The Voice for Mariners

GCMA NEWS

Number 49 June/July 2007

INSIDE THIS ISSUE

EVERYBODY WAKE UP!!!

This Is Your Last Wake Up Call!

The disgraceful conduct revealed by GCMA Attorney J. Mac Morgan, Esq. and put on display in a front-page article in the Baltimore Sun on Sunday June 24, 2007 is only the latest of a number of events that our Association drew attention to and commented upon over the years. What can be done about these things. First of all, it is time for mariners, employers and Congress to wake up.

What "disgraceful conduct"?

The Coast Guard unfairly loaded the ñscales of justiceò to tilt in their favor up to 97 percent of the time ï and got caught doing it.

[GCMA Comment: Where, other than in some Third World totalitarian state, would a 97% conviction rate even be conceivable?]

Articles dealing with this matter appear in this as well as our May 2007 newsletter. The complete story to date, including the article ñJustice Capsized?ò that appeared in the Sun also appears in **GCMA Report #R-427-J**, Investigations: Report to Congress ï Coast Guard Abuses of the Administrative Law System as a part of our permanent record. Oh, yes, Congress knew all about it the morning after the story broke. Unfortunately, only a few of the nationôs daily newspapers carried anything more than Associated Pressô abbreviated article describing this feature story. Time-challenged Americans love their news in tiny capsules.

Equally disgraceful was the Coast Guardôs attempt to cover up this scandal. A Headquarters public relations ñPress Releaseò by Admiral Mary E. Landry contained significant factual errors. In reply, GCMA posed the same questions to the Admiral that wfe asked our readers in our last newsletter, namely:

- What action will the Commandant take, especially since he is a party to three lawsuits?
- How soon will he take action? (He has known all about it for well over two months!)
- How many cases that were previously decided will have to be re-opened?
- How many marinersô careers were interrupted or destroyed when they were denied ñdue process.ò
- Can the Coast Guard remedy the situation alone, and if not, who will clean up the mess and when?
- How deeply are others in Coast Guard ñmanagementò involved in secret meetings and ex parte communications that will be exposed by these and subsequent lawsuits?

Perhaps, the overarching question should be this: Should Congress still allow the Coast Guard to superintend the U.S. Merchant Marine or should they assign this function to another agency? We invite Congress to seek out the whole story and no longer simply accept the Coast Guardôs word as the most convenient means to govern its actions.

Congress – WAKE UP!

It appears that either the Coast Guard does not adequately inform Congress about the true state of our ñlower-levelò mariners (which we believe is the case) or that Congress does not pay sufficient to material that they receive from other sources. Of course, there are many ñother sourcesò including intense lobbying efforts conducted in

Washington by organizations like AWO with the money and political acumen to do so. However, that rarely includes GCMA because nobody provided us with sufficient funds to do so.

Nevertheless, over the years, GCMA patiently prepared reports we believe are truthful and factual. We forwarded these GCMA Reports to individual Members of the principal Congressional oversight committees. In a letter initially addressed to about 50 individual Representatives and Senators that accompanied **GCMA Report #R-427-J** on July 5th , we suggested that Members and their staff actually read the reports we previously mailed them. This list included the following reports accompanied by some pointed comments:

- R-279. Rev 6, Sept. 14, 2006. Report to Congress on the Need to Review and Set Safe Manning Standards for Offshore Supply and Towing Vessels. *[**Comment:** Under manning has been a problem our mariners must endure but are never invited to discuss! The Coast Guard officers who make manning decisions never "ride the boats" to assess the conditions they establish!]*

- R-341. Rev.3. Jun. 30, 2006, Smoking and Merchant Mariner Health & Welfare Issues: A Petition to Congress. *[**Comment:** Most mariners seek a healthy place to work. Why has the Coast Guard controlled "smoking" on their cutters and shore stations yet ignored the health of our mariners?]*

- R-350. Feb. 14, 2003. Mariners Seek Help From Congress on Safety-Related Problems. *[**Comment:** Our mariners must approach Congress when Coast Guard officials ignore us.]*

- R-354, Rev.1. Nov. 19, 2006. A Direct Appeal to Congress on Lifesaving Issues Affecting Lower-Level Mariners. *[**Comment:** In 1986, the NTSB asked the Coast Guard to eliminate survival craft that failed to keep people from entering the water. We ask that Congress not postpone this requirement to 2013 to mollify manufacturers. Our mariners believe basic lifesaving issues need immediate Congressional oversight to overcome the Coast Guard's inertia.]*

