah-prison-ship-1940-41/>.

1970s (MAIDSTONE).⁵⁸ Other countries have treated their political prisoners in a similar fashion.

Shortly after becoming Cuba's president in 1925, for example, General Gerardo Machado began using the MÁXIMO GÓMEZ to "disappear" his political enemies.⁵⁹ In 1932, Brazil imprisoned the leaders of the failed Constitutionalist Revolution

⁵⁸ On January 17, 1972, seven prisoners escaped from the MAIDSTONE. See *Suspects in Ulster Flee Prison Vessel*, N.Y. TIMES, Jan. 18, 1972, at 8. One source has described the breakout as follows:

The *Maidstone* was considered "escape-proof." However, internees on the overcrowded ship saw a seal swimming nearby. If the seal could get in through the security fencing then they could get out. Seven internees covered in boot polish slid down the anchor rope, made their way through the fencing and swam to shore. They hijacked a bus and were spotted driving into the Markets area. The British surrounded the area and claimed everything was under control. The "Magnificent Seven" [as the escapees quickly were dubbed] surfaced [a week later] at . . . [a] press conference.

ROBERT W. WHITE, *OUT OF THE ASHES: AN ORAL HISTORY OF THE PROVISIONAL IRISH REPUBLICAN MOVEMENT* 87 (2017).

⁵⁹ In 1927, Chester M. Wright, one of the officers of the Pan-American Federation of Labor, went to Cuba to investigate the MÁXIMO GÓMEZ. In subsequent reporting, he wrote:

In Havana harbor, not too near the shore, but well out of the traffic lane and out of sight of tourists, lies the former German ship Maximo Gomez, taken by the Cubans during the World war. It is the prison ship the fear of which spreads throughout Cuba today.

Many Cubans told me of friends who had been snatched away and fed into the Maximo Gomez. Those who have come back are so few that I could learn of but one or two and I could find none. The Maximo Gomez is the first step on the road to exile. Every possible effort was made to find a way in which I might visit this hated ship but that seems to be one of the things that is not being done.

Chester M. Wright, *Grim Prison Ship Inspires Fear Among Cubans: Maximo Gomez is Step to Exile—Counterpart of Old "Success" is Ever-Present Threat to Machado's Foes*, PITT. PRESS, Mar. 4, 1927, at 2.

(Wright's headline needs a bit of an explanation. Built out of teak and launched at Myanmar in 1840, the SUCCESS served as an Australian prison hulk in the 1850s. See Rich Norgard, *A History of the Success*, THE SAILING SHIP SUCCESS, <http://shipsuccess.blogspot.com/>. From 1890 to 1941, she traveled around the world billed as a convict ship, although she had never been used for this purpose. *Id.* In 1946, she was destroyed in a fire while tied up near Port Clinton, Ohio. *Id.*)

It should be noted that not everyone held in the MÁXIMO GÓMEZ was a political prisoner. In 1929, for example, it was reported that "Sydney Hoffman, American citizen, was today placed aboard the Cuban prison ship Maximo Gomez to await deportation on charges of violating the United States-Cuban liquor treaty." See *Cubans Put Miamian on Ship for Deportation*, MIAMI HERALD, Apr. 24, 1929, at 1.

aboard the steamship PEDRO I.⁶⁰ Following Spain's July 1936 Military Uprising, many of the coup's participants were held aboard the steamer URUGUAY.⁶¹ During the Cuban Revolution (1959), some Batista sympathizers found themselves locked aboard the SAN PASQUAL, a hulk off the coast of Cayo Las Brujas (Witches Island).⁶² Additional examples can be found in Argentina (1959),⁶³ Uruguay (1968),⁶⁴ Cambodia (1970),⁶⁵

⁶⁰ See *Brazilian Revolt Leaders are Jailed: Revolutionary Chief Seized, Placed Aboard Ship with Staff*, PITT. PRESS, Oct. 5, 1932, at 7. One month later, the ship set sail to an undisclosed location. See *75 Rebel Leaders Exiled by Brazil: Floating Prison Ship, Pedro I, Sails for an Unrevealed Destination*, N.Y. TIMES, Nov. 2, 1932, at 2. A different source reveals what happened next:

Following the military defeat of the Paulistas early in October 1932, the Pedro I took about one hundred of the rebellion's leaders to Recife and from there another ship took them to exile in Portugal. Together with the military leaders of the rebellion, the ship carried such civilians as Waldemar Ferreira, Francisco Morato, Paulo Nogueira Filho, Paulo Duarte, Júlio de Mesquita Filho, Francisco Mesquita, Prudente de Moraes Neto, Joaquim Sampaio Vidal, and Antônio Pereira Lima.

JOHN W.F. DULLES, *THE SÃO PAULO LAW SCHOOL AND THE ANTI-VARGAS RESISTANCE* (1938-1945), at 30 (1986).

⁶¹ See PELAI PAGÈS I BLANCH, *WAR AND REVOLUTION IN CATALONIA, 1936-1939*, at 56 (Patrick L. Gallagher transl. 2013). See also *Fear Haunts Trial on Barcelona Ship*, N.Y. TIMES, Aug. 28, 1936, at 2 (describing the ship's 500 prisoners as being "in the hold . . . waiting without hope. Some play cards, some dominoes."). A photograph of the URUGUAY, taken shortly after the *Times*' story appeared, can be viewed at <https://www.granger.com/results.asp?inline=true&image=0111163&wwwflag=1&itemx=12>.

⁶² See *Fleet of Stone*, SURVEYOR, Fall 2004, at 36, 38, <https://www.escsi.org/wp-content/uploads/2017/10/4710.095-Fleet-of-Stone.pdf> ("SS San Pasqual, an oil tanker launched 1921 in San Diego, traded for a year before becoming a molasses store ship in Havana, Cuba. Run aground close offshore northern Cuba in 1933, she lay forgotten until World War II, when the hull was fitted with machine guns and cannon as a guard post against U-Boat attack. During the Cuban Revolution, it served Che Guevara as a prison for captured partisans."). For photographs of the SAN PASQUAL (often misspelled "PASQUALE"), see *S.S. San Pasqual Shipwreck*, ATLAS OBSCURA, <https://www.atlasobscura.com/places/ss-san-pasqual-shipwreck>.

⁶³ See Juan de Onís, *Argentines Work as Strikers Yield: All Expected Back Today—Military Pressure Ends Four-Day Shut-Down*, N.Y. TIMES, Jan. 23, 1959, at 2 ("The meatpackers were striking for the release of their leaders, who are among about 500 labor and political leaders still under arrest. Some of these men are being held on a navy prison ship. . .").

⁶⁴ See Malcolm W. Browne, *Uruguay Imposes Emergency Rule*, N.Y. TIMES, June 25, 1969, at 3 ("Last year, Uruguay sent many detainees, especially striking bank employees, to military detention camps and some to a prison ship.").

⁶⁵ See *2 American Ship Hijackers Want to Quit Cambodia*, N.Y. TIMES, July 4, 1970, at 4. As this article explains, in March 1970 merchant mariners Alvin L. Glatkowski and Clyde W. McKay, Jr. hijacked the U.S. munitions ship COLUMBIA EAGLE and sailed her to Cambodia, where they expected to be welcomed as heroes. Three days after their arrival, however, a coup replaced the anti-U.S. government with a pro-U.S. government. As a result, the pair were confined, along with other political prisoners, on a rusting World War II landing ship moored in the Mekong River.

Chile (1973-80),⁶⁶ and the Philippines (1987-88).⁶⁷

In 1929, Japan turned the former warship MUSASHI into a prison ship for juvenile delinquents.⁶⁸ More conventionally, from 1997 to 2005 Great Britain used a ship called the WEARE to relieve prison overcrowding in England.⁶⁹ In 2010,

Glatkowski eventually made his way back to the U.S. and served seven years in prison; McKay escaped and was not heard from again (it is believed he was killed by the Khmer Rouge). For a further discussion, see RICHARD LINNETT & ROBERTO LOIEDERMAN, *THE EAGLE MUTINY* (2001).

⁶⁶ During the military dictatorship of General Augusto Pinochet, Chile was accused of using the Navy training ship *ESMERALDA* as a floating prison and torture chamber. See Leslie Maitland, *Four-Master from Chile is Called "Torture" Ship*, N.Y. TIMES, June 20, 1976, at 34. In 2004, the Chilean government finally admitted that these allegations were true. See Larry Rohter, *Navy Admits Torture on Ship*, N.Y. TIMES, Dec. 2, 2004, at A24. For a further discussion, see Germán F. Westphal, *The Esmeralda Ship: The Chilean Navy's Torture Chamber* (2003), <https://web.archive.org/web/20080224044157/http://www.chile-esmeralda.com/>.

⁶⁷ In 1987, Colonel Gregorio Honasan led an unsuccessful revolt against President Corazon Aquino. Following its conclusion, many of Honasan's followers were briefly held in prison ships. See *Mutineers Ferried to Manila After Weeks on Prison Ships*, SPOKESMAN-REV. (Spokane), Sept. 8, 1987, at A12 (explaining that the rebels were being brought ashore so that they could be transferred to "re-education camps"). Subsequently, Honasan himself was captured and imprisoned on the *ANDRES BONIFACIO*, a navy ship converted to a holding facility. In 1988, he escaped after bribing his guards. See Seth Mydans, *Leader of a Failed Coup Attempt Escapes Detention in Philippines*, N.Y. TIMES, Apr. 2, 1988, § 1, at 2. In 1992, Honasan and his supporters were granted amnesty after a new government came to power. See Lindsay Murdoch, *Ramos Sworn in [as Filipino President,] Offering Amnesty to Rebels*, AGE (Melbourne), July 1, 1992, at 7.

⁶⁸ Because of its clientele, the ship emphasized rehabilitation over punishment:

The Juvenile Floating prison, first prison of its kind ever built in Japan[,] was opened near Yokohama with appropriate ceremonies by the [M]inister of Justice and many government officials. The floating juvenile prison is the former Musashi, a scrapped Japanese warship which has been rebuilt.

The floating prison takes young juvenile delinquents and teaches the arts of fishing, navigation and kindred subjects, both practical and theoretical.

...

Twenty-six boys have been transferred to the ship from prisons ashore and when the crew is completed over 50 boys are expected to be on the prison ship. Half of the boys are to be between the ages of 14 and 18 years and an equal number between the ages of 18 and 23 years.

The floating prison is an experiment in a new treatment of juvenile prisoners, which will give them [the] healthy atmosphere of the sea, plenty of work and at the same time teach them a useful profession.

Old Japanese Ship is Jail for Boys, TAMPA DAILY TIMES, Apr. 4, 1929, at 9A.

⁶⁹ The WEARE was anchored in Portland Harbor in Dorset in southwest England. See *HM Prison Weare*, THE ENCYCLOPAEDIA OF PORTLAND HIS., <https://www.portlandhistory.co.uk/hm-prison-weare.html>. For a painting of the WEARE, together with a description,

however, when the British government raised the idea of doing so again, the public reacted with a storm of protest.⁷⁰

2. *By the United States*

In this country, there have been three major peacetime uses of prison ships: in California (1849-54); in California and Maine (1902-16); and in New York City (1987 to present).⁷¹

see Simon Ryder, *A Short History of a Pseudonym*, SIMON RYDER INVESTIGATIVE ARTIST (Nov. 6, 2013), <https://simonhyder.wordpress.com/2013/11/06/a-short-history-of-a-pseudonym/>. The painting is by the British-UAE artist Trevor John de Pattenden (<https://www.tjdepattenden.com/>) (misidentified by Ryder as “Trevor”).

As explained *infra* note 95, this was the vessel’s second tour as a prison ship, having previously served the same role in New York City (where she was known as the BIBBY RESOLUTION).

⁷⁰ See Andrew Neilson, *Ships Ahoy? What the New Coalition Government Might Do with Penal Policy*, 49 HOWARD J. CRIM. JUST. 282 (2010).

⁷¹ More isolated episodes also exist. An early judicial decision, for example, mentions that a prison ship operated in New Orleans during the military governorship of General James Wilkinson (1805-07). See *infra* text accompanying note 130.

In 1891, the United Kingdom and the United States agreed to prohibit sealing in the Bering Sea. To publicize the new ban, the two countries sent a squadron of ships to the area. Included in the U.S. force was the prison ship AL-KI. Upon returning to the United States, Captain Henry C. Cochrane wrote a detailed letter to Colonel Charles Heywood describing the mission:

We went on board the steamer Al-Ki, a chartered vessel belonging to the Pacific Coast Steamship Company, at Mare Island [near San Francisco], on the 21st, and sailed from San Francisco on the 22d of June. Arrived in Bering Sea July 2d, and at Iliuliuk, Ounalaska, Aleutian Islands, the same day, in advance of the other vessels ordered. . . .

While the men-of-war, together with the United States revenue cutters Rush and Corwin, were engaged in cruising and furnishing all sealing, whaling, and fishing vessels with notice of the President’s proclamation and the orders of the British Government relative to the fur seal fisheries, the Al-Ki acted as harbor and prison ship at Ounalaska. The crews of vessels seized were promptly transferred to our custody upon being brought into port and were uniformly well treated.

Owing to the determined attitude of the combined governments, and the custom of giving each vessel found a preliminary warning, [just] four seizures were necessary. These were the schooners E.B. Marvin, British, July 6th, the La Ninfa, American, July 14th, the Ethel, American, July 30th, and the Otto, British, August 31st. The total number of prisoners received was 48, including a dozen Nationalities and 7 Nootka Sound Indians, hunters. The crew of the Otto was not transferred to the Al-Ki.

Of these vessels, the first and the last were sent to Victoria for adjudication, and the others were towed to Sitka, 1,200 miles, by the Al-Ki, and turned over to the United States marshal for Alaska.

Following the discovery of gold at Sutter's Mill in 1848, California experienced a sudden influx of 300,000 people hoping to get rich.⁷² As a result, local authorities were forced to use prison ships until more permanent jails could be built. In Stockton, for example, a grounded vessel called the SUSANNAH was pressed into service:

In Mormon channel, near the Center-street bridge, two French-built vessels went aground in 1849. One of these, named the Susannah, was a brig of about 250 tons, built of oak.

