

***Criminalization on the High Seas:
Seafarers Caught in the Middle -- Great Risks and Indignities***

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Introduction:

We in Maritime Ministry have been immensely gratified by the work of the International Maritime Organization in focusing on the issue of the environment and shipping industry's opportunity to make a significant change for the better. Today we in NAMMA are honored to be a part of this 2007 Observance of World Maritime Day with the US Maritime Administration here in New York.

Reflecting the IMO's theme of the *Environment*, the content of this forum has been dealing with the complex issues of protecting our environment. In many US ports we have seen a significant enforcement of international pollution standards by the local Coast Guard Sectors. We applaud these efforts; but I would like to point out some major and, perhaps, unintended consequences which need to be explored today and in the future. Perhaps my presentation will serve as a reality check regarding the human costs of our attempts to clean up the environment.

Current Challenges:

In our experience in Philadelphia over the last several years, we have had four crews detained as material witnesses because of their ships' serious pollution violations. We found out about these violations through crew reports complaining of mistreatment or neglect. Subsequent investigations revealed major pollution violations. These seafarers made these complaints most reluctantly to protect themselves from greater harm or neglect.

Seafarers are literally caught in the middle of these pollution problems. Because many ships, new and old, do not have the capability to deal with oily bilge water, the only course of action possible is to dump this toxic mix into the ocean by necessity and by direct command from a ranking officer. Seafarers would rather not do this but they have no choice. This problem is not isolated to the so called "substandard" ships, as a number of well respected ship operators have also been caught dumping oily water over board.

Once the initial USCG inspection took place, upwards of 10 crew members have been detained in Philadelphia as material witnesses for 8-10 months. This is a period of great uncertainty for the seafarers. They do not understand the US Federal Court system and how the process works. Prosecution of these cases is a complicated legal process, as we all well know. As part of the agreement to release the ship, the owners are required to provide legal counsel for the material witnesses. However, there is an inherent contradiction in this relationship. The material

witnesses simply do not trust their legal counsel because they are perceived to be the ship owner's agent.

These detained crew members are put up in local motels for the duration of the investigation, all at the cost of the offending ship owner. However, they are very helpless and vulnerable in these situations. They suffer the simple indignities of not having their family allotment sent home on time or getting their local allotment or daily food allowance at the specified time each month. There is no standard per diem. They are often located in remote motels where they can not get food of their native country. Think about eating a foreign diet for months on end. Would we put up with that? Locally, we at SCI Philadelphia provide daily services to these crews to keep them connected with their families and deal with these everyday issues. But depression and addictive behaviors have surfaced among the crews. Recently, a defendant in one case tried to commit suicide.

These seafarers may never ever work again in the maritime industry because they cooperated with US authorities in the pollution cases. They face pressure from manning agents. Blackballing exists. This is the hard reality these seafarers face because they had the courage to reveal criminal acts of pollution on the high seas. Their home countries ultimately need to enforce the protections of this new Maritime Labour Convention.

Finally, I would like to address what some in the maritime industry say is the real reason they expose these violations: the seafarers want the "whistle blower" awards. That has not been our experience in Philadelphia during the investigation phase. I believe the Justice Department can back that up with real statistics. These seafarers take an incredible risk to reveal pollution problems aboard ship and yet we do not honor their risks in protecting our environment. They simply want to get on with their lives and go back out to sea. Some have received substantial awards but only after they have spent 18 or more months in the US pursuing their claim of the award. This basically compensates them for the fact that they will never sail again.

As we have had to face the implications of serving these detained crews, I reached out to the Department of Justice and the United States Coast Guard, locally and at Headquarters. We began some good discussions about possible ways to address these issues. Today, I would like to repeat some additional recommendations:

- 1) Decriminalize these investigations. It is quite clear that in most cases seafarers, from the captain down to the deck hand, have very little control over what to do with oily bilge water when the mechanical systems do not work. Seafarers are the wrong target and should not be penalized for the negligence of others.
- 2) The Department of Justice and USCG need to streamline the investigation process so that seafarers do not have to sit around for 10 or more months waiting to testify. Cannot their testimony be videotaped and let them go home? Material witnesses living in the US have the "luxury" of living at home with their families and even working at their jobs. Is it too much to ask for these seafarers to have a normal life?

- 3) For seafarers who must stay as material witnesses, there needs to be a more comprehensive protocol between the USCG and the ship owner to assure humane treatment of the seafarers during their stay. Items for discussion would include: fairer per diem rates, standardized and verified pay and allotment schedules, regular access to the local seafarer center, etc.
- 4) DOJ & USCG need to reach out early on in the investigation with the local maritime ministry center so that the chaplain can look after the crew and be updated about the progress of the investigation. The chaplain is probably the only person who is trusted by the seafarers in these cases to provide accurate information and look after their needs.
- 5) Provide a truly independent legal counsel for the seafarers, not one paid by the owner. They need someone who they can speak freely to and receive answers about the legal process they are involved in. This is a very scary process for them and they often feel like the defendants in the first few months.
- 6) The Justice Department should institute a tracking system of these seafarers to see if they indeed get blackballed or they return to sea. If we as a country want their cooperation in these investigations, perhaps we need to look after their long term needs and interests as professional mariners.

Educational Initiatives:

Since these violations keep happening and the DOJ continues to zealously prosecute them, we at the Seamen's Church in Philadelphia and South Jersey and other centers around North America have taken on the task of educating seafarers to the need to preserve the environment and avoid prosecution by using best practices aboard ship. Chaplains give out on routine basis important information regarding oil water separator issues and pollution prevention.

New Challenges:

With the implementation of MARPOL Annex 6 regarding smoke stack emissions and the DOJ's seeming eager desire to prosecute these violations, we see several major issues arise:

1. Who will pay the price of compliance? Will DOJ treat seafarers in the same way as they have done over the oily water separator violations?
2. As the US further criminalizes seafarers for these violations, it will have major impact on retention and recruitment the world over for seafarers. There is a major shortage today and with the expected surge in growth of international trade over the next decade, where will the seafarers come from? Who wants to go to sea and get arrested?
3. There has been and will be continuing retaliation against seafarers who report infractions. Is our enforcement process for compliance purposes or political opportunism? Who pays the real human price? Seafarers – disruption of their lives and threat to their professional calling.
4. The North American Maritime Ministry Association stands ready to support any and all education efforts to assist seafarers in the assuring the quality of our ocean and air environment. We are the connection to millions of seafarers calling in the ports of North American and the Caribbean. NAMMA is proud to be a founding member of NAMEPA.