- R-370-A (Series), Rev. 2. May 19, 2007. Report to Congress: Fifth Anniversary of the Webbers Falls I-40 Fatal Bridge Accident: Unresolved Issues Revisited. [***Comment:** The Coast Guard and NTSB together sidetracked and skillfully avoided "fatigue" and "hours-of-work" issues.*]

- R-395, Rev.2. Nov. 22, 2006. Safe Potable Water and Food Service for Commercial Vessels of Less than 1600 Gross Register Tons: An Appeal To Congress. [***Comment:** While our mariners appreciate the Congressional action taken in 2004, but ask the Coast Guard why they have done nothing with this issue in the last 3 years.*]

- R-401, Rev. 1,. Mar. 8, 2005. Crew Endurance and the Towing Vessel Engineer ï A Direct Appeal to Congress. [Comment: The Coast Guardôs record on training our lower-level engineers has been absolutely deplorable. We think they must have their head in the sand or worse!]

- R-411. Rev. 4, May 30, 2006. Congressional Oversight is Necessary to Prevent Continuing Overhead Clearance Accidents. [***Comment:** The Coast Guard has been less effective than the Keystone Cops in "connecting the dots" and initiating rulemaking on these preventable accidents.*]

- R-413. Rev. 1, Feb. 11, 2006. A Direct Appeal to Congress to Reform the Two-Watch System. [***Comment:** This was the main thrust of our Legislative Agenda in GCMA Report #R-332, Rev. 3 but was totally overlooked in the draft 2008 Authorization Bill.*]

- R-417. Rev. 1, Feb. 25, 2007. Report to the 110th Congress: Request for Congressional Oversight on the Towing Safety Advisory Committee.(TSAC). [***Comment:** At present, the towing industry – under the guise of a TSAC working group – is writing its own towing vessel inspection regulations using a Coast Guard draft document without presenting that document as a Notice of Proposed Rulemaking in the Federal Register. Three years have passed and there still is no NPRM.*]

- R-428. Rev.1. Oct. 23, 2006. Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel. [***Comment:** Entry-level refers to new people entering the system. There are few "regulations" and only limited guidance available, and even that is largely overlooked. It is especially important for reasons of safety to train entry level personnel.*]

- R-428-D. Feb. 13, 2007. Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services. [***Comment**: This report tells Congressional oversight committees exactly how the Coast Guard treated our merchant mariners. We pulled no punches and never heard a peep from the Coast Guard about it. Believe it!]*

- R-429, Aug. 29, 2006. GCMA Report to Congress: How Coast Guard Investigations Adversely Affect Lower Level Mariners. [***Comment**: Homeland Security is scheduled to provide a comprehensive and authoritative report on investigations to Congress this summer.*]

- R-429-G. Rev. 2. Feb. 24, 2007. (Series). Report To Congress: Sharpening Accident Investigation Tools By Establishing Logbook Standards for Lower-Level Mariners. [***Comment**: We thank Congress for including this in the Authorization Bill. However, we ask whether Congress will be able to count on the Coast Guard to enforce it if it becomes law? They cannot even*

successfully distribute the logbooks that Congress already authorizes and requires the public to use.]

Mariners – WAKE UP!

If you are tired of being discriminated against like a third-class citizen, both by your employer and by the Coast Guard, it is high time to do something about it other than to ñbitch about it.ò Because, guess what, nobody is listening. From the war in Iraq and Afghanistan to immigration, to Paris Hiltonôs time in jail, the media focuses the publicôs attention on something other than events in our small world. After all, we are only 200,000 out of 300,000,000 in this country!

The first ñactionò that most mariners should take is exactly the same action we suggested that Congress take ï **READ**! Find out the whole story by reading about it from the same reading list we suggested to Congress. Then, make your voice heard by contacting members of Congress. CGMA Report #R-423, available on our website has a list of contact addresses. Nothing can take the place of an **informed** mariner **accurately** informing a member of Congress

Employers – WAKE UP!

The current ñcrew shortageò is real. It was real in 1998 as pointed out by Richard Plant after ñPilots Agreeò although some in the towing industry still tried to deny it.

After the Coast Guard thoughtlessly mandated significant new crew training in the mid-1990ôs without providing any means to pay for it, industry was slow to recognize that most ñlower-levelò mariners only could afford to pay for their own credentials when the cost was only $500 to $1,000 a pop. Suddenly, as pointed out in our newsletters, the cost jumped astronomically to $20,000 or more. Now only wealthy corporations and those whose political connections allow them to tap into state coffers can afford to train their own mariners. Unfortunately, for some corporations, ñcorporate welfareò is a way of life. We want to point out that the Coast Guard never requested a dime for training merchant mariners.