"It was used as a prison-ship in '49," said L. Basilio, in answer to the inquiries of a reporter, "as we had no jail in the city then. I was working as a blacksmith's hand in a shop, as the corner of Hunter and Market streets, for \$8 a day. One of my duties was to rivet shackles on the legs of prisoners. The stage[coach] brought in the prisoners from the mountains late at night, and my work had, therefore, to be done at about 10 o'clock. An old plank, nailed across with cleats, led up to the deck of the Susannah. The rigging and masts were all gone. The man in charge of the prison was a German, who lived on the flooring just below the deck. The men were kept below on the lower floor, to which a cleated plank descended from a hatch-hole. Every night I went down that plank with my tools

[ANNUAL] REPORT OF THE SECRETARY OF THE [UNITED STATES] NAVY 620-21 (1891). *See also Cruising in Bering Sea: War Ships and Cutters in Chase of Sealers*, N.Y. TIMES, Aug. 14, 1891, at 1 ("The [Al-Ki] is a passenger steamer of the Pacific Coast Steamship Company, which has been chartered by the Treasury Department for \$300 per day as a prison ship, where sealers who do not heed the warning to stop sealing are to be kept until turned over to the proper courts. She has on board one line officer of the navy—Lieut. Commander Meade—three marine officers, a [s]urgeon, and forty marines.").

In August 1944, 258 African-American sailors at Mare Island refused to load the U.S. Navy ship SANGAY with mines and other munitions, claiming that the task was too dangerous. Incensed at this show of disobedience, the Navy turned a nearby barge into a makeshift prison. After several days, 208 of the mutineers agreed to accept minor punishments and were reassigned to various overseas units. The remaining 50, who became known as the "Port Chicago 50," were returned to the barge but then sent to Camp Shoemaker to await trial. In October 1944, the men were sentenced to long prison terms, which were reduced after the war. *See* STEVE SHEINKEN, *THE PORT CHICAGO 50: DISASTER, MUTINY, AND THE FIGHT FOR CIVIL RIGHTS* (2014). *See also 50 Get Mutiny Terms: Sentences of Negroes in Navy Range from 8 to 15 Years*, N.Y. TIMES, Nov. 19, 1944, at 29.

⁷² *See* J.S. HOLLIDAY, *THE WORLD RUSHED IN: THE CALIFORNIA GOLD RUSH EXPERIENCE* (1981). As has been explained elsewhere:

In March 1848, there were roughly 157,000 people in the California territory; 150,000 Native Americans, 6,500 of Spanish or Mexican descent known as Californios[,] and fewer than 800 non-native Americans. Just 20 months later, following the massive influx of settlers, the non-native population had soared to more than 100,000. And the people just kept coming. By the mid-1850s there were more than 300,000 new arrivals—and one in every 90 people in the United States was living in California.

Barbara Maranzani, *8 Things You May Not Know About the California Gold Rush*, HISTORY (Aug. 31, 2018), <https://www.history.com/news/8-things-you-may-not-know-about-the-california-gold-rush>.

and shackles, and the German stood guard at the hole above, armed with pistols and guns enough to kill the entire lot of prisoners if they made a demonstration. I stood the work for a while, shackling the men and chaining them to beams which supported the upper flooring, and then I threw up the job as too dangerous.”

The Susannah was used as a prison-ship for only a short time. It afterward became the resort of criminals, who made it a lodging-house and place of refuge. About the year 1854 it was therefore burned to the water’s edge.⁷³

Similarly, in San Francisco a ship called the EUPHEMIA was turned into a floating prison:

San Francisco’s first jail was an outdated and flimsy log structure built around 1846 at Clay and Stockton streets. . . .

The Town Council of San Francisco[, realizing] how insecure their jail was, . . . began to search for a new jail. A special committee was appointed to either purchase or lease a new building for the jail. A particular dilemma faced the committee; the inflated gold prices of San Francisco had driven up the costs of building, hence rents were also high. A possible solution, and a thrifty one, was the use of an abandoned ship for a building. Gold fever had also stricken the crews of the vessels that had brought the argonauts to California, and hundreds of ships lay empty along the water front. The solution for the special committee’s dilemma was at hand; they purchased a ship for use as San Francisco’s new jail. . . .

At the October 8, 1849 meeting of the Town Council of San Francisco, the special committee reported “the purchase of the brig *Euphemia* for the purpose of a prison ship, and, on motion, the report of the committee was adopted and the purchase approved.” The former owner of the *Euphemia*, incidentally, was Town Council member William Heath Davis. The purchase price: three thousand, five hundred dollars.⁷⁴

In Sacramento, a ship called the LA GRANGE was used for the same purpose:

[In 1850], the City of Sacramento docked . . . the La Grange, at the foot of I-Street in downtown to house people with criminal convictions and mental illnesses. A grand jury report provided a window into the terrible conditions aboard the La Grange:

[The jail is] considered insecure and, for close confinement, unhealthy. There are at present only 16 cells, each about 4½ by 8 feet in size, divided by board partitions, and occupying a space in the center of the brig of about 25 by 40 feet. . . . Each of these cells contain from two to three prisoners. . . .⁷⁵

⁷³ *Wrecks of Old Boats: Vessels that Came to Stockton and Stayed*, STOCKTON MAIL, Dec. 17, 1883, at 3.

⁷⁴ James P. Delgado, *Gold Rush Jail: The Prison Ship Euphemia*, 60 CAL. HIST. 134, 135-36 (1981) (footnotes omitted).

⁷⁵ Julia A. Mendoza, *Prison Row: A Topographical History of Carcerality in California*, 66 UCLA L. REV. 1616, 1622 (2019) (footnotes omitted).

The state was no more prepared than its cities for the sudden population boom. As a result, when California opened its first state prison in 1851, it used a ship known as the WABAN.⁷⁶ After six months anchored off Angel Island in San Francisco Bay, the WABAN moved to a nearby spit of land called San Quentin:

The Dec. 20, 1851 edition of the *Daily Alta California* chronicles the ship's first foray as a prison vessel.

"The bark Waban, with about forty state prisoners, was towed over to Angel Island yesterday by the steam tug Firefly, Capt. Griffin. We learn the prisoners are intended to work in the stone quarry, under the direction and supervision of our efficient Sheriff, Jack Hays," the newspaper reported at the time.

The state [soon] opted for a permanent prison, rather than a ship, and in 1852 . . . purchased 20 acres of land at San Quentin for \$10,000. . . .

As folklore has it, the Waban arrived [at San Quentin] on July 14, 1852 (Bastille Day) with 40 to 50 convicts. On Oct. 12, 1852, a "contract was let for the first cell building," according to reports. The building was completed in 1854. Inmates slept on the [Waban] at night and worked to construct the prison during the day.⁷⁷

A book about early California criminals includes the following description of the WABAN's living conditions:

The officers always called him "Old" Jim Smith, but he was merely "old" in criminal experience. Born in Prussia about 1831, few have heard of James P. Smith (probably Schmidt), although he was as colorful as he was unsuccessful as a bandit. Various nautical tattoos on his body indicated that he had been a seaman and had probably jumped ship at the time of the 1849 California Gold Rush. His first conviction was for grand larceny at Sacramento in September of 1851. He was sentenced to a two-year term in the California State Prison.

⁷⁶ *Id.* at 1622-23. The WABAN became a prison ship after a trip to South America left her unseaworthy:

The *Waban* was built in Westbrook, Maine, in 1836 and named after a noted, local Indian chief. It sailed from New York with twelve passengers and much cargo on September 1, 1849, destination California. There were numerous stops and delays but it arrived in San Francisco on June 8, 1850. After a voyage to South America, the *Waban* returned in poor shape for further sailing and was purchased as a storage facility, then by the city of San Francisco as a prison ship.

WILLIAM B. SECREST, CALIFORNIA DESPERADOES: STORIES OF EARLY CALIFORNIA OUTLAWS IN THEIR OWN WORDS 87-8 (2000). It has been reported that no pictures of the WABAN still exist. See Pete Brook, *19th Century Museum Prison Ships*, PRISON PHOTOGRAPHY, <https://prisonphotography.org/2009/03/18/19th-century-museum-prison-ships/>.

⁷⁷ Gwen Kubberness, *The History and Corruption of San Quentin Prison*, CRIMINAL GENEALOGY (Feb. 11, 2019), <https://criminalgenealogy.blogspot.com/2019/02/the-history-and-corruption-of-san.html> (italics added).

At this time there was really no prison at all. The twenty-acre site, at Point San Quentin on the bay just north of San Francisco in Marin County, had recently been purchased for \$10,000. The old bark *Waban*, anchored offshore, was used to house the prisoners until cell blocks could be constructed on shore. Jim found himself back aboard ship, but under less than ideal circumstances.

Listing himself as a baker by trade, Jim may have been put to work preparing the bread, potatoes, meat and soup that constituted the convicts' main diet. The thirty or forty other prisoners were kept busy quarrying stone on nearby Angel Island, gathering firewood, filling in swampland around the prison site or leveling the ground. Prison life was mostly working out in the open and there were few complaints until they were herded below deck on the *Waban* at night.

The lower deck of the old ship had been divided into a series of eight-foot-square cells with four or five convicts occupying each cell. It was blistering hot in summer and cold and damp in winter. Toilet facilities consisted of a bucket and the smell of the place by morning can well be imagined. Worse, in bad weather the men might be cooped up for days, the stench becoming so unbearable the guards refused to go downstairs until the place had been aired out.⁷⁸

The second significant use of prison ships in the United States during peacetime came in the early 1900s, when the U.S. Navy used five different vessels as prison ships—two on the East Coast and three on the West Coast.⁷⁹

On the East Coast, the collier SOUTHERY began operating as a prison ship in Boston in 1902; moved to Maine in 1903; and was joined there by the gunboat TOPEKA in 1905.⁸⁰ Following the opening of the Portsmouth Naval Prison in Maine in 1908, the SOUTHERY and the TOPEKA were kept on and served as overflow prisoner housing until World War I.⁸¹ On the West Coast, the schooner MANILA was converted into a prison ship in 1907 and stationed at Mare Island (near San Francisco).⁸² Later, the gunboat NIPSIC (1908-12) and the cruiser PHILADELPHIA (1912-16) replaced her.⁸³

In his 1915 report to Secretary of the Navy Josephus Daniels, Captain Ridley McLean, the Navy's Judge Advocate General, after first noting that the SOUTHERY no longer was being used as a prison ship, summed up conditions aboard the PHILADELPHIA and TOPEKA (which were in the process of being phased out):

⁷⁸ SECRET, *supra* note 76, at 91-2.

⁷⁹ In addition to these five ships, other Navy vessels occasionally were assigned prison duty. At the U.S. Naval Academy, for example, the training ship SANTEE regularly doubled as a cadet detention ship. *See, e.g., Annapolis Cadets Punished: They Tried to Smuggle in Liquor for a Holiday Celebration*, N.Y. TIMES, Dec. 30, 1904, at 2; *Naval Court-Martial Closed: Decision in Case of Midshipmen Accused of "Hazing" Expected Next Week*, N.Y. TIMES, Nov. 6, 1903, at 1; *The Revolt at Annapolis: The Mutinous Cadets Still in the Prison-Ship*, N.Y. TIMES, Feb. 3, 1883, at 1.

⁸⁰ *See* KATY KRAMER, PORTSMOUTH NAVAL PRISON 25-28 (2016).

⁸¹ *Id.* at 60.

⁸² *See* USS Manila, NAVSOURCE, at <http://www.navsourc.org/archives/09/46/46902.htm>.

⁸³ *See* Eleanor Boba, *In Sight of Shore: Prison Ships*, REMNANTS (Nov. 3, 2017), <http://remnantsofourpast.blogspot.com/2017/11/in-sight-of-shore-prison-ships.html>.

Reports from the U.S.S. *Topeka* show that while the detention system was in operation on board that ship the general sanitary condition was excellent, the food of good quality and sufficient in quantity; that notwithstanding the great care exercised in advancing detentioners to the higher classes, 29 per cent deserted after being made first-class and allowed liberty.

Reports from the U.S.S. *Philadelphia* show that the sanitary condition of the ship and health of the detentioners were excellent; that the food was sufficient in quantity and excellent in quality; that [religious] services were held weekly; that the detentioners gladly availed themselves of the benefit of the educational system in force in the service, including both the academic and technical instruction; that it was impracticable to hold all the usual military drills, because of the great decrease in the number of detentioners; and that for this reason the instruction and drills were held along naval lines, the idea being to make the men proficient in drills and in the duties of their ratings.⁸⁴

By far, however, the most significant peacetime use of prison ships in the United States has occurred in New York City. Since 1987, it has had five such vessels: BIBBY RESOLUTION, BIBBY VENTURE, HAROLD A. WILDSTEIN, VERNON C. BAIN, and WALTER KEANE.⁸⁵ As mentioned at the outset of this article, only the VERNON C. BAIN is still operating.

The impetus for this mini-armada was a crack epidemic that, beginning in 1985, sent the City's inmate population soaring.⁸⁶ Desperate for additional jail space, in October 1986 Mayor Ed Koch announced that the City had decided to turn two former Staten Island ferries—the CORNELIUS G. KOLFF and the PRIVATE JOSEPH F. MERRELL—into prison ships.⁸⁷

⁸⁴ *Naval Prisons and Disciplinary Barracks*, 7 J. AM. INST. CRIM. L. & CRIMINOLOGY 130, 132-33 (1916).

⁸⁵ See Sneha Dey, *The History of the City's Floating Jail*, CITYLIMITS (May 10, 2018), <https://citylimits.org/2018/05/10/urbanerd-the-history-of-the-citys-floating-jail/>.

⁸⁶ To combat the epidemic, in 1984 the City launched "Operation Pressure Point." See David W. Dunlap, *Police Moving to Halt Drug Sales on Streets of the Lower East Side*, N.Y. TIMES, Jan. 20, 1984, at B2. In 1988, a second initiative was added: drug sweeps by specially-trained officers known as "Tactical Narcotics Teams." See David E. Pitt, *Ward Says New Drug Units are Not the Whole Answer*, N.Y. TIMES, Nov. 30, 1988, at B3. By 1989, these policies had resulted in a near-doubling of the City's jail population. See Michel Marriott, *After 3 Years, Crack Plague in New York Only Gets Worse*, N.Y. TIMES, Feb. 20, 1989, at A1 ("In 1985 the city jail population was almost 10,000. Much as a result of crack use and related crimes, the current jail population is almost 18,000[.]").

⁸⁷ See Susan Milligan, *Ferries Eyed as Jail Bailout*, DAILY NEWS (NY), Oct. 9, 1986, at 3 ("Koch defended the ferry idea, saying that 'we would consider it one of our better accommodations.' If the inmates get seasick, 'We'll give them Dramamine,' he said."). See also Joyce Purnick, *City Studies Plan to Use Two Ferries for Inmates*, N.Y. TIMES, Oct. 7, 1986, at B1; Joyce Purnick, *City Plans to Add 2,300 Jail Spaces: Would Use Two Upstate Sites and Renovated S.I. Ferry*, N.Y. TIMES, Oct. 9, 1986, at A1; Robert D. McFadden, *[State] Consent Given for Converting Old Ferryboat into New Jail*, N.Y. TIMES, Oct. 25, 1986, § 1, at 29.