It is also time to wake up to the way many employers treat their mariners, especially those they drive beyond endurance or injure in the line of duty. GCMA Report #R-333, Rev.3, Donôt Count On Corporate Compassion or Coast Guard Concern ï True Stories of Our Lost, Injured, and Cheated Mariners documents a number of cases as do the reports in the entire #R-370 series of GCMA reports on work-hour violations, some of which we also sent to Congress. The Coast Guardôs role in investigating many of the resulting accidents has been dismal at best. Marinersô attorneys have had to work around Coast Guard bungling and incompetence in many of these cases.

It is time for industry trade associations like OMSA and AWO to wake up to the damage that ñunion-bustingò activities cause their member companies in the long run. Your plan to isolate individual mariners and hold them captive to their jobs contributed to the present situation and ñlocked downò the entire Gulf Coast one full year before 9/11. So has the ñblack listingò of countless mariners that is still permitted under the Fair Credit Reporting Act.

GCMA faced a wholesale barrage of bald-faced lies and untruths manipulated by the President of the Offshore Marine Service Association for four years between 1999 and mid-2003. Although we are not a labor union, we maintain that the freedom to join a labor union is a right that was cavalierly denied to most ñlower-levelò mariners by the towing and offshore oil segments of the maritime industry. Industry offers nothing comparable in return and has conspired with the Coast Guard to deny ñlower-levelò mariners a voice in the industry although by now even management should be able to understand that **without our mariners, nothing moves!**

Coast Guard Officers – WAKE UP!

We are the mariners you ignored, marginalized, and trampled over for years as you built your military careers. We are hard-working taxpayers of this country that paid your way through the Coast Guard Academy and through other training and advanced college programs that most of our mariners never had an opportunity to enjoy. Although taxpayers including our working mariners financed your education and training in many ways, we did not intend for you to turn our tax dollars against us and turn you into a pampered, exclusive, and arrogant group of elitists.

We especially resent it when we needed you to stand up for our mariners on workplace safety issues, health issues like safe drinking water, hearing protection, asbestos mitigation, smoking, hours-of-work, lifesaving equipment, and countless other issues and discovered that you were not there for us. You consistently favored ñmanagementò over our ñmarinersò because thatôs where the money, influence, and retirement jobs resided. Except for those Coastguardsmen who risk their lives on our behalf, we have no confidence in your ability to lead the merchant marine or even to be trusted!

Many of our mariners possess the practical experience you never gained. How often have Coast Guard officers ñridden our boatsò in the past 30 years to see what life was really like afloat? And why not; how can you hope to regulate us properly when you do not even know who we are! While you are seldom willing to learn from our experienced mariners, you are quick to denigrate and look down your noses at us. You meddled with us long enough, and it is becoming quite clear that you can be replaced in those functions where you performed so poorly for so long. If you think this assessment is harsh, just read GCMA Report #R-428-D, Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services.

Nevertheless, our country needs your service and expertise as a military organization in an active role in homeland security. However, we are civilian mariners and we have had a belly full of your mindless military domination. We identify ourselves as transportation workers. We ask only that you get out of our lives!

REP. CUMMINGS QUESTIONS FAIRNESS – RECORDS INDICATE BIAS IN COAST GUARD'S COURTS
By Robert Little, Reporter, Baltimore Sun

[**Background**: In GCMA Newsletter #48, May 2007, our lead article was titled Should the Coast Guard Continue to Regulate Merchant Mariners?
*Since mid-April, we knew of the impending scandal that tainted the Coast Guard's Administrative Law system and verified our suspicions held for over 10 years as published in GCMA Report #R-396 as early as 1996. We reviewed three separate lawsuits filed against the Coast Guard's Chief ALJ and others on the Coast Guard's payroll. However, Robert Little, an Investigative Journalist on the Baltimore Sun did his own extensive legal research and published a definitive article that appeared on the front page of the Baltimore Sun and was put on the Associated Press newswire. GCMA Webmaster, Captain J. David Miller immediately linked our GCMA website to this article within 24 hours. We also added Robert Little's ground-breaking article to GCMA Research Report #R-429-J, Investigations: Rot at the Bottom, Corruption at the Top, which now is part of our "**Investigations**" series of reports. Therefore, we did not print Bob Little's article in this Newsletter. However, the article that follows appeared in the Baltimore Sun on June 25, 2007 and summarized the larger article. Emphasis by underlining is ours.]*

June 25, 2007. The chairman of the House subcommittee responsible for oversight of the U.S. Coast Guard said yesterday that he will convene a hearing to explore allegations that the agency's administrative law system is biased and that its judges are pressured to rule in the Coast Guard's favor.

Rep. Elijah E. Cummings, a Baltimore Democrat, said he also plans to ask Commandant Thad W. Allen to consider immediate action to protect the rights of defendants whose cases are now before the Coast Guard's courts.

"This needs to be looked at quickly," said Cummings, chairman of the Subcommittee on Coast Guard and Maritime Transportation. "Even the appearance of injustice or impropriety cannot be tolerated."

Cummings was responding to an article published yesterday in The Sun ï based on evidence in federal court records, computer files, internal memos and the sworn testimony of a former agency judge -- suggesting that the Coast Guard's system is stacked against mariners. The Baltimore-based administrative court system handles hundreds of cases each year brought by the agency against civilian mariners accused of negligence, misconduct or other infractions, and its judges have the authority to suspend or revoke the credentials that mariners must have in order to work.

Former Coast Guard Administrative Law Judge Jeffie J. Massey, who left the agency in March and 10 days later gave a sworn statement about her experience, said she was told by Chief Judge Joseph N. Ingolia that she was not a judge but rather a tool to enable the Coast Guard to gain the rulings it wants.

"I was specifically told [by Ingolia] that I should always rule for the Coast Guard," she testified.

According to Massey, court records and internal memorandums obtained by The Sun, Ingolia told other judges how to rule in cases and dictated policy through private memos that were never shared with defendants or their lawyers, a practice that could violate federal laws requiring that agency judicial procedures be published and subject to challenge. And staff attorneys for the chief judge and the commandant's office discussed cases with Coast Guard investigators, possibly violating mariners' right to an impartial hearing.

Out of more than 6,300 charges brought in the past eight years, mariners prevailed in just 14, according to agency records. When dismissals are included, records show that the Coast Guard wins or reaches a settlement in more than 97 percent of its cases.

"I practiced law for 20 years, and I can't imagine some of this stuff happening," said Cummings, who had a general practice in Baltimore before being elected to Congress in 1996. "You don't have investigators and judges' staff talking to each other, not if what you're looking for is fairness. If these things that are being said are accurate, then anyone in the mariners' position would be hard pressed to believe that they're going to have their case heard in a fair and impartial manner. And we need to address that."

Coast Guard officials, who have declined to discuss the issue with The Sun, citing pending lawsuits filed by mariners against Ingolia and others, released a statement yesterday saying that Allen is "committed to ensuring that proceedings involving the suspension and revocation of merchant mariner documents ... are fair and provide due process to mariners."

Cummings said he hopes to have Massey testify before members of Congress, and Massey said yesterday that she would if asked.

"I am willing to tell the truth about what happened at the Coast Guard with anyone who will listen," said Massey, reached at her home in Texas. "What they are doing is wrong, and people need to know about it."

Cummings said he and Rep. James L. Oberstar, a Minnesota Democrat, will decide in the next few days whether to convene a hearing before the Coast Guard subcommittee or the full House Transportation Committee, which Oberstar chairs. He said he hopes to hold the hearing soon after Congress returns from its Fourth of July recess.

In her statement, Massey said a former colleague expressed fear for his job if he didn't rule in favor of the Coast Guard, even though a mariner had offered what the judge thought was compelling evidence of his innocence. And court records allege that an attorney who helps write appellate decisions for the commandant met with Coast Guard investigators, who also serve as prosecutors, and discussed issues in pending cases. If true, it would violate federal laws guaranteeing separation of a court's judicial and appellate branches.

Two attorneys in New Orleans have filed complaints with the Justice Department alleging that the meetings and other evidence from Massey's statements amount to obstruction of justice. Officials at the Justice Department have declined to comment.

Richard A. Block, secretary of a Louisiana organization formed to promote the rights of mariners who work in the Gulf of Mexico, called the findings "an absolute disgrace that has sabotaged the United States Merchant Marine." In a letter yesterday to The Sun, he questioned how any mariner who appeared before Coast Guard judges could be confident of a fair hearing and called on the agency to reopen cases to ensure that outcomes were just.

"How many merchant mariners' careers were interrupted or destroyed when they were denied due process?" he asked.

THE ALJ SCANDAL EXPANDS
THE MURRAY ROGERS CASE
By Capt. Richard A. Block

I met Captain Murray Rogers three years ago a few days after a boarding team attached to the Coast Guard Marine Safety Office in Morgan City, LA, boarded his towboat while he was serving as the only licensed officer on board the towboat M/V BAILEY ANN ï a job he obtained through a hiring agency on a towboat he signed on as Pilot ñsight unseenò only a few days earlier.