Both the CORNELIUS G. KOLFF (named for a prominent Staten Island businessman) and the PRIVATE JOSEPH F. MERRELL (named for a Staten Island World War II Medal of Honor recipient) were built in 1951 as part of the City's sixth

Although Koch neglected to mention it—perhaps he did not remember or did not know—in 1965 DOC Commissioner Anna Kross had pushed a similar proposal:

Special state investigator Herman T. Stichman last night dismissed as “entirely unsound” City Correction Commissioner Anna Kross’ suggestion that obsolete aircraft carriers be used as prison ships to relieve overcrowding in the Women’s House of Detention and other city jails.

He declared that historically prison ships were “hell holes” and that “we don’t want prison ships any more than we want . . . a return to Devil’s Island.”

“What an absolutely unfortunate image it would give visitors to this country,” Stichman exclaimed, “if the first thing they were to see were prison ships tied up in our harbors!”⁸⁸

Following months of conversion work, the PRIVATE JOSEPH F. MERRELL, renamed the VERNON C. BAIN,⁸⁹ opened in March 1987, late and over budget.⁹⁰

class of ferries (the third member of the class was the VERRAZZANO, named for the Italian explorer Giovanni da Verrazzano). See BRIAN J. CUDAHY, *OVER AND BACK: THE HISTORY OF FERRYBOATS IN NEW YORK HARBOR 275-80* (1990) (explaining that the three ferries, which were steam-powered and had three, rather than two, passenger decks, represented “a near-total break” from their predecessors).

Initially, the VERRAZZANO also was in the running to be turned into a floating jail. See *NYC Considers Using Old Staten Island Ferries as Jail Boats to Ease Overcrowding*, J.-NEWS (White Plains, NY), Oct. 8, 1986, at B8 (“Mayor Edward I. Koch said Tuesday he hopes to use three retired ferries to ease jail overcrowding by converting them to prison space. . . . The city has three ferries no longer in service, the *Kolff*, the *Verrazano* [sic] and the *Merrill* [sic]. . . .”). Instead, the City decided to auction her off. See Jeff Vandam, *Ferries of a Certain Age*, N.Y. TIMES, Apr. 16, 2006, § 14, at 5. As of 2014, the VERRAZZANO was in a Staten Island scrapyard awaiting demolition. See *Ferry Awaits Final Voyage*, GORDON DONOVAN (Sept. 24, 2014), <http://gordondonovan.com/ferry-awaits-final-voyage/>.

⁸⁸ *Stichman Hits Prison Ship Idea*, DAILY NEWS (NY), Mar. 29, 1965, at 5.

⁸⁹ The new name honored a popular Rikers Island warden who had been killed in a 1985 car accident. See *The Final “Ex” for Ex-Staten Island Ferry, Ex-Rikers Floating Dorm*, NEW YORK CORRECTION HISTORY SOCIETY, <http://www.correctionhistory.org/html/museum/gallery/ferries/scrapkeane.html> [hereinafter *Final “Ex”*].

⁹⁰ See Bruce Lambert, *City’s Prison Boat is Late and Costly*, N.Y. TIMES, Mar. 24, 1987, at B8 [hereinafter *Late and Costly*] (reporting that the conversion had been expected to take 60 days and cost \$4.86 million but ended up taking 150 days and costing \$8.2 million). See also *infra* text accompanying notes 201-04 (discussing a lawsuit arising out of the conversion).

Within a month, there was even more red ink:

New York City’s prison ferry, which opened three months late and \$3 million over budget, is 60 percent empty because its operation is being changed to prevent \$3 million in unexpected staffing costs.

Among the unusual expenses the city has encountered is a Coast Guard requirement that a licensed mate and an engineer be stationed aboard at all times—even though the ferry is permanently docked at its Rikers

The CORNELIUS G. KOLFF, renamed the WALTER KEANE,⁹¹ followed in the fall.⁹² Moored at Rikers Island, the two vessels, each with 162 beds, were made part of the Otis Bantum Correctional Center.⁹³

Even as it waited for the WALTER KEANE to arrive, the City was busy negotiating with Bibby Line, the venerable Liverpool shipping company, to

Island pier and has no engines. . . .

To save money, officials have cut the guard staff in half by converting the ferry for use by work-release inmates, who are gone most of the day for jobs and classes.

But since there are only 65 such inmates, the remaining 97 beds on the ferry are empty. To put them to use, the city is expanding the work-release program. Officials hope to fill the ferry to capacity by the end of the month.

Unresolved, Correction Department officials say, is how the city will address the same staffing problems on a second ferry that has been ordered for arrival in the fall. One possibility is to also use the second ferry for work-release inmates, if the program can be expanded that much. . . .

[Manhattan Councilwoman Ruth W.] Messinger called the ferry problems another example of the city's lack of long-range planning. "The ferry boat prison is not a solution," she said. "It's a gimmick and a costly one at that. It's expensive to create and has an outrageously high operating cost."

Bruce Lambert, *Facing \$3 Million Overrun, Jail Ferry Plan is Modified*, N.Y. TIMES, May 3, 1987, at 40.

⁹¹ The new named honored Walter B. Keane, a veteran DOC officer who had been killed in a job-related accident. See *Final "Ex," supra* note 89. My research has not uncovered any additional details regarding Keane's career or his death. I also have not been able to determine why Keane's middle initial was omitted from the ferry's name.

⁹² See Laura Jean Waters, "Rikers Island Jail," in BOSWORTH, *supra* note 5, at 852.

Having learned from the numerous mistakes it had made while converting the PRIVATE JOSEPH F. MERRELL, the City's conversion of the CORNELIUS G. KOLFF proceeded much more smoothly. See Linda Borg, *2d Ship of Cells Readied for City*, DAILY NEWS (NY), Aug. 2, 1987, at 16.

As Borg explains, the CORNELIUS G. KOLFF was converted by Newport Offshore Ltd. of Rhode Island, which had been awarded the \$4.8 million job through competitive bidding. In contrast, the PRIVATE JOSEPH F. MERRELL was converted by First Marine Shipyard of Staten Island, "a company run by the family of Mr. Koch's former Ports and Terminals Commissioner, Susan Frank" that was picked following "a declaration of emergency . . . [that allowed] Correction Commissioner Richard J. Koehler [to] bypass[] strict competitive bidding procedures and Board of Estimate Review." See *Late and Costly, supra* note 90.

For a further look at the two companies (neither of which still exist), see, e.g., In re Newport Offshore Ltd., 219 B.R. 341 (D.R.I. Bankr. 1998) (explaining that Newport Offshore filed for bankruptcy in 1985); Anthony Bianco, *The [Franks: The] First Family of Pollution*, BLOOMBERG NEWS (Oct. 28, 1996), <https://www.bloomberg.com/news/articles/1996-10-27/the-first-family-of-pollution> (explaining that First Marine Shipyard filed for bankruptcy in 1991).

⁹³ See Waters, *supra* note 92, at 852-53.

lease two of its “accommodation barges” (*i.e.*, floating dormitories).⁹⁴ Known, respectively, as the BIBBY RESOLUTION and the BIBBY VENTURE, both had housed British troops during the Falkland Islands War (1982).⁹⁵

The negotiations, which consumed nearly 18 months, were followed with intense interest by the media.⁹⁶ In the end, the City agreed to pay Bibby Line \$20.5

⁹⁴ In 2007, Bibby Line celebrated its 200th birthday. See <https://bibbylinegroup.co.uk/about/heritage/>. Through its Bibby Maritime subsidiary, it continues to lease floating dormitories to parties in need of temporary housing. See <http://www.bibbymaritime.com> (indicating that as of 2020, it has five accommodation barges—three in Europe and two in Asia—that collectively have space for 1,226 residents).

⁹⁵ The BIBBY RESOLUTION was built in 1979 in Stockholm at the Götaverken Finnboda shipyard as a floating dormitory for offshore oil-and-gas workers. At her launching, she was known as the BALDER SCAPA. In 1980, she became the FINNBODA 12. In 1982, she served as a British troop barge in the Falkland Islands War. She then was acquired by the Consafe Group of Sweden and renamed the SAFE ESPERIA. When Consafe went bankrupt, she was purchased by Bibby Line and renamed the BIBBY RESOLUTION. Following her time as a New York City prison barge (1989-92), she performed the same role in England under the name WEARE (1997-2005). See *supra* note 69 and accompanying text. Now known as the JASCON 27, she is owned by the Sea Trucks Group of Lagos, Nigeria, and is laid up in Kingstown (Saint Vincent and the Grenadines). See *Jascon 27*, BALTIC SHIPPING, <https://www.balticshipping.com/vessel/imo/8636180>.

Similarly, the BIBBY VENTURE was built in 1980 in Stockholm at the Götaverken Finnboda shipyard as a floating dormitory for offshore oil-and-gas workers. At her launching, she was known as the FINNBODA 11. In 1982, she served as a British troop barge in the Falkland Islands War. She then was acquired by the Consafe Group of Sweden and renamed the SAFE DOMINIA. When Consafe went bankrupt, she was purchased by Bibby Line and renamed the BIBBY VENTURE. Now known as the VENTURE, she is owned by Intership SVI (London) and is being used in Kingstown (Saint Vincent and the Grenadines). See *Venture*, BALTIC SHIPPING, <https://www.balticshipping.com/vessel/imo/8638774>.

⁹⁶ See, e.g., *NYC Planning to Use Troop Barge as Jailboat*, J.-NEWS (White Plains, NY), Aug. 12, 1987, at B5; Douglas Martin, *Prison Barge Arrives at East River Pier; City to Seek Another*, N.Y. TIMES, Oct. 27, 1987, at B24; Susan Milligan, *Jail Barge is In, 2d in Works*, DAILY NEWS (NY), Oct. 27, 1987, at 25; Celestine Bohlen, *2 More Prison Barges Considered*, N.Y. TIMES, Oct. 13, 1988, at B9; Celestine Bohlen, *Board Backs Prison Barge Near Pier 40*, N.Y. TIMES, Oct. 28, 1988, at B1; Celestine Bohlen, *Jail Influx Brings Plan for 2 Barges*, N.Y. TIMES, Mar. 3, 1989, at B1. See also *Estimate Board Votes a Second Prison Barge*, N.Y. TIMES, Oct. 15, 1988, at 35 (reporting that the City had hired, for nearly \$1 million, an environmental consulting firm to make recommendations as to where the barges should be located).

At the beginning of the negotiations, the City, as an alternative to the BIBBY RESOLUTION and the BIBBY VENTURE, considered buying the much larger British accommodation barge PURSUIVANT. Able to hold 700 inmates, she had been built in 1977 and originally was known as the BARGEMAN. After several years of commercial work, she was leased in 1983 by the British government, renamed the PURSUIVANT, and moved to the Falkland Islands to house the soldiers that had been left there as a deterrence force. With the troops finally relocated to permanent onshore barracks, the PURSUIVANT was available and being offered by a consortium called North Venture Investment (U.K.) Ltd. for \$10 million. See Joel Benenson, *Celling of a Barge*, DAILY NEWS (NY), June 5, 1987, at 2. After the City, along with the states of Florida and Texas, dropped out of the bidding, it appeared that New York State, which was grappling with its own prison overcrowding problem, would become the PURSUIVANT’s new owner. However, the deal fell apart after North Venture upped its asking price to \$11.2 million.

million for each vessel, with this amount representing five years of lease payments (\$17 million) and an additional \$3.5 million to cover the cost of various retrofits (such as putting steel mesh over the portholes).⁹⁷ The deal also called for the City to have the option of purchasing the vessels at the end of the leases for a “nominal amount.”⁹⁸

The BIBBY VENTURE arrived first, pulling into New York City in October 1987.⁹⁹ Critics immediately scoffed at the idea of turning her into a jail:

Officials overseeing New York City jails say the troop barge the city has leased from a British company to cope with inmate overcrowding is dangerous to both prisoners and correction officers.

“Quite simply, it is a labyrinth of spaces that is largely unsupervisable by either sight or sound,” wrote Kenneth Schoen, director of the Office of Compliance. Mr. Schoen monitors city jails for the Federal District Court in Manhattan, which has overseen the jails’ operation since 1979.

“I don’t think the barge is cost-effective space,” Mr. Schoen wrote in a letter to Richard J. Koehler, the Commissioner of Correction. He called the Correction Department’s plans to erect partitions to better utilize the space a “Rube Goldberg scheme” and said the barge would require more guards than a conventional jail.

Mr. Schoen urged the city to reconsider leasing the \$19 million barge and its option to buy the vessel at minimum cost in five years. He also suggested that the city reconsider leasing a larger barge for \$21 million.
...

Other experts who have visited the barge—which arrived two weeks ago and was officially transferred to the city yesterday—voiced similar concerns.

Robert Kasanof, chairman of the Board of Correction, the city’s jail oversight agency, pointed out that the barge was designed for well-disciplined British soldiers, not detainees awaiting trial for serious crimes. Mr. Kasanof said the barge’s narrow corridors and individual rooms would obstruct guards’ views.

“It will require extraordinarily rich, heavy staffing for it to be a secure place,” Mr. Kasanof said.

See Paul Browne, *State Prison Boss Sinks Barge Plan*, DAILY NEWS (NY), Jan. 13, 1988, at 28. For a further look at the PURSUIVANT, see *Pursuivant*, BALTIC SHIPPING, <https://www.balticshipping.com/vessel/imo/7414559>.

⁹⁷ See Mireya Navarro, *2 Jail Barges May Be Sold at Shortfall of Millions*, N.Y. TIMES, July 12, 1994, at B3.

⁹⁸ *Id.* According to one source, the “nominal amount” was \$10. See Susan Milligan, *Lower E. Side Berth for Floating City Jail*, DAILY NEWS (NY), Sept. 9, 1987, at 5.

⁹⁹ See Jeffrey K. Parker, *Falklands Troop Barge Becomes Big Apple Jailhouse*, UPI (Oct. 26, 1987), <https://www.upi.com/Archives/1987/10/26/Falklands-troop-barge-becomes-Big-Apple-jailhouse/581656222800/>.

Others have criticized the quality of construction, saying inmates could easily hide contraband in ceilings and make weapons from plastic fixtures. They cite exposed smoke-detector wires, buckled floors, and European-style hand-held shower [heads] that are too delicate for jail use, among other failings.

“The whole thing could be taken apart very easily,” said Ted Katz, director of the Legal Aid Society’s Prisoners Rights Project.¹⁰⁰

Officially known as “Maritime Facility I” (BIBBY VENTURE) and “Maritime Facility II” (BIBBY RESOLUTION),¹⁰¹ the two vessels were docked in Lower Manhattan.¹⁰² The 386-bed BIBBY VENTURE opened in March 1988,¹⁰³ while the 386-bed BIBBY RESOLUTION opened in May 1989.¹⁰⁴ In his 2002 book

¹⁰⁰ Douglas Martin, *Oversight Groups Assail Prison Barge as a Poorly Constructed and Dangerous Maze*, N.Y. TIMES, Nov. 10, 1987, at B3.

¹⁰¹ See New York State Commission of Correction, *A Report on Corrections in New York State—1989*, at 121 (July 1990), <https://www.ncjrs.gov/pdffiles1/Digitization/133454NCJRS.pdf>. My research has uncovered very few uses of these designations, which sometimes are rendered using Arabic numbers rather than Roman numerals.

¹⁰² Initially, the BIBBY VENTURE was located at Pier 36 in the East River (off South Street on the Lower East Side). Subsequently, she was moved to Pier 40 in the Hudson River (off Houston Street near Greenwich Village). When the BIBBY RESOLUTION arrived in 1989, she was assigned to Pier 36. See RAYMOND W. GASTIL, *BEYOND THE EDGE: NEW YORK’S NEW WATERFRONT 43* (2002). See also Catherine Crocker, *Jail Barge Gets 5-Year Berth*, J.-NEWS (White Plains, NY), June 22, 1989, at B7 (reporting on the move of the BIBBY VENTURE to Pier 40); *New Fight on Jail Barge*, DAILY NEWS (NY), May 11, 1989, at 1 (Metro) (detailing the pair’s use of Pier 36). For a photograph of the BIBBY VENTURE moving to Pier 40 (after a temporary berthing at Pier 97), see *Prison Barge Moves Down the River*, N.Y. TIMES, Aug. 10, 1989, at B4.

¹⁰³ See Douglas Martin, *As Crowding in Jails Eases, New York City May Not Need Barge*, N.Y. TIMES, Apr. 6, 1988, at B1 (reporting that “inmates [had been kept] off the barge until the middle of last month” by a citizens’ lawsuit). See also Kirk Johnson, *Ruling Allows Immediate Use of Barge as Jail*, N.Y. TIMES, Feb. 27, 1988, at 35 (explaining that in addition to the lawsuit, the opening had been delayed by a Greek oil tanker, which had run into the BIBBY VENTURE’s mooring mechanism and sheared it).

¹⁰⁴ See Daniel Hays, *A Prison Barges in on East River*, SUNDAY DAILY NEWS (NY), May 21, 1989, at 1 (Metro). In his story, Hays described the barge as follows:

The city’s newest jail barge at Pier 36 near the Manhattan Bridge [is] [b]attleship gray and equipped with razor wire[.] [T]he five-deck, 216-foot craft is named the Bibby Resolution. . . .

Each air-conditioned cell has double bunks, a large window and a bathroom compartment with shower, commode and sink. There’s a pharmacy that an official said has “lots of Dramamine,” and a gymnasium, weight room, Nautilus machine, law library and medical clinic.

Two swimming pools were not part of the tour reporters were given. “There are no plans to use them,” Correction Department spokeswoman Ruby Ryles said.

Id.

about the City's waterfront, urban planner Raymond W. Gastil said the barges, each "stacked with cells of human cargo like a freighter loaded with containers," were at once "both an eyesore and a fascinating curiosity[.]"¹⁰⁵

When the residents of Lower Manhattan complained about the barges,¹⁰⁶ Koch, famous for his fast quips,¹⁰⁷ had a ready retort:

When I say every drug pusher should be arrested and put in jail, [people say] that's fine. When I say that means we have to have jails in which to put them, and we dock a jail barge alongside a neighborhood, there are opponents. I say to these groups, "Would you rather have these people walking around in your neighborhood, or be in jail on a barge in your neighborhood?"¹⁰⁸

Although it already had four floating jails, in March 1989 the City announced that it had awarded a \$125 million contract to New Orleans' Avondale Shipyard¹⁰⁹ to build, from scratch, an 800-bed prison barge (officially designated "Maritime Facility III"), with completion expected by June 1990.¹¹⁰ By the time the new

¹⁰⁵ GASTIL, *supra* note 102, at 44.

¹⁰⁶ As explained *infra* text accompanying notes 205-10, the residents did more than complain: they took the City to court but lost (twice).

¹⁰⁷ See Joe Coscarelli, *The Quotable Ed Koch: Wit, Wisdom, and One-Liners*, N.Y. MAG. (Feb. 1, 2013), <https://nymag.com/intelligencer/2013/02/ed-koch-quotes-wit-wisdom-one-liners.html>.

¹⁰⁸ *Koch Speech: Courageous Choices*, N.Y. TIMES, Aug. 25, 1989, at B4.

Although the City's residents may have disliked the barges, inmates initially had nothing but praise for them. See Celestine Bohlen, *For Inmates, the Living is Easier on "Love Boat,"* N.Y. TIMES, May 30, 1989, at B3 (reporting that inmates aboard the BIBBY VENTURE had dubbed it "the Love Boat" because of its "soft" living conditions); Hays, *supra* note 104 (quoting inmate Teodoro Espada as saying the BIBBY RESOLUTION was "like a hotel . . . it's beautiful").

Conditions on the two vessels subsequently grew much harsher. Thus, in Daniel Nina's novella *Charlie Gorra Strikes Back* (1996), the title character, forced to serve the final six months of his sentence on the BIBBY RESOLUTION, calls for the barge's "liberation" (*i.e.*, closing) after nearly being raped by a fellow inmate. See *id.* at 23, 25, 29. (For a review of the book, which can be difficult to follow because it is written in "Spanglish," see "Charlie in New Yol," in GERALD GUINNESS, "THE COVERS OF THIS BOOK ARE TOO FAR APART": BOOK REVIEWS FOR THE SAN JUAN STAR, 1977-1998, at 147 (1999).)

¹⁰⁹ Founded in 1938, Avondale Shipyard closed in 2014 following numerous ownership changes. In 2018, it was announced that the 254-acre site would be turned into a global logistics hub. See William Kalec, *Avondale's Second Act*, BIZ NEW ORLEANS (Feb. 20, 2020), <https://www.bizneworleans.com/avondales-second-act/>.

¹¹⁰ See Celestine Bohlen, *\$125 Million Jail Barge is No Mere Ex-Troopship*, N.Y. TIMES, Mar. 22, 1989, at B3. To ensure that its instructions were carried out, City officials regularly flew to New Orleans to review the project's progress. See Selwyn Raab, *New York City's Bayou Digs: Three Rooms, a Prison View*, N.Y. TIMES, July 23, 1991, at B3.

Various items from the time of the vessel's construction can be viewed at NYC's *DOC "Hard Hat Deputy Warden"—John J. Walker Jr.*, NEW YORK CORRECTION HISTORY SOCIETY (July 30, 2019), <http://www.correctionhistory.org/pdf/Saluting-both-DOC-and-NYPD-Johnny-Walkers.pdf> (explaining that the items were donated by John J. Walker III in memory of his father, Deputy Warden John J. Walker, Jr., who helped oversee matters). Among the pieces is Walker's "plank owner" certificate, dated Jan. 22,

VERNON C. BAIN arrived in New York in January 1992—18 months late and \$36 million over budget¹¹¹—the crack epidemic had eased.¹¹² As a result, several prison officials admitted that the vessel had been a mistake.¹¹³

1992, which reads in part: “D/W John Walker was an honored member of the first and the most illustrious crew which distinguished itself forever when it commissioned the Vernon C. Bain—M.T.F. III.”

¹¹¹ See Selwyn Raab, *Bronx Jail Barge to Open, Though the Cost is Steep*, N.Y. TIMES, Jan. 27, 1992, at B3 [hereinafter *Cost is Steep*]. Asked why the jail was late and over budget, John H. Shanahan, an assistant correction commissioner, explained that the City had “never designed this kind of passenger vessel before[.]” *Id.*

Lacking propulsion, the VERNON C. BAIN had to be towed from New Orleans to New York City by tugs, an 1,800-mile trip. *Id.* In a 1999 law review article calling for an overhaul of U.S. tug law, the authors used the long voyage to buttress their argument:

[The U.S. Supreme Court’s] rule against exculpatory clauses in towage contracts [creates] an intolerable result: A tug is responsible in tort for the welfare of its tow, yet the tug is unable to contract freely with that tow as to the duties of the tug. The nature of tows today, huge oil rigs, gambling casinos, generating plants, and floating prisons, among others, makes it imperative that the Court afford relief to tugs so that they may specifically define the parameters of their obligation.

Charles E. Lugenbuhl & David B. Sharpe, *The Law of Towage at the Millennium: What Changes Are Needed?*, 73 TUL. L. REV. 1811, 1818 (1999) (footnote omitted).

¹¹² The easing had started to become apparent six months earlier. See *Crack May Be Cracking*, N.Y. TIMES, Aug. 10, 1991, at 18 (“Tantalizing hints have begun to appear that the worst of the crack epidemic is waning. A few unexpected bright spots, for example, now illuminate New York City’s social landscape: fewer children are going into foster care; crime reports are going down and so are hospital emergencies”).

¹¹³ John R. Horan, the vice chairman of the City’s Board of Correction, told reporters: “The money was clearly misspent.” *Id.* Chairman William H. Booth added: “This should be our last barge. They’re too expensive and too uncertain.” *Id.*

In more recent times, the VERNON C. BAIN has been criticized for being incompatible with its surroundings:

In the early 1990s, the Hunts Point neighborhood around the barge was overrun by rampant prostitution, other crime, homelessness and junkyards. At night, the main attraction was strip clubs. Children in the area had some of the country’s highest asthma rates. The closest bus stop in Hunts Point, a roughly 900-acre peninsula in the South Bronx, was a 20-minute walk from the jail.

“Hunts Point was a place to put things that no one else wanted,” said John Robert, a former president of the local community board.

....

Now, the barge is part of a changing Hunts Point.

The strip clubs have been shut down; violent crime, including homicides and rapes, has plunged by 280 percent from 1990 to 2018, according to the Police Department.

In describing the City's newest jail, the *New York Times* wrote:

The squat, 47,326-ton barge, named the Vernon C. Bain, is five stories high and resembles a jumble of incongruous blue and gray steel slabs without portholes. . . .

The deck of the new barge is as long as two football fields and 125 feet wide. Lower decks contain dormitories for 700 inmates and cells for 100, a medical clinic, a law library, a chapel and a mess hall. An enclosed exercise pen is on the top deck.¹¹⁴

Down the street from the jail, Amazon opened a warehouse over the summer, where trucks line up throughout the day to pick up packages to be delivered.

The city's Economic Development Corporation, which owns much of the prime waterfront real estate in Hunts Point, has big plans for the area. It recently asked companies to submit ideas for a redesigned Hunts Point Produce Market, one of neighborhood's economic engines.

Roughly 16,000 trucks travel through the area, shuttling goods like produce, meats and beer from warehouses to restaurants and shops throughout New York City. The city, hoping to significantly reduce congestion, has announced plans to develop a marine terminal at Hunts Point.

City officials envision that the marine terminal could anchor a major shift in how goods like produce and lumber enter the New York market, moving them off roads and onto waterways.

Whatever the future holds for Hunts Point, it does not include a city jail taking up precious and valuable waterfront property, [Bronx councilman Rafael Salamanca, Jr.] said.

"We should give this land back and create jobs," he said. "Some could be green space for the community so we can enjoy the view of the East River."

Matthew Haag, *A Temporary Floating Jail is Still Open After 27 Years*, N.Y. TIMES, Oct. 11, 2019, at A25.

¹¹⁴ *Cost is Steep*, *supra* note 111. Upon seeing the vessel, Josephine Infante, the director of the Hunts Point Local Economic Development Corporation, was flabbergasted, telling reporters: "[It's] phenomenal-looking. It's incredible. It's so big." Donald Bertrand, *The Bain of Hunts Point*, DAILY NEWS (NY), Jan. 26, 1992, at 1 (Bronx-Westchester). Bruce Piel, the general manager of the Hunts Point Produce Market, quickly dubbed the new addition the "Louisiana Purchase." *Id.* The nickname did not stick.

To staff the vessel's medical clinic, Executive Health Group, the City's contractor, ran the following "want ad" flanked by an attractive ship silhouette that looked nothing like a barge:

COME ABOARD . . .

AND JOIN THE MEDICAL CREW OF THE VERNON C. BAIN

If you'd like to be part of an innovative Medical Service, we have

The Fall 1992 opening of the VERNON C. BAIN at Rikers Island¹¹⁵ set off several changes:

1) The existing VERNON C. BAIN ferry became the HAROLD A. WILDSTEIN.¹¹⁶

2) The BIBBY RESOLUTION and the BIBBY VENTURE were closed¹¹⁷ and later put up for sale.¹¹⁸ In July 1994, the pair were auctioned off for \$1.8 million to A.L. Burbank, a California shipbroking company.¹¹⁹ This price represented a return of less than four cents on the dollar.¹²⁰

outstanding opportunities available for qualified healthcare professionals. EHG National Health Services, Inc., a leading national health service corporation, is seeking healthcare staff for a state-of-the-art maritime correctional facility located on the shores of the Southeast Bronx. . . . We offer full-time, part-time and per diem shifts and are able to accommodate flexible hours and variable sessions. When you **BOARD SHIP**, your car will be safely parked in a free parking lot. . . .

Display Ad, DAILY NEWS (NY), Feb. 2, 1992, at 2 (Classified) (bold as in original).

¹¹⁵ See *supra* note 4.

¹¹⁶ The new name honored a Rikers Island psychologist who had been killed during a 1990 robbery. See *There Are Fissures of the Heart That Never Mend*, NEW YORK CORRECTION HISTORY SOCIETY, <http://www.correctionhistory.org/pdf/the-harold-a-wildstein-story.pdf>.

¹¹⁷ See Selwyn Raab, *2 Jail Barges to be Closed and Removed*, N.Y. TIMES, Feb. 15, 1992, § 1, at 25.

¹¹⁸ See Bruce Lambert, *Wanted: Good Home for Barges. Well Maintained. Very Secure.*, N.Y. TIMES, Dec. 5, 1993, at CY6. To help spur interest, the City ran ads that read:

BARGES FOR SALE

Bids will be received by the City of New York, Department of General Services for the sale of barges, “BIBBY RESOLUTION” and “BIBBY VENTURE” on June 22, 1994 at 11:00 a.m. For additional information, please contact the N.Y.C. Department of Correction. . . .

Display Ad, N.Y. TIMES, May 18, 1994, at D21 (bold as in original).

When he learned that the vessels were being put up for sale, former Mayor Ed Koch implored the City to keep them, arguing they could be turned into “homeless shelters or AIDS hospices.” Navarro, *supra* note 97.

¹¹⁹ See Esther B. Fein, *A \$1.8 Million Bid Wins 2 Empty Prison Barges*, N.Y. TIMES, July 29, 1994, at B3. The sale later was challenged, unsuccessfully, by a third party. See *infra* text accompanying notes 214-17.