He came to GCMA seeking advice on the problems he encountered in dealing with the Coast Guard Marine Safety Office in Morgan City at the end of June or early July 2004. The Coast Guard apparently boarded his vessel in mid-stream in the Lower Atchafalaya River during high water. In our conversation, he stated that he was ñnot guiltyò of the charges the Coast Guard was pursuing although he agreed with the boarding officers that the vessel was ñatrocious, both in equipment and habitability, though not beyond helpò when boarded on June 22nd.

[GCMA Comment: The Coast Guard should know by now that there is very little an employee, especially a new employee, can do to remedy deplorable conditions on a vessel because he has no control over company purse strings.]

At that time, I understood that the Coast Guard was considering filing charges on him and had put forward in an informal verbal ñagreementò that would require him to reveal the internal affairs of his new employer and in return accept a ñLetter of Warningò in lieu of being summoned to a hearing before an Administrative Law Judge. However, he had nothing in writing.

At the time, I advised him to accept the ñLetter of Warningò because I knew that the Coast Guard Investigating Officers generally sought a much stiffer penalty against any mariner who showed any signs of ingratitude by not accepting their ñgenerous offer.ò Of course such a generous offer of a ñsettlement agreementò is motivated by much less work and effort in building a case on the part of the Coast Guardôs Investigating Officers and saves money for the government on travel and other expenses to bring in an Administrative Law Judge to handle the case.

Captain Rogers, however, was adamant that he was innocent. In talking with him, it appeared obvious that his employer (who had a license) had left the towboat with its tow eastbound without enough licensed people and with only a promise of either returning or of finding another Master to work with Murray before the tow reached Morgan City. Murrayôs choice was either to shut the boat down or continue the trip. However, Murray was only the Pilot and never signed on or was paid as Master of the vessel. This was the problem he faced at the moment the Coast Guard boarded the vessel. However, throughout our discussion, Murray showed considerable loyalty to his new employer and consideration for the bind that he would leave him in if he left the vessel. However, this certainly was much more consideration than his employer would show him in return. I explained to him that I thought that loyalty to his employer might have been misplaced.

At the time, I also mentioned to him that the Coast Guard should have placed much greater effort into addressing the shortcomings of his employer in adequately crewing and properly maintaining his vessel rather than going after him because he was a new employee and was ñput out on a limbò by his new employer.

To remedy the situation, since he did not have a lawyer or license insurance, I suggested that he take the easiest way out of a bad situation. Throughout, however, he maintained his innocence and resisted allowing the threatened ñLetter of Warningò to be a part of his record forever.

Mariners tempted to accept a ñLetter of Warningò need to know that the letter can stay in your files forever and that you must revisit it with a written explanation every time you apply for a license renewal. In addition, the National Maritime Center has denied ñDesignated Examinerò credentials to mariners whose explanations for Letters of Warning do not express appropriate remorse of the willingness to grovel for the desired endorsement. Captain Murray Rogers expressed his determination not to succumb to the Coast Guardôs threats and intimidation ï and he has not done so at very great personal expense!

Climbing Mount Everest

In light of his determination and in what I believed was in Murrayôs best interest, I urged him to make an appointment to speak with the then Commanding Officer of the Marine Safety Office in Morgan City, Captain S.P. Garrity. In doing so, based upon my previous meetings with Captain Garrity, I believed that Captain Garrity was the type of person who would give Murray a fair hearing. Murray followed my advice and also attempted to gain access to the Commanding Officer and reach an amicable settlement with him. However, he was rebuffed in all attempts to do so by junior officers and civilians in the Marine Safety Office.

I tried a second time after Captain Garrity was reassigned to another unit and relieved by Captain Terry Gilbreath as the new Commanding Officer also with no results. Apparently, the cognizant officials at the Marine Safety Office in Morgan City preferred to let his case grind through the Administrative Law Bureaucracy rather than simply grant him access to the unitôs Commanding Officer as he requested. The Commanding Officer must have acquiesced in this behavior rather than to take the time to sit down with Murray and discuss his issues with the Coast Guard that went much deeper than this boarding indicated. In hindsight, Captain Gilbreath, the new Commanding Officer, should have put forth the effort because this case has now escalated into a civil lawsuit that will haunt him and others in MSO Morgan City throughout the remainder of their careers in the Coast Guard. Murray Rogersô letters recount his side of the story in full detail in his own words.

Rogers' Previous Service as a Coast Guard Enlisted Man

In my first conversation and in a number of subsequent conversations, I learned that Murray Rogers recently served as an enlisted man in the U.S. Coast Guard along the Gulf Coast. While doing so, he related that he was seriously injured in the line of duty while working on a Coast Guard buoy tender ï which, in itself, can be a very hazardous occupation.