Ironically, just two years earlier the City had received a \$3.2 million offer but had rejected it as being too low. See Mark Mooney, *New Woes “Sale” with Jail Ships*, DAILY NEWS (NY), Oct. 10, 1994, at 8. As Mooney further explains, within months of the City’s sale to A.L. Burbank, a Singaporean company called World Sale Ship Brokering placed the pair (temporarily renamed FLOTEL 750 and FLOTEL 1000) back on the market for \$10 million.

¹²⁰ By the time of the sale, the City’s investment totaled \$53.5 million: \$42 million for acquisition, renovation, and siting; \$6.5 million to upgrade Pier 40 so that the BIBBY VENTURE could be moved to it; and \$5 million for post-use (*i.e.*, 1992-94) maintenance. See Mark Mooney & David L. Lewis, *\$5 Million Down Drain in Floating Prisons*,

3) The HAROLD A. WILDSTEIN and the WALTER KEANE ferries continued for a time to be used as inmate auxiliary housing but eventually were turned into administrative space.¹²¹ In 2003, the City sold the HAROLD A. WILDSTEIN to a New Jersey scrapyard.¹²² In 2004, it sold the WALTER KEANE to a New York financier, who soon sold it to a different scrapyard.¹²³

The crack epidemic of the late 1980s and early 1990s was not confined to New York City.¹²⁴ As a result, politicians throughout the country argued that ships were a cheap and fast way to relieve prison overcrowding.¹²⁵ In the end, however, none of these proposals was greenlighted.¹²⁶

DAILY NEWS (NY), July 12, 1994, at 14.

¹²¹ See *Final* “Ex,” *supra* note 89 (“As jail population eased in the early 2000s, the ferries’ use as reserve dorms declined. Then they were used for DOC offices, inmate programs, and services.”).

¹²² *Id.* (“The Merrell/Wildstein was purchased by a Bayonne company for scrap, brought to the waters of the Kill Van Kull separating Staten Island from New Jersey, and placed alongside a pier about July 2003. The vessel was partially disassembled but sunk into the waters at the foot of 2d Street in Bayonne before salvage was completed. Its removal was the subject of a lawsuit filed by the federal government in November 2004.”). The lawsuit, titled *United States v. Bayonne Durable Construction Co.*, No. 04-cv-05784 (D.N.J. filed Nov. 23, 2004), was settled in March 2006. The case file can be accessed on PACER (pacer.login.uscourts.gov).

¹²³ See *Final* “Ex,” *supra* note 89 (“Metal Management Inc. . . . bought the ex-Kolff/ex-Keane for scrap value from a Queens financier who had purchased it from NYC in the Spring of 2004. He said that originally he had hoped to see its survival in NY or elsewhere, possibly as [a] floating casino or health services facility or emergency shelter for the homeless.”). See also *Salvaging the Walter Keane Staten Island Ferry*, OLDE GOOD TIMES (Nov. 14, 2017), <https://ogtstore.com/blog/tag/nautical/> (blog post offering for sale various items from the WALTER KEANE, “including salvaged anchors and weights, industrial chain, nautical bells, and marine equipment”).

¹²⁴ See DAVID FARBER, *CRACK: ROCK COCAINE, STREET CAPITALISM, AND THE DECADE OF GREED* (2019). As Farber points out, “The crack crisis [was] the dark side of the Reagan-Bush-Clinton years.” *Id.* at 6.

¹²⁵ See, e.g., Joe Jackson, *Is Barge Jail in Norfolk’s Future?*, VIRGINIAN-PILOT (Norfolk), Sept. 16, 1994, at B1; Brian McGrory, *[Massachusetts] Floats Plan for Prison Ships to Ease Crowding*, BOSTON GLOBE, Sept. 19, 1991, at 1; Leo C. Wolinsky, *Prison Ship Idea Sails into Sacramento Debate*, L.A. TIMES, July 7, 1987, pt. II, at 5; *[Texas] Prison Ship Idea Called Unsinkable*, FORT WORTH STAR TELEGRAM, May 20, 1987, at A22; Alyn Ackermann, *[New Jersey] Studies Conversion of Troop Ship [MAURICE ROSE] into Prison*, ASBURY PARK PRESS (NJ), Oct. 29, 1986, at A12. See also Joan Barron, *Prison Ships & Sinking Triple Trailers*, CASPAR STAR-TRIB. (WY), Jan. 5, 1992, at A8 (“This approach [of turning ships into prisons] isn’t really practical in land-locked Wyoming. It has its attraction though, given the ragged history of the existing state prison near Rawlins.”).

In 1986, the City of Philadelphia agreed to a consent decree capping its inmate population. The decree also required it to build a new downtown detention center by December 31, 1990. See *Harris v. Pemsley*, 654 F. Supp. 1042, 1046 (E.D. Pa.), *appeal dismissed*, 820 F.2d 592 (3d Cir.), *cert. denied*, 484 U.S. 947 (1987). In 1989, when the City announced at a court hearing that it was unlikely to meet the deadline, District Judge Norma L. Shapiro suggested that it consider “anchoring a prison ship in the Delaware River.” Steve Stecklow, *Inmates Protest Crowding*, PHIL. INQUIRER, Feb. 20, 1989, at 1B.

¹²⁶ Even before the crack epidemic, government officials in several states had suggested that prisoners be kept on ships. See, e.g., Dave Hodges, *[Florida] Prison Ship Idea*

In a 2018 interview, Admiral Paul F. Zukunft revealed that the U.S. Coast Guard was considering hiring a private prison ship to hold drug smugglers caught at sea until they could be brought to the United States.¹²⁷ According to Zukunft, this would allow the Coast Guard to focus on more urgent tasks.¹²⁸

IV. U.S. CASE LAW

Prison ship cases can be organized as follows: 1) “mere mention”; 2) “literary effect”; and, 3) “key role.” Due to their volume, I have made the modern-day “New York City” cases their own category.

A. MERE MENTION CASES

In “mere mention” cases, prison ships are mentioned, but only in passing. In *United States v. Burr*,¹²⁹ for example, it was explained that James Knox, one of the government’s witnesses, was forced to spend time in a New Orleans prison ship after he refused to cooperate with General James Wilkinson:

Failing to get from him such a deposition as he desired, it was alleged that General Wilkinson had then caused [Knox] to be arbitrarily and illegally imprisoned. . . . Judge Hall, it was said, must be presumed to have acted under the influence of General Wilkinson, who was exercising a military dictatorship in New Orleans. Knox was taken from the jail to the “prison ship,” it was contended, by . . . military force.¹³⁰

Resurrected, FLA. TODAY (Cocoa), Dec. 18, 1981, at 1B; Kenneth T. Berents, *Prison Ship Idea Privately Pushed by [Maryland] Governor*, EVENING SUN (Balt.), Sept. 9, 1976, at C3; Janice Wolf, *A Prison Ship? Idea Won't Float, [Hawaii] Aide Says*, HONOLULU STAR-BULL & ADVERTISER, May 30, 1976, at D7; *Prison Ship Idea Studied by Louisiana*, MIAMI HERALD, Sept. 28, 1975, at 8-AW.

Some private citizens also pushed the idea. See, e.g., Ed Lattal et al., *Boats Could Solve Prison Overcrowding*, HARTFORD COURANT, July 5, 1984, at E2 (“We are sixth grade students from Clover Street School in Windsor[, Connecticut]. . . . Our alternative plan would be to have boats in the oceans that are actually prisons.”); *Floating Prisons?*, NORTH ADAMS TRANSCRIPT (MA), Aug. 21, 1981, at 1 (“Vincent F. Zarrilli, . . . a 49-year-old [Boston] kitchenware maker . . . wants officials to study the idea of converting old aircraft carriers into floating prisons.”); Editorial, *Prison Compromise*, GREEN BAY PRESS-GAZETTE (WI), Sept. 24, 1979, at A6 (“Debate continues on finding sites for new Wisconsin prisons. There is agreement that the state needs more facilities for a rapidly growing inmate population. . . . But nobody wants prisons built near where they live. Perhaps a prison ship is the solution.”).

¹²⁷ See Hope Hodge Seck, *Coast Guard Eyes Leasing Civilian Jail Ship to Hold Detainees*, MILITARY (Jan. 16, 2018), <https://www.military.com/dodbuzz/2018/01/16/coast-guard-eyes-leasing-civilian-jail-ship-hold-detainees.html>.

¹²⁸ *Id.* Shortly before the interview, the *New York Times* published a lengthy article reporting that drug smugglers caught by the Coast Guard routinely were spending weeks at sea, chained to outside decks with no protection from the elements, as the vessels continued their missions before finally returning to port. See Seth Freed Wessler, *Prisoners at Sea*, N.Y. TIMES, Nov. 26, 2017, at 39 (Sunday Mag.).

¹²⁹ 25 F. Cas. 41 (C.C.D. Va. 1807) (No. 14,692F).

¹³⁰ *Id.* at 47. Some background information is needed to make this paragraph intelligible.

In *Patrick v. Commercial Insurance Co.*,¹³¹ a merchant ship lying in the harbor of Cádiz, Spain, ran aground in a storm and later was burned by French soldiers.¹³² The ship's owners sought reimbursement from their insurers, who refused to pay based on a clause in the policy that read: "The assurers take no risk in port but sea-risk."¹³³ To get around this language, the owners argued that the vessel had been lost outside the port:

The place where the ship was driven ashore was nearly opposite *Fort Puntales*, and immediately adjoining the fortifications of the *French*, on *Trochedera* creek, being a beach (or, as some of the witnesses said, the *Trochedera* islands) on the opposite side of the *Bay of Cadiz*. The master said the place was not considered as part of the port of *Cadiz*, and was then held by a hostile power, and entirely out of the jurisdiction of *Cadiz*. Before the *French* besieged *Cadiz*, merchant ships used to lie along from *Cadiz* to *Puntales*, and the *Spanish* prison-ships used to lie above the latter place; but in consequence of the position taken by the *French*, they were moved nearer *Cadiz*.¹³⁴

At the end of the trial, the jury, deciding that the ship had been lost at sea, found for the owners.¹³⁵ On appeal, its verdict was affirmed.¹³⁶

Former Vice President Aaron Burr was on trial for treason, accused of trying to establish his own country in the southwestern part of the United States. One of Burr's key partners was General James Wilkinson, who, with Burr's help, had been named Louisiana's territorial governor in 1805. To avoid being indicted along with Burr, Wilkinson in 1806 sent a false, but highly damaging, letter to President Thomas Jefferson. Although Burr eventually was acquitted, the trial left him financially and politically ruined. Wilkinson, on the other hand, emerged relatively unscathed. Since his death in 1825, however, Wilkinson has come to be regarded as a traitor. For a further discussion, see, e.g., JAMES E. LEWIS, JR., *THE BURR CONSPIRACY: UNCOVERING THE STORY OF AN EARLY AMERICAN CRISIS* (2017); DAVID O. STEWART, *AMERICAN EMPEROR: AARON BURR'S CHALLENGE TO JEFFERSON'S AMERICA* (2011); PETER CHARLES HOFFER, *THE TREASON TRIALS OF AARON BURR* (2008).

Burr's trial later inspired Edward Everett Hale's famous short story *The Man Without a Country*, 12 ATL. MON. 665 (Dec. 1863). In it, U.S. Army lieutenant Philip Nolan befriends Burr and later is tried with him. When he is convicted of treason, Nolan tells the judge, "Damn the United States! I wish I may never hear of the United States again!" *Id.* at 667. The judge therefore sentences Nolan to spend the rest of his life imprisoned on U.S. Navy ships, where no one is permitted to tell him anything about what is happening in America. As the years pass, Nolan becomes increasingly desperate for such news. Just before dying, he finally is told how the country has developed. For a further discussion, see Alexander Zaitchik, *No Land's Man: Edward Everett Hale's "The Man Without a Country" Turns 150*, L.A. REV. BOOKS (Mar. 24, 2013), <https://lareviewofbooks.org/article/no-lands-man-edward-everett-hales-the-man-without-a-country-turns-150/>.

¹³¹ 11 Johns. 9 (N.Y. Sup. Ct. 1814).

¹³² *Id.* at 9.

¹³³ *Id.*

¹³⁴ *Id.* at 10 (italics in original).

¹³⁵ *Id.* at 12.

¹³⁶ *Id.* at 13-14.

In *Wysham v. Rossen*,¹³⁷ the PHILIP, a merchant ship travelling from Baltimore to Europe, was captured by a British man-of-war and forced to divert to Jamaica.¹³⁸ After being detained there for six months, she was released and returned to Baltimore.¹³⁹ Once back in America, Rossen, the ship's second mate, sued for his unpaid wages and was awarded \$185.50.¹⁴⁰ On appeal, however, the verdict was overturned.¹⁴¹

While in Jamaica, the PHILIP's crew had been forced to live on a prison ship, a fact the court noted but did not find relevant:

The *Philip* . . . arrived at *Jamaica* the 9th of *October*. The plaintiff, after being on board a month, was compelled, with the rest of the crew, to go on board a prison ship, there being no provisions on board the *Philip*, and was detained on board the prison ship until the 11th of *March*, when he and the rest of the crew were restored to the *Philip*.¹⁴²

In *Succession of Seymour*,¹⁴³ various parties put in claims to a woman's estate.¹⁴⁴ Because she had used multiple aliases, there was considerable confusion regarding her true identity.¹⁴⁵ As a result, the trial court was forced to undertake an extensive review of her life. In doing so, it found that in 1851 she had escaped from a California prison ship:

In the month of June, 1846, a young woman, apparently about nineteen years of age, who stated her name was Fanny Minerva Seymour, shipped from Liverpool, England, for New York. . . . From New York she came to this city [New Orleans], arriving here in the latter part of the summer or early in the fall of 1846. . . . Seymour . . . reached San Francisco in 1850, and lived there a short time in a house of ill fame. In the same year, she went to Sacramento, and became the proprietress of a place called "The Palace," and the mistress of a gambler, Rube Raines, who owned a gambling saloon, the El Dorado. She lived in Sacramento under the name of Fanny M. Smith, until December 20, 1851. On that night, she shot and wounded a man named Albert Putnam, was arrested, carried to the prison ship in the river, from which she escaped, and left California. . . .¹⁴⁶

In *Cross v. Derwinski*,¹⁴⁷ a World War II veteran who had spent most of the war in Japanese prison camps unsuccessfully sought benefits when, late in life, he developed post-traumatic arthritis and irritable bowel syndrome.¹⁴⁸ In describing the petitioner's service record, the court wrote:

¹³⁷ 11 Johns. 72 (N.Y. Sup. Ct. 1814).

¹³⁸ *Id.* at 72.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 73.

¹⁴² *Id.* at 72 (italics in original).

¹⁴³ 24 So. 818 (La. 1897).

¹⁴⁴ *Id.* at 819.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 820-21. Although the court does not give the ship's name, it seems likely that it was the LA GRANGE. See *supra* text accompanying note 75.