I eventually learned that he had good reason to be dissatisfied with the medical attention he received for his injury in the service as well as the subsequent treatment he received after the end of his enlistment from the Coast Guard officers who were his superiors.

After leaving the service, Murray was, for a while, a civilian employee at the Regional Examination Center in New Orleans East and gained an insight into Coast Guard licensing practices before he finally left the Coast Guard.

Murray related to me how he fought bureaucratic red tape related to his service-related injuries for approximately a year

after leaving the service, but was finally awarded 30% disability by the government for those injuries.

Rogers Files Suit Against the Coast Guard

Captain Murray Rogers filed a multi-million dollar civil lawsuit against the Commandant, Vice Commandant, and Chief Administrative Law Judge of the Coast Guard on May 16, 2007 in the U.S. District Court for the Eastern District of Louisiana. Also named in the civil lawsuit are five other civilian employees of the Coast Guard including one official at MSO Morgan City. His lawsuit (#07-2896) was linked to two other lawsuits previously filed in the same court (#07-1497 and #07-1536) as previously reported in GCMA Newsletter #48 because these actions are substantially the same and closely related. The implications of these lawsuits are national in scope and go to the heart of how the Coast Guard mismanaged merchant marine personnel for many years. In fact, it may well be their undoing!

The ROGERS lawsuit reveals (in item #18) the Coast Guard first asked for a ***3-month*** suspension of his license. On July 27, 2004, (item #22) the Coast Guard filed an ñamended complaintò with the same factual allegations but now asked for three months outright suspension, three months probationary suspension, and a ***12 month probationary period***. On October 7, 2004, the Coast Guard filed a third ñamended complaintò with the same factual allegations but asked for three months outright suspension, three months probationary suspension, and a 24 month probationary period. This was an outrageous attempt to harass and intimidate the mariner.

Why the Coast Guard Harassed Rogers

Why did the Coast Guard continuously ratchet up their attacks on Captain Murray Rogers throughout the summer and fall of 2004? The answer appears to be revealed in the lawsuit in items #19 & 20 as follows: ñThe USCGôs Complaint against Mr. Rogers and his license was never formally filed in the ALJ Docket Center in Baltimore, Maryland. Mr. Rogers, unaware that the Complaint had not been filed, filed an answer to the Complaint on July 9, 2004.ò It was this ñanswerò that probably enraged Coast Guard officials and caused them to unleash their full powers of harassment against him.

In a nine-page letter dated July 23, 2004 and addressed to Captain Garrity, Captain of the Port, Morgan City, Murray stated in part that, ñI have ***six times*** tried to gain your audience for a meeting on these matters concerning the (M/V) BAILEY ANN to no avail.ò Apparently, it was this letter as well as a letter written to the Eighth District Commander, Admiral Robert Duncan on or about Oct.29, 2004, that threw the local Coast Guard officials into an absolute tizzy. These letters spoke of the way Murray was treated both as an enlisted man in the service and later as a licensed mariner. Murray mailed copies of his letter to Admiral Duncan everywhere including to six members of the Louisiana Congressional delegation and to three other senior Coast Guard officials. It is quite likely that the letter stirred up anger, embarrassment, and resentment at all levels of the Coast Guard. As our Association pointed out to Congress on a number of occasions, Coast Guard officers at all levels ignored and marginalized ***all*** ñlower-levelò mariners for years because they believe our mariners count for nothing

On the other hand, Coast Guard officers intuitively recognize that business executives have the power and the money that potentially could harm their careers if they are not sufficiently pliable and cooperative.

Neither of the two Commanding Officers of MSO Morgan City or Admiral Duncan had the courtesy to send a meaningful reply to Murray Rogers while they allowed their subordinates to run interference for them. Consequently, it probably would have been easier for Rogers to obtain an audience with the Pope or the Queen of England than with the Commanding Officer of MSO Morgan City!

However, the Coast Guardôs efforts to ratchet up his punishment clearly retaliated for his increasingly public complaints but did not fool anyone, least of all Judge Jeffie J. Massey.

It is clear that no level of command including the Commandant or the Eighth District Commander was willing to take Murray Rogersô complaints seriously either as a former Coast Guardsman or in his new role as a licensed Merchant Marine Officer. His complaints against the Coast Guard itself should make recruiting officers run for cover ï as would GCMA Reports #R-394 and R-395 if more widely read.

Our Association also tried to obtain audiences for him with the Commanding Officers at Morgan City through the Investigations Office on several occasions but was never successful in doing so. In the meantime, Rogers struggled with presenting the proper form and format to the Administrative Law Docketing Center in faraway Baltimore as he originally planned to defend himself in court to the best of his ability.