¹⁴⁷ 2 Vet. App. 150 (1992).

¹⁴⁸ *Id.* at 151.

Appellant served on active duty with the Armed Forces during World War II from May 21, 1941, to May 28, 1946. R. at 1. . . .

In May 1942, appellant was captured by Japanese forces and was interned in Japanese prison camps until September 1945. R. at 51, 62. During this period, appellant was confined for 21 days in the hold of a prison ship taking him from the Philippines to Japan. R. at 51.¹⁴⁹

Lastly, in *United States v. Battle*,¹⁵⁰ the court denied a prisoner's habeas corpus motion.¹⁵¹ In discussing the underlying facts, it referred to

[t]wo inmates [who] testified by videotaped deposition: Carlos Hill and John McCullough. Hill had been in Cell House C with [Anthony] Battle at [the U.S. Penitentiary in] Atlanta. In part, he testified that Battle thought [the FBOP] was putting "computer chips or things in his brain to find out what he knew. . . ." Tr. 7. In response to habeas counsel's question, "Q: implants?" Hill said "Yeah. Transplants, implants." He related watching a television program with Defendant regarding alternatives to prison. One suggestion was making an aircraft carrier into a floating prison, and implanting devices in the prisoners which would relay their thoughts. At that point, Defendant had said that's what BOP had done to him.¹⁵²

B. LITERARY EFFECT CASES

In "literary effect" cases, prison ships are mentioned to emphasize a specific point. In *In re Bonner*,¹⁵³ for example, John Bonner was found guilty of stealing four cows on federal land.¹⁵⁴ Because there was no local federal prison, the court ordered Bonner to serve his sentence in the Iowa state penitentiary.¹⁵⁵ Bonner challenged this order, arguing that as a federal prisoner such confinement was illegal.¹⁵⁶ In agreeing with him, Justice Field wrote:

Counsel for the government admits that [based on previous cases], the petitioner should not have been sentenced to imprisonment in the [state] penitentiary, but he claims that the judgment and sentence are not for that cause void, so as to entitle the petitioner to a writ of habeas corpus for his discharge; and he asks the court to reconsider [the previous precedents]. According to his argument, it would seem that the court does not exceed its jurisdiction when it directs imprisonment in a [state] penitentiary[, or] the guard house of a fort, or the hulks of a prison ship, or in any other place not specified in the law.

We are unable to agree with the learned counsel, but [instead] are of opinion that, in all cases where life or liberty is affected by its proceedings,

¹⁴⁹ *Id.*

¹⁵⁰ 264 F. Supp. 2d 1088 (N.D. Ga. 2003).

¹⁵¹ *Id.* at 1209.

¹⁵² *Id.* at 1153.

¹⁵³ 151 U.S. 242 (1894).

¹⁵⁴ *Id.* at 243.

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 243-44.

the court must keep strictly within the limits of the law authorizing it to take jurisdiction, and to try the case, and to render judgment.¹⁵⁷

In *Grayson v. Lynch*,¹⁵⁸ the plaintiffs were awarded \$5,200 for the loss of their herd, which had become ill with Texas cattle fever (“TCF”) after being infected by the defendants’ herd.¹⁵⁹ In upholding the judgment, Justice Brown rejected the defendants’ argument that it should be set aside because the plaintiffs had described TCF as a “contagious” disease but the trial court had deemed it an “infectious” disease:

There is, doubtless, a technical distinction between the two in the fact that a contagious disease is communicable by contact, or by bodily exhalation, while an infectious disease presupposes a cause acting by hidden influences, like the miasma of prison ships or marshes, etc., or through the pollution of water or the atmosphere, or from the various dejections from animals. The word “contagious,” however, is often used in a similar sense of “pestilential” or “poisonous,” and is not strictly confined to influences emanating directly from the body.¹⁶⁰

In *Mitchell v. Alcoholic Beverage Control Commission*,¹⁶¹ the plaintiff was denied a liquor license because government officials felt his town already had a sufficient number of bars and carry-out stores.¹⁶² In ordering the state to issue the license,¹⁶³ the trial court peppered its opinion with long quotes from historical sources, including one concerning the hatred that the patriots felt for the Tories following the end of the American Revolutionary War:

An article in the “Massachusetts Chronicle” expressed the common feeling: “As Hannibal swore never to be at peace with the Romans, so let every Whig swear, by his abhorrence of slavery, by liberty and religion, by the shades of departed friends who have fallen in battle, by the ghosts of those of our brethren who have been destroyed on board of prison-ships and in loathsome dungeons, never to be at peace with those fiends the refugees, whose thefts, murders, and treasons have filled the cup of woe.”¹⁶⁴

Lastly, in *United States v. Corozzo*,¹⁶⁵ the government asked that severe restrictions be made part of the defendant’s sentence. In rejecting this request,¹⁶⁶ the court provided a long history lesson, beginning with the prison ships used by the British during the American Revolutionary War:

¹⁵⁷ *Id.* at 256.

¹⁵⁸ 163 U.S. 468 (1896).

¹⁵⁹ *Id.* at 469.

¹⁶⁰ *Id.* at 477. Justice Brown’s “miasma of prison ships” language is quoted with approval in *Ex parte Liang Buck Chew*, 296 F. 182, 184 (D. Mass. 1923), a case upholding the deportation of a Chinese citizen suffering from clonorchiasis (*i.e.*, fluke worm of the liver).

¹⁶¹ 193 A.2d 294 (Del. Super. Ct.), *rev’d and remanded*, 196 A.2d 410 (Del. 1963).

¹⁶² *Id.* at 298-99.

¹⁶³ *Id.* at 385.

¹⁶⁴ *Id.* at 325-26.

¹⁶⁵ 256 F.R.D. 398 (E.D.N.Y. 2009).

¹⁶⁶ *Id.* at 403.

In the sentencing of this sixty-nine year old captain and killer for the [M]afia, the government requests that severe conditions be imposed by the court on his imprisonment and supervised release, limiting his right to interact with: 1) relatives who were or are criminals; and 2) members or associates of organized crime families. Even if modified, the restrictions sought would probably result in long-term solitary confinement, onerous segregation, and alienation from natural family.

The request is considered from chambers high in the new federal courthouse for the Eastern District of New York, with historical memories sunk into its foundations and rising into [the] surrounding atmosphere. On these sanctified grounds, cruelty to American prisoners was first practiced on a mass scale.

The deadliest battle of the Revolutionary War was fought here on August 27, 1776, when Washington's Army was defeated. *See, e.g.,* Barnet Schecter, *The Battle for New York* 141-54 (2002). Thousands of American prisoners captured in that engagement and in those that followed were incarcerated in British prison ships anchored in New York harbor, and in the City's sugar houses. *See* Edwin G. Burroughs, *Forgotten Patriots: The Untold Story of American Prisoners During the Revolutionary War* (2008). There they were packed in one upon another, denied warmth in bitter winter, light, clothing and sanitary facilities, and stifled without ventilation in summer heat. They died by the thousands—Whites and Blacks, sailors and soldiers of the new Republic. For years their bones washed up on the beaches of Brooklyn. Their remains are interred in the Prison Ship Martyrs Monument at Fort Greene, a short walk from [this] courthouse. . . .

So, when the government seeks to impose terms that make life in prison and on supervised release harsher than necessary, the United States District Court for this district cannot ignore history and this country's aspiration to provide justice for all. It must seriously consider whether it would be justified in granting the government's motion to impose cruel prison conditions.¹⁶⁷

C. KEY ROLE CASES

In "key role" cases, prison ships play a significant factual or legal role.

In *Thompson v. Rowe*,¹⁶⁸ for example, "one Gale" received a warrant (*i.e.*, an IOU), dated Aug. 1, 1850, from the Sacramento County Auditor entitling him (or her) to be paid \$1,192.70 for services rendered aboard a prison ship.¹⁶⁹

By the time of the lawsuit (Dec. 22, 1851), the warrant was owned by Ira D. Thompson.¹⁷⁰ When he sought to cash it in, his request was denied, even though the

¹⁶⁷ *Id.* at 399-400.

¹⁶⁸ 2 Cal. 68 (1852).

¹⁶⁹ *Id.* at 68. The opinion does not provide either Gale's first name or the ship's name. Likewise, it does not describe the nature or duration of Gale's work. It seems likely, however, that the vessel was the LA GRANGE. *See supra* text accompanying note 75.

¹⁷⁰ *Thompson*, 2 Cal. at 68. The court does not explain how Thompson came to own the warrant.

county had enough funds on hand to cover it.¹⁷¹ Thompson therefore filed a petition for mandamus against Cyrus Rowe, the County Treasurer.¹⁷² In response, Rowe cited an intervening court order (Nov. 8, 1851) directing him to pay such warrants at 50% of face value.¹⁷³ The court order had been issued pursuant to a state law (Mar. 11, 1851) restricting local government expenditures.¹⁷⁴

The trial court ordered Rowe to pay Thompson the full value of the warrant, plus interest.¹⁷⁵ On appeal, the California Supreme Court, finding the Legislature's directions to be "clear," reversed in a brief opinion (three paragraphs).¹⁷⁶

In *Stovel v. United States*,¹⁷⁷ the master (Edwin F. Stovel) and crew of the NANSHAN sought to be awarded a statutory bounty for their actions during the Battle of Manila Bay (May 1, 1898).¹⁷⁸ The court rejected the men's claim, holding that only U.S. Navy ships were eligible for the money.¹⁷⁹

Until shortly before the battle, the NANSHAN had been a British merchant ship in Hong Kong.¹⁸⁰ On April 6, 1898, Commodore George Dewey (acting under orders from officials in Washington, D.C.) purchased the NANSHAN to serve as a support vessel.¹⁸¹ After promising the plaintiffs double wages if they would stay on, Dewey outfitted the NANSHAN with two one-pound guns and placed five of his own men (an officer and four sailors) on the ship.¹⁸² These changes, it was argued, made the NANSHAN a U.S. Navy ship.¹⁸³

In deciding that no bounty was due, the Court of Claims distinguished *The Ceylon*,¹⁸⁴ a British case decided during the Napoleonic Wars that had involved a French prison ship:

On the argument and in the brief of counsel the court's attention is called to the case of the *Ceylon* . . . in which it is held in substance that the employment of a vessel in the public military service of the enemy, by those who have competent authority so to employ her, "is a sufficient setting forth for war" under the prize act, though the vessel may not be furnished with any formal commission of war. The facts upon which that decision is predicated are briefly as follows:

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ *Id.*

¹⁷⁵ *Id.* at 69.

¹⁷⁶ *Id.* at 71.

¹⁷⁷ 36 Ct. Cl. 392 (1901).

¹⁷⁸ *Id.* at 396. The Battle of Manila Bay was the first major engagement of the Spanish-American War. See, e.g., JOSE ROCA DE TOGORES Y SARAVIA, BLOCKADE AND SIEGE OF MANILA (Nat'l Hist. Inst. edition 2003) (1909); ROBERT CONROY, THE BATTLE OF MANILA BAY: THE SPANISH-AMERICAN WAR IN THE PHILIPPINES (1968); NATHAN SARGENT, ADMIRAL DEWEY AND THE MANILA CAMPAIGN (1947).

¹⁷⁹ *Stovel*, 36 Ct. Cl. at 402-03.

¹⁸⁰ *Id.* at 397.

¹⁸¹ *Id.*

¹⁸² *Id.*

¹⁸³ *Id.* at 399.

¹⁸⁴ 1 Dod. 105 (High Ct. Adm. 1811).

[The Ceylon, a British merchant] ship[, was] captured by French frigates. . . . She [later] was . . . dismantled[] and fitted out as a prison ship for English prisoners of war, in which condition she was found at the time of [her recapture by the British Navy]. The question was whether this ship was “sufficiently set forth for war” to come within the prize act, which directs restitution of British ships recaptured from the enemy, unless they shall have been “set forth as ships or vessels of war by the enemy.”

The court held in that case, by Sir William Scott, that she came within the phraseology of the statute “set forth as ships or vessels of war.”

The question presented and decided in [The Ceylon] is not the question submitted to the consideration of the court in this proceeding. The question is not whether the [NANSHAN] belonged to the United States as a part and parcel of the war equipment, but whether, in the battle of Manila, she was so constituted, equipped, and conditioned as to come within the letter or spirit of the statute entitling vessels to participate in the bounty, upon the theory that they participated in the battle.

The claimant in this case and his crew were not in the military service of the United States. They had not been enlisted or hired to perform and discharge military duty. They were not identified with the naval force, in a military sense, which fought the battle and won the victory at Manila.

It would be an unjust discrimination against the men who were in the service, subject to all the restrictions and requirements of that service, and all the dangers incident to that battle, to allow the demand of the claimant, who did not undertake, by any obligation, to perform the duties and discharge the functions of a soldier.¹⁸⁵

In *In re Thompson's Will*,¹⁸⁶ the decedent, a U.S. Army lieutenant, was killed on Dec. 15, 1944, when the Japanese hell ship¹⁸⁷ he was on was sunk by a U.S. bomb.¹⁸⁸ Lacking a will, his parents introduced a letter, dated Feb. 19, 1942, he had written to them in which he said that if anything happened to him, he wanted them to collect his \$10,000 life insurance policy.¹⁸⁹ The insurance company objected to the introduction of the letter, citing New York's non-recognition of holographic wills.¹⁹⁰ When the parents pointed out that New York law recently had been changed to make an exception for service members,¹⁹¹ the company claimed that as a POW, the decedent did not qualify for the exception.¹⁹² In rejecting this argument, the court wrote:

The respondent also contends the proponent's testimony showed that the decedent was a prisoner of war on a prison ship and if killed as claimed

¹⁸⁵ *Stovel*, 36 Ct. Cl. at 401-02.

¹⁸⁶ 76 N.Y.S.2d 742 (Surr. Ct. 1948).

¹⁸⁷ Japan's hell ships are discussed *supra* note 39.

¹⁸⁸ *Thompson's Will*, 76 N.Y.S.2d at 744.

¹⁸⁹ *Id.*

¹⁹⁰ *Id.*

¹⁹¹ *Id.* at 746.

¹⁹² *Id.* at 749.

in Subic Bay on such prison ship that he was no more in actual military service than a civilian would be. It is well known that prisoners of war many times escape and return and oftentimes kill or wound the enemy in making such escape and no special ceremony or re-enlistment is necessary on the return of such prisoners to their commands. Section 846 of 10 U.S.C.A. Army, relied on by respondent, does not hold to the contrary, but by providing for payment during captivity even after the expiration of the soldier's term of service indicates the soldier is at all times in actual military service. Such argument must be, therefore, brushed aside, and it is here held that this decedent as such prisoner was at all times from the date of his capture in the actual military service of the United States. Any contrary view would defeat the very purpose of Section 16, Decedent Estate Law, itself.¹⁹³

Lastly, in *Wilson v. Ponce*,¹⁹⁴ a group of inmates at Terminal Island, a federal prison in Los Angeles, filed a habeas corpus petition in which they demanded to be released because of COVID-19.¹⁹⁵ By the time of their lawsuit (May 16, 2020), the disease had ravaged the prison, infecting two-thirds of the inmates and killing nine of them.¹⁹⁶ In rejecting their request, the court explained:

The nature of the relief[,] coupled with the provisional class certification[,] is simply not what lawyers and judges think of as habeas, even under § 2241, let alone §§ 2254 or 2255. . . . [Moreover,] Petitioners have carefully argued that release is the only remedy; however, relief could be obtained by transferring prisoners, including by such extraordinary measures as recalling the U.S.N.S. Mercy from San Diego to serve as a prison ship.¹⁹⁷

D. NEW YORK CITY CASES

The “New York City” cases include all decisions that mention, individually or collectively, the BIBBY RESOLUTION, BIBBY VENTURE, HAROLD A. WILDSTEIN, VERNON C. BAIN, and WALTER KEANE.

1. HAROLD A. WILDSTEIN and WALTER KEANE

During its time as the VERNON C. BAIN, the HAROLD A. WILDSTEIN appeared in four opinions. In contrast, no case mentions the WALTER KEANE.¹⁹⁸

In *Benjamin v. Malcolm*,¹⁹⁹ a prison overcrowding case, the court, in acknowledging that the City was making good-faith efforts to address the problem, referenced the VERNON C. BAIN in a footnote:

¹⁹³ *Id.*

¹⁹⁴ 2020 WL 3053375 (C.D. Cal. 2020).

¹⁹⁵ *Id.* at *8.

¹⁹⁶ *Id.* at *2.

¹⁹⁷ *Id.* at *10. From March 2020 to May 2020, the U.S. hospital ship MERCY was stationed in Los Angeles to help the area fight the COVID-19 pandemic. See Andrew Dyer, *Hospital Ship Mercy Departs S.D. to Assist in Los Angeles*, S.D. UNION-TRIB., Mar. 24, 2020, at A7; Andrew Dyer, *Hospital Ship Mercy Returns to San Diego Today*, S.D. UNION-TRIB., May 15, 2020, at A1.

¹⁹⁸ *But see infra* note 230.

¹⁹⁹ 659 F. Supp. 1006 (S.D.N.Y. 1987).

For instance, the New York Times has reported that the conversion of a ferry boat into a “prison boat,” a project which was planned to take sixty days and cost 4.86 million dollars, actually took more than twice as long and cost almost twice that much. See Lambert, *City’s Prison Boat is Late and Costly*, N.Y. Times, Mar. 24, 1987, at B8, col. 1.²⁰⁰

In *First Marine Shipyard, Inc. v. Vessel “VERNON C. BAIN,”* the shipyard that converted the PRIVATE JOSEPH F. MERRELL into the VERNON C. BAIN sued both the vessel and New York City for an unpaid balance of \$194,999.27, calculated as follows: 1) \$115,751.16 for past due invoices; and, 2) \$79,248.11 for various change orders.²⁰¹

The ensuing litigation resulted in three opinions. In the first, Judge Charles S. Haight, Jr., *sua sponte*, directed the parties to brief the issue of whether admiralty jurisdiction existed.²⁰² In the second, Judge Haight, with a nod to Dickens, ruled that such jurisdiction was present:

The contracts at bar are not for the construction of a new vessel (clearly non-maritime); nor are they for the repair of an existing vessel so that she may return to navigation (clearly maritime). Strictly speaking, the contracts are for the conversion of a vessel. If the purpose of the work was to return the vessel to navigation in a different form for a different purpose, the contracts would clearly be maritime. . . . That cannot be said of the conversion of the ferryboat Private Joseph F. Morell [sic—should be Merrell] into the detention facility Vernon C. Bain: the Department of Corrections [sic] acquired the vessel not to transport inmates over water, but to keep them housed in a floating facility attached to the land. The City argues that the conversion work must be for the purpose of continuing the vessel in navigation. While the question is not free from doubt, I think that the Bain’s continued documentation as a vessel, her ongoing voyages under tow for inspection, and her residual utility as a vessel imbue these contracts with the requisite maritime nature. Indeed, the vessel in her present occupation follows in the melancholy tradition of the prison ship, relatively unknown today, but a familiar form of incarceration in the days of Dickens. Regarding the contract for jurisdictional purposes as one of “uncertain intentment,” and resolving those reasonable doubts undoubtedly present in favor of the admiralty jurisdiction . . . , I conclude that the contracts at bar are maritime in nature and hence within the Court’s admiralty jurisdiction. The case would be different if plaintiff’s contracted-for work had at its purpose the reduction of the ferryboat to scrap, or its conversion to use exclusively on land, without residual capacity for navigation.²⁰³

In his third opinion, Judge Haight, after a lengthy review of the facts, granted summary judgment to the shipyard on the past due invoices and summary judgment to the defendants on the change orders.²⁰⁴

²⁰⁰ *Id.* at 1007 n.2. As explained *supra* note 90, Lambert’s story concerned the conversion of the PRIVATE JOSEPH F. MERRELL into the VERNON C. BAIN.

²⁰¹ See 1991 WL 120314, at *4 (S.D.N.Y. 1991).

²⁰² See 1990 WL 6593, at *2 (S.D.N.Y. 1990).

²⁰³ 1990 WL 89343, at *3 (S.D.N.Y. 1990) (footnote omitted).

²⁰⁴ *First Marine*, 1991 WL 120314, at *5-6.

2. BIBBY RESOLUTION and BIBBY VENTURE

In *Silver v. Koch*,²⁰⁵ a group of Lower East Side residents sued to keep the BIBBY VENTURE from opening. They scored an early victory in the trial court (Nov. 13, 1987)²⁰⁶ that quickly was quashed by the appeals court (Feb. 26, 1988):

Order of the Supreme Court, New York County (Shirley Fingerhood, J.), entered November 13, 1987, which preliminarily enjoined the respondents from transferring any prisoners or staff to Pier 36 or to the barge, the “Bibby Venture,” and which set the matter down for an evidentiary hearing as to whether an emergency situation exists and as to whether the use of the pier and barge is and will be of a temporary nature, reversed, on the law and facts, and in the exercise of discretion, and petitioners’ motion for preliminary injunctive relief denied, without costs or disbursements.

Respondents selected Pier 36 for the temporary mooring of a prison barge to alleviate overcrowding elsewhere. Petitioners commenced this proceeding to compel respondents to comply with Uniform Land Use Review Procedure (“ULURP”), State Environmental Quality Review [Act] (“SEQRA”) and City Environmental Quality Review (“CEQR”) procedures and also to preliminarily and permanently enjoin further action with respect to the preparation of the pier for the mooring of the barge.

Since petitioners have failed to show the applicability of ULURP, SEQRA or CEQR to the actions of the respondents, the grant of a preliminary injunction by the [trial] court was an abuse of discretion. Furthermore, petitioners did not establish their likelihood of success on the merits, irreparable harm to them absent the grant of the relief sought, nor a balance of the equities in their favor (*see, W.T. Grant Company v. Srogi*, 52 N.Y.2d 496, 517, 438 N.Y.S.2d 761, 420 N.E.2d 953).²⁰⁷

One year later, a different group of residents filed a new lawsuit, raising the same types of claims, when the City announced that it was planning to move the BIBBY VENTURE to Pier 40 in Greenwich Village. Once again, the residents succeeded in obtaining a preliminary injunction from the trial court (Apr. 13, 1989).²⁰⁸ After reviewing the facts more closely, however, the court dissolved the injunction and dismissed the case (June 7, 1989), explaining:

Much of petitioners’ arguments on this issue fall into the realm of the NIMBY syndrome (not in my backyard) (*see, Greenberg v. Veteran*, 89 Civ. 0591, WL36290 [SDNY April 17, 1989]; Lewis, *Group Homes, Shelters and Congregate Housing: Deinstitutionalization Policies and the*

²⁰⁵ 525 N.Y.S.2d 186 (App. Div.), *appeal dismissed*, 522 N.E.2d 1069 (N.Y.), and *appeal denied*, 533 N.E.2d 673 (N.Y. 1988).

²⁰⁶ The trial court’s opinion is unreported.

²⁰⁷ *Silver*, 525 N.Y.S.2d at 187.

²⁰⁸ *See Federation to Preserve the Greenwich Village Waterfront and Great Port, Inc. v. Board of Estimate of the City of New York*, 1989 WL 1715689 (N.Y. Sup. Ct. 1989) (star pagination unavailable).

NIMBY Syndrome, 21 Real Prop. Prob. T.J. 413; Andreen, *Defusing the “Not in My Backyard” Syndrome*, 63 N.C.L. Rev. 811). While the court understands that no one wants a prison in their neighborhood, NIMBY is not a valid legal argument. The BOE and the responsible agencies were well aware of the community concerns when the BOE voted to approve the prison barge and when the negative declaration was issued. Moreover, community concern and outrage do not render the determination null and void (see, Note, [*Neighborhood Character and SEQRA: Courts Struggle with Homeless Shelters, Prisons and the Environment*, 14 Colm. J. Env’t L. 231], at 231-243).²⁰⁹

In a one-sentence opinion, the appeals court affirmed (May 10, 1990).²¹⁰

During their brief time as New York City jails, the BIBBY RESOLUTION and the BIBBY VENTURE spawned two reported decisions. In both, the firings of guards accused of dereliction of duty were upheld.²¹¹

²⁰⁹ See *Federation to Preserve the Greenwich Village Waterfront and Great Port, Inc. v. Board of Estimate of the City of New York*, 1989 WL 1715688 (N.Y. Sup. Ct. 1989) (star pagination unavailable).

²¹⁰ See *Federation to Preserve the Greenwich Village Waterfront and Great Port, Inc. v. Board of Estimate of the City of New York*, 556 N.Y.S.2d 473, 473 (App. Div. 1990). In a brief concurring opinion, Justice Asch wrote:

I would concur in the affirmance. The underlying questions raised in this Article 78 proceeding, brought with respect to the mooring of the Bibby Venture as a prison barge, as well as the contentions of those interested, already have been considered and passed upon by this court (*In re Application of Sheldon Silver v. Edward I. Koch, etc.*, 137 A.D.2d 467, 525 N.Y.S.2d 186, *appeal denied* 73 N.Y.2d 702, 536 N.Y.S.2d 743, 533 N.E.2d 673).

Id.

²¹¹ See *Jones v. City of New York*, 1989 WL 74942 (S.D.N.Y. 1989); *Medina v. Sielaff*, 582 N.Y.S.2d 685 (App. Div. 1992).

In *Jones*, a BIBBY VENTURE inmate named Paul Buttafocco, who “was awaiting trial in Brooklyn on a charge of third-degree burglary,” “escaped through a hole in the mess hall’s wall and jumped into the river.” Jeffrey K. Parker, *First Escape from City Jail Barge*, UPI (May 1, 1988), <https://www.upi.com/Archives/1988/05/01/First-escape-from-city-jail-barge/9341578462400/>. Following the escape, Probationary Guard Angela Jones was fired. Claiming that she had been made a scapegoat for the embarrassing incident, she sued. In rejecting her claim, the court focused on her probationary status and wrote: “Regardless of the quality of Jones’ performance, she had no constitutional property interest in her employment at the time of her dismissal. Whether her discharge was erroneous or not, she has not alleged a violation of constitutional due process rights.” *Jones*, 1989 WL 74942, at *1.

In *Medina*, a probationary guard named Sherlinda Medina was accused of having a romantic relationship with a BIBBY RESOLUTION inmate named Manuel “Frankie” Cedeno. See *Medina*, 582 N.Y.S.2d at 686. In upholding her firing, the court wrote:

In the instant matter, petitioner herself admitted that she was off post and went to an unauthorized section of the prison barge in order to visit with an inmate. Thus, regardless of whether or not she was, in fact, engaged in a personal relationship with Cedeno, and even putting aside for purposes

Additionally, in *Palmigiano v. DiPrete*,²¹² a Rhode Island prison overcrowding case, the court, in describing the credentials of Dr. Lambert King, one of the plaintiffs' expert witnesses, alluded to both vessels:

Dr. King is the Medical Director and Vice President for Professional Affairs at the Saint Vincent Hospital and Medical Center of New York City. In addition to his responsibilities for the direction of the medical services within the hospital, he is responsible for the provision of ambulatory medical, dental and mental health services at the Manhattan Detention Center in Manhattan as well as two maritime facilities housing additional inmates. . . .²¹³

Lastly, as previously explained,²¹⁴ the BIBBY RESOLUTION and the BIBBY VENTURE were sold in 1994 to A.L. Burbank, a California shipbroking company, for \$1.8 million. The sale immediately was challenged by a Florida scrap dealer called Impact Shipping:

This is an action for money damages arising out of the sale of two barges by the City of New York (the "City") to defendant A.L. Burbank Shipbrokers Ltd. ("Burbank") rather than to the plaintiff, Impact Shipping, Inc. The plaintiff sues the City and Joanne Foulke, the Acting Deputy Commissioner of the City's Department of General Services, contending that the failure to sell the barges to it deprived it of property without due process in violation of 42 U.S.C. § 1983 (first cause of action), constituted a breach of contract (second cause of action), and violation of the City's own regulations (third cause of action). The plaintiff also sues defendant Burbank on the grounds that Burbank tortiously interfered with the plaintiff's contract (fourth cause of action) and with the plaintiff's prospective economic relations (fifth cause of action).

The City and defendant Foulke now move for summary judgment pursuant to Fed.R.Civ.P. 56 dismissing the plaintiff's first, second, and third causes of action. Defendant Burbank moves for summary judgment dismissing the plaintiff's fourth and fifth causes of action. The plaintiff cross-moves

of this analysis the ample corroborative testimony of witnesses, her own concessions were sufficient to support the reasonableness of respondents' actions.

Id. at 688.

(The opinions, it should be noted, do not identify either vessel by name. In *Jones*, however, the court states that the plaintiff was fired for an escape that took place on a "prison barge" on April 30, 1988, see *Jones*, 1989 WL 74942, at *1, and, as explained at the beginning of this footnote, Paul Buttafocco escaped from the BIBBY VENTURE on that date. Similarly, in *Medina*, the court states that the plaintiff was fired for rendezvousing with an inmate on June 25, 1989 on a prison barge located at Pier 36, see *Medina*, 582 N.Y.S.2d at 686, and, as explained *supra* note 104, the BIBBY RESOLUTION began berthing at Pier 36 in May 1989.)

²¹² 737 F. Supp. 1257 (D.R.I. 1990).