Captain Rogers Hires an Attorney

The next time I saw Murray in person was in a Federal courtroom in Houma, LA, before Judge Jeffie J. Massey early in January 2005. By that time, he had hired a good attorney who refused to allow the system to buffalo his client. He was accorded a fair and impartial hearing by ALJ Massey who ultimately dismissed the case. Unfortunately, that was not the end of the story!

The Coast Guard promptly tried to overturn the judgeôs verdict they were not happy with. Judge Massey then had to face the fury of the Coast Guard Marine Safety Office, reinforced by the Eighth District legal staff and ultimately the Chief Administrative Law Judge and the entire Coast Guard ñestablishmentò who marched in lock-step behind him. This conspiracy forms the basis of the three civil lawsuits in which the Coast Guard will be defended by the U.S. Attorney for the Eastern District of Louisiana and the resources of the Department of Justice -- all financed by the American taxpayer.

By that time, Murray had been forced by events beyond his control to hire legal counsel. He reported to me that the experience already cost him well **in excess of $15,000 in legal expenses.** The experience virtually bankrupted him and destroyed both his reputation and his career.

Our mariners must understand that the Coast Guard has the power to destroy an individual mariner and, in this case and others, has abused their power to do just that. In fact, our Association contends that these arrogant officials have been given far too much power that has been exercised with inadequate oversight for many years. These activities have gone far beyond the bounds of civil penalties. In these three cases, we believe the Coast Guardôs outrageous policies and conduct have gone beyond the bounds where the government can legitimately be expected to defend the perpetrators.

In my opinion, the Commanding Officer(s) including the District Commander should have made themselves available to discuss the matter with Captain Murray Rogers as he requested. Company officials seldom have similar problems seeking an audience with a unitôs commanding officer. After all, these

officers holding the rank of Captain are very well paid for the work they are supposed to do and should be capable of handling matters their subordinates screw up. Unfortunately, this was never done because Murray Rogers was ñonlyò a mariner and in the past had ñonlyò been a lowly Coast Guard enlisted man. However, he is also an American citizen and has a right to expect much more from his government.

However, in civilian life, a shore-based Commanding Officer of a military organization is not the same as a shipôs Captain. He only commands a desk and he is not God! In our country, our citizens are not shackled to a military ñchain of command.ò As civilians, they are encouraged to bring their grievances to their elected representatives whenever it is necessary to do so. In Murray Rogersô case it became necessary because nobody in authority in the Coast Guard would listen to his grievances.

On April 4, 2005, Rogers wrote a letter to the office of U.S. Senator David Vitter summarizing his case. Senator Vitter is on the Coast Guard Commerce, Science, and Transportation Committee that oversees Coast Guard activities, and as such, this letter certainly is on target. He may have written other letters to others that I am not aware of as our Association never directed his activities.

The Coast Guard actions in this case were vindictive and reprehensible in the extreme and show how far a field the Coast

Guard is willing use any tool in its arsenal to ñwin at any cost.ò

In reviewing the ROGERS case, I am drawn to this statement in Judge Masseyôs deposition given on May 9, 2007 in the related DRESSER case regarding the Chief Administrative Law Judge: ñCALJ Ingolia told me at that meeting that I should never ever make a ruling that caused the Coast Guard to do one more minuteôs work than they wanted to do and that I should never concern myself with how hard it was on a respondent to go through the discovery process or to get discovery, that was just not a concern of mine.ò

Throughout this ordeal, the Coast Guard tried to use the existing Administrative Law system as a tool to make it just as difficult as possible for Murray Rogers to defend himself. Unfortunately, this case reflects the dismally poor quality of Coast Guard leadership evident from the Coast Guard District Commander, Admiral Duncan, down. It also shows that the corruption leads upwards directly to Headquarters and its staff up to the office of the Commandant itself.

As in the other two lawsuits mentioned in GCMA Newsletter #48, it further illustrates how the Coast Guard was willing to pursue any case in which it chooses to destroy a mariner, to break his spirit, and cripple him financially to satisfy their need to win at any cost and retaliate against all opposition with devastating thoroughness. At the same time, their ñprosecutorial discretionò allows them to sidestep other cases against corporations who are capable of defending themselves and dragging out hearings and chiseling civil penalties to virtually nothing. GCMA Report #R-370-A is a perfect example that we recently sent to Congress.

There is no better argument at this time than this case to remove our civilian merchant mariners out from under the domination of a military organization.