²¹³ *Id.* at 1261 n.4. As will be recalled, see *supra* note 101 and accompanying text, during their time in Manhattan the BIBBY RESOLUTION and the BIBBY VENTURE officially were called "maritime facilities."

²¹⁴ See *supra* text accompanying note 119.

for partial summary judgment on the issue of liability on its first, second, fourth, and fifth causes of action and for summary judgment on its third cause of action. For the reasons explained below, the defendants' motions are granted, and the plaintiff's motion is denied.²¹⁵

The gravamen of Impact's complaint was that after it had won the barges at auction, the City decided to restart the process and accepted Burbank's bid because it was double Impact's offer:

In May and June 1994, the City publicly advertised the sale of two prison barges by competitive sealed bid. (Mun. Defs.' 3(g) Statement ¶¶ 1-3; Pl.'s 3(g) Statement ¶ 1.) The bid package contained several documents including an invitation to bid, which specified the bid opening date as June 22, 1994, at 11:00 a.m., and the bid terms and conditions of sale (the "bid terms"). (Hochman Aff. ¶ 24 & Ex. I.) The plaintiff submitted a bid, which included an executed copy of the bid terms, a completed and signed invitation to bid, and an initialed copy of the bid package cover sheet. (Hochman Aff. ¶ 34 & Ex. J.) When the bids were publicly opened and read on June 22, 1994, the plaintiff's bid was the highest at \$450,000 per barge, for an aggregate of \$900,000. (Mun. Defs.' 3(g) Statement ¶¶ 32-33; Pl.'s 3(g) Statement ¶ 14.) . . .

On June 23, 1994, [the City] received a late bid from defendant Burbank. (Hochman Aff. ¶ 40 & Ex. L.) Defendant Burbank's bid was \$900,00 per barge, for an aggregate of \$1.8 million. By letter dated July 20, 1994, the City requested that the plaintiff extend its bid. (Hochman Aff. ¶ 46 & Ex. M.) By letter dated July 21, 1994, the plaintiff extended its bid to August 1, 1994, but stated that it considered its bid accepted as of 11:00 a.m. on June 22, 1994. (Hochman Aff. ¶ 47 & Ex. N.) . . . By letter dated July 21, 1994, the City invited both the plaintiff and defendant Burbank to participate in an informal re-bid. (Hochman Aff. ¶ 50 & Exs. P, Q.) The plaintiff received the informal re-bid letter, but did not respond to it. (Kanji Dep. (Hochman Aff. Ex. C) at 155-60.) Defendant Burbank signed and notarized the July 21, 1994 informal re-bid letter and returned it to the City including its bid in the amount of \$900,000 per barge, for a total of \$1.8 million. (Hochman Aff. ¶ 52 & Ex. R.) . . . The City sent Burbank a written sales order dated July 28, 1994, accepting its bid. (Hochman Aff. ¶ 56 & Ex. T.)²¹⁶

After a detailed review of the facts, the court ruled that the vessels belonged to Burbank:

The plaintiff never received written acceptance of its bid from the City. (Kanji Dep. (Hochman Aff. Ex. C) at 109, 268; Blustein Dep. (Hochman Aff. Ex. D) at 131, 251.) Therefore, because the plaintiff's bid was never accepted in writing, no contract was ever formed and the City did not breach the terms of the bid.²¹⁷

²¹⁵ Impact Shipping, Inc. v. City of New York, 1997 WL 297039, at *1 (S.D.N.Y. 1997).

²¹⁶ *Id.* at *2-*3.

²¹⁷ *Id.* at *9.

3. VERNON C. BAIN

Since it opened in 1992, the VERNON C. BAIN has been mentioned in 102 decisions.²¹⁸ Many of these cases are prisoner grievance lawsuits.²¹⁹ In *Sankara v. City of New York*,²²⁰ for example, the court's opinion begins:

Plaintiff Ahmadou Sankara brings this action pro se pursuant to 42 U.S.C. § 1983 against Deborah Mateo (“Mateo”), a medical professional at the Vernon C. Bain Center (“VCBC”), and the City of New York (the “City,” and together with Mateo, “Defendants”), alleging that Defendants were deliberately indifferent to his medical needs.²²¹

According to Sankara, he had been forced to take medicine for two conditions (hepatitis B and tuberculosis) he did not have.²²² Finding that the complaint failed to state a cognizable cause of action, the court dismissed.²²³

In *DeBlasio v. Oliver*,²²⁴ the plaintiff similarly sued for mistreatment:

Plaintiff, proceeding *pro se*, initiated this action by filing a complaint on July 30, 2018. (Dkt. #2 (the “Complaint”).) In the Complaint, Plaintiff alleged that on July 6, 2018, while he was detained at the Vernon C. Bain Correctional Center, a jail barge that is part of the Rikers Island correctional complex, he got into an altercation with two correction officers. (*See id.* at 4). Correction Officer Oliver is alleged to have taken Plaintiff's two Holy Qur'ans, thrown them on the floor, and put Plaintiff in an upper body hold. (*Id.*). Thereafter, Plaintiff alleges, Correction Officer Santiago sprayed Plaintiff in the face with OC-4 (a type of pepper spray). (*Id.*). Plaintiff claims to have suffered mental anguish as a consequence of the altercation, and asked the Court, among other things, to suspend Oliver and Santiago. (*Id.* at 5).²²⁵

After filing the case, the plaintiff refused to engage in discovery, causing the court to dismiss his complaint with prejudice.²²⁶

²¹⁸ This figure is based on an August 15, 2020 Westlaw search I conducted using the term “Vernon w/2 Bain.”

²¹⁹ In *Inman v. City of New York*, 2011 WL 4344015 (S.D.N.Y. 2011), however, the complainant was a guard who claimed, unsuccessfully, that while working aboard the VERNON C. BAIN she had been treated unfairly because she was African-American.

²²⁰ 2018 WL 1033236 (S.D.N.Y.), *appeal dismissed*, 745 F. App'x 426 (2d Cir. 2018), *reconsideration denied*, 2019 WL 549018 (S.D.N.Y. 2019), *and reconsideration denied*, 2020 WL 1957412 (S.D.N.Y. 2020).

²²¹ *Sankara*, 2018 WL 1033236, at *1.

²²² *Id.* at *2.

²²³ *Id.* at *6 (“Plaintiff’s allegations relate to a single incident of being misdiagnosed and prescribed the wrong medication, and the law is clear that a ‘single incident of errant behavior is an insufficient basis for finding that a municipal policy caused plaintiff’s injury.’ *Sarus v. Rotundo*, 831 F.2d 397, 402-03 (2d Cir. 1987).”).

²²⁴ 2020 WL 1673790 (S.D.N.Y. 2020).

²²⁵ *Id.* at *1.

²²⁶ *Id.* at *6.

More recently, in *Trail v. New York City Department of Corrections*,²²⁷ the court explained:

Plaintiff, currently detained at the Vernon C. Bain Center in the custody of the New York City Department of Correction (DOC), brings this *pro se* action under 42 U.S.C. § 1983. Plaintiff alleges that housing and testing policies at Rikers Island for handling COVID-19 illness show deliberate indifference to a risk of serious harm to him.²²⁸

Finding the complaint to be technically deficient, the court dismissed it without prejudice.²²⁹

In some instances, the court does not give the vessel's name, but the date of the underlying events usually makes it clear that the case involves the VERNON C. BAIN.²³⁰ In *State v. Luna*,²³¹ for example, Daniel Luna was tried in a New Jersey state court *in absentia* and found guilty of various counts, including, most seriously, armed robbery.²³² In ordering a new trial,²³³ the New Jersey Supreme Court held that Luna had had a very good reason for being absent:

Jury selection proceeded without [Luna] and was completed on Tuesday, August 13, 2002. Later that day, after the jury had been sworn but before the start of testimony, the assistant prosecutor learned that Luna had been arrested in New York the previous Friday and was incarcerated on a prison barge near Riker's Island. The prosecutor reported that news in open court the following morning. Defense counsel then asked for an adjournment in order to arrange for Luna to be brought to court from New York. . . .

²²⁷ 2020 WL 2539080 (S.D.N.Y. 2020).

²²⁸ *Id.* at *1.

²²⁹ *Id.* at *2.

²³⁰ Sometimes, however, it is impossible to know which of the City's prison ships are being discussed. In *Muhammad v. City of New York Department of Corrections*, 904 F. Supp. 161 (S.D.N.Y. 1995), *appeal dismissed*, 126 F.3d 119 (2d Cir. 1997), for example, one finds the following paragraph:

DOC maintains a procedure that allows inmates to request religious accommodations. (Pl.Ex. 30; Tr. 711.) This procedure was previously utilized by a group of approximately twenty-five inmates of Chinese descent, housed on a DOC prison barge. (Tr. 707-08, 711.) The group requested that a congregate religious service be conducted by a Buddhist monk. Imam Luqman, with the assistance of the DOC Jade Society, an Asian-American fraternal organization of civilian and uniformed staff, located a Buddhist monk to provide a Buddhist service on the prison barge for the group. (Tr. 707-08.)

Id. at 175 (footnote omitted). Because the date of the service is not provided, any one of the City's three prison barges could have been the host.

²³¹ 936 A.2d 957 (N.J. 2007).

²³² *Id.* at 960.

²³³ *Id.* at 965.

The trial court denied the motion for an adjournment [and w]ithout developing a full record, . . . conducted the trial in absentia. After a three-day trial, the jury convicted Luna on all six counts. . . .

[D]efense counsel made a timely motion for an adjournment after jury selection, which was denied. Without a hearing, the trial court lacked a basis to . . . proceed with trial. In light of the complete circumstances presented, the failure to allow defense counsel the opportunity to explore the information just received—that Luna was in jail in another state—rendered the subsequent proceedings defective. Therefore, . . . a new trial is warranted.²³⁴

In *Basagoitia v. Smith*,²³⁵ three men—Juan Basagoitia, Daniel Machuca, and David Robles—conspired in 2003 to commit a double murder.²³⁶ After their plan went awry, they were arrested and eventually ended up together on a “prison boat.”²³⁷ While on the vessel, Basagoitia and Robles got into an angry conversation about the attempted killings, which Machuca later testified about in court, thereby helping to convict Basagoitia.²³⁸

In *Brown v. City of New York*,²³⁹ an inmate sued, claiming that while he was leaving to go to court in 2005, a corrections officer prematurely shut a door, injuring his arm.²⁴⁰ In denying the City’s motion for summary judgment, the court wrote:

On the date of the incident, plaintiff was in custody of the NYC Department of Corrections (“NYDOCS”) in the process of leaving the prison barge at Riker’s Island at 4:00 AM to go to court. Inmates had to walk single-file through a sliding metal gate operated by a corrections officer; its door slides to the right. At deposition, Mr. Brown testified that he was the last person in line; his left hand was handcuffed to the inmate in front of him. Plaintiff alleges that as he passed through the gate, the female corrections officer “must have pushed the button too quick,” causing his free right hand to get caught in the door. When the corrections officer failed to respond, the inmates pulled back the gate. . . .

The City’s reliance on the doctrine of *res ipsa loquitur* fails: Having assumed physical custody of plaintiff, the City owes a duty of care to safeguard a handcuffed plaintiff. (*See Sanchez v State of NY*, 99 NY2d 247 [2002].) The Court finds that the movant has failed to meet its burden of proof. A jury must determine whether one hand was free or both hands were cuffed, whether the plaintiff’s alleged swinging arm contributed to his injury and whether the corrections officer closed the door gate too abruptly. The defendant’s motion to dismiss is accordingly denied.²⁴¹

²³⁴ *Id.* at 959-60, 964.

²³⁵ 2012 WL 4511358 (E.D.N.Y. 2012).

²³⁶ *Id.* at *1.

²³⁷ *Id.* at *6.

²³⁸ *Id.* at *2, *6.

²³⁹ 2016 WL 1532365 (N.Y. Sup. Ct. 2016).

²⁴⁰ *Id.* at *1.

²⁴¹ *Id.* at *1-*2.

Lastly, there are many cases in which the VERNON C. BAIN is merely a bystander, such as *Lurch v. NYSDOCCS*²⁴²: “Plaintiff, currently incarcerated in the Vernon C. Bain Center, brings this *pro se* action under 42 U.S.C. § 1983, alleging that Defendants violated his rights by arresting him.”²⁴³

V. CONCLUSION

Prison ships have had a long tenure in the United States, dating back to the American Revolutionary War. It therefore is difficult to understand why so little has been written about them. Additionally, any serious study of America’s penal system is incomplete without them.

The VERNON C. BAIN is particularly deserving of attention, given the fact that it is the only vessel ever built to be a prison ship. Moreover, by the time it closes in 2026, it will have held upwards of 500,000 prisoners,²⁴⁴ making it one of the busiest penal institutions in history.

²⁴² 2020 WL 3173020 (S.D.N.Y. 2020).

²⁴³ *Id.* at *1. *See also* *Zhang v. City of New York*, 2019 WL 4513985 (S.D.N.Y. 2019), in which the court denied as moot a motion to make the VERNON C. BAIN more than a bystander:

Plaintiffs seek to add the Vernon C. Bain Center (“VCBC”)—the Rikers Island facility where Zhang was detained—as a defendant, but note that if Defendants will concede that VCBC is part of Rikers Island Facilities, they will not seek to add VCBC as an additional defendant. (Mem. at 10; ECF No. 178 at 5.) At oral argument, Defendants agreed that VCBC was part of the Rikers Island Facilities. (Oral Arg. Tr. at 3.) Accordingly, Plaintiffs motion to add VCBC as a defendant is denied as moot.

Id. at *6.

²⁴⁴ The City does not publish records showing how long inmates spend in specific correctional facilities. It does, however, release borough-wide figures. *See* [New York City] Mayor’s Office of Criminal Justice, *Biannual Report on Progress Towards Closing Jails on Rikers Island – Local Law 192* (Mar. 5, 2020), <https://criminaljustice.cityofnewyork.us/wp-content/uploads/2020/03/LL192-Report-Final.pdf>. This report indicates that Bronx inmates are held for a median of 14 days. *Id.* at 2 (under “Chart 4”).

Thus, with a capacity of 800 inmates; each inmate being replaced every two weeks; and the ship being in service for 34 years (1992-2026), the math works out to $800 \times 26 \times 34 = 707,200$. Of course, the vessel is not always at 100% capacity. According to the Mayor’s report, in 2019 the average daily inmate population of the VERNON C. BAIN was 620. *Id.* at 1 (under “Chart 1”). This still yields a 34-year total of 548,080.

The quick turnover reflects the fact that the facility primarily is used to hold pre-trial suspects who are released once they make bail. For a further discussion, *see, e.g.*, Beth Fertig, *Paying Bail? You May Get Stuck at the Boat*, WNYC NEWS (Mar. 27, 2018), <https://www.wnyc.org/story/paying-bail-you-may-get-stuck-at-boat/>.