TOWBOAT CATCHES FIRE ON THE LOWER MISSISSIPPI RIVER
By Captain Chuck Marks

*[**Source:** Telecon. **Reference:** File PH-43, May 22, 2004.]*

GCMA received a report from GCMA member Captain Chuck Marks that he was on watch as Pilot aboard the AEP-MEMCO towboat M/V SUSIE COONEY, a 200ô x 45 foot, Dravo-built, 7,200 horsepower towboat southbound on the Lower Mississippi River at mile 505 with 25 loads and coming up astern of the M/V VIKING QUEEN (ñVQò) that was floating down the river shepherding a 42-barge ñsix-longò tow at 17:10.

Chuck made overtaking arrangements with the ñVQò by radio. The head of his tow was just coming up on the stern of the ñVQò when he heard his engines change tune. Looking down at the tachometers, he saw that he was losing revolutions (RPM) on his starboard engine. Shortly thereafter, his Chief Engineer rang up from the engineroom that he lost his starboard engine and then called back again to report, ñWe have a fire.ò

Chuck immediately sounded the general alarm, notified the ñVQò to report that ñwe are on fire,ò and aborted the overtaking maneuver. He took the headway off his tow, steered out of the maneuver, and began backing on his port main engine. The ñVQò called him and asked if they could offer any assistance, and Chuck said, ñCatch me once I get slowed down, if I donôt hit the bank!ò

The Captain rushed up to the wheelhouse and asked if Chuck had notified the Coast Guard. Chuck, who had his hands full, left that job to the Captain who immediately went began calling Sector Lower Mississippi River at Memphis, TN, on Channel 16.

Shortly thereafter, the Mate called up that the fire appeared to be out but that they definitely had lost the starboard engine. However, the call was premature; the fire re-kindled and melted the wiring that caused a complete loss of electric power.

In the meantime, Chuck slowed the tow to about four miles per hour, maneuvered it into a flanking position and avoided hitting the bank. He began flanking out to the ñVQ.ò Captain Mike Holland of the ñVQò caught the boat and its 25 barge tow and, along with his own 42-barge tow, edged over into slack water by 18:00.

In the meantime, Chuck told his Mate, who had the crew assembled on the stern of the tow, that he was trapped on the third deck, and to get some ladders up to the third deck to make an escape route for him and the Captain. Fire hoses were run out from the ñVQ,ò and heavy smoke engulfed the boat as ñVQò crewmembers assisted in fighting the fire. Another fire broke out around dusk at 19:30 as the crews vented smoke from the smoldering wreck

Chuck noted that, although his Captain was in contact with the Coast Guard from the outset, they never came out to the fire scene. The Cook and one of the deckhands had a Verizon cellphone that worked occasionally, but the boat was out in the boondocks, in the middle of nowhere with about five river miles to the nearest landing.

Chuck has nothing but praise for the actions of the ñVQò and her Captain who stayed with them, held them in slack water, fed them, gave them a place to shower and sleep over night. The engineroom crew and the Mate camped out in the after quarters on the burned vessel. Their vessel was uninhabitable and badly damaged by fire and smoke except for the after quarters on the stern. The Mateôs bathroom on the second deck burned and the Tuflex floor covering melted in his room.

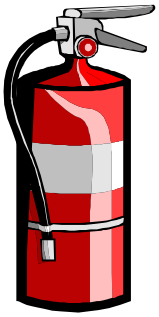
The Captain kept in touch with the Coast Guard periodically and gave them updates. The Coast Guard complimented them on doing a good job. The next morning, the situation looked particularly bleak. There was no electricity, no tugs to take care of the barges, and the nearest landing was five miles away. Meanwhile, MEMCO dispatched one of their 6,000 horsepower boats to head downriver as soon as possible with two empty barges from Memphis, but they were 225 miles away and they also dispatched a tug from Greenville, MS.

The Captain contacted the office and decided to put the crew ashore at the Myersville Grain Elevator about five miles downstream To do this would require two trips in the skiff. However, as they were preparing to get underway, the M/V LORIE JOHNSON of Golding Barge Line pushing a unit tow appeared on the scene and was contacted by radio. The Captain said that he would be glad to assist and take the SUSIE COONEYøs crew aboard and down to the landing ï but first would have to check with the company office. Someone in the company office replied that that would not be possible because of ñinsurance considerationsò ï and the M/V LORIE JOHNSON continued on its journey.

Although the ñVQò put out a broadcast that the burned out vessel and its tow remained at LMR mile 505 and that a skiff would be operating in the area, the M/V PENNY ECKSTEIN came charging up the river full throttle apparently oblivious to the situation. Three large swells from the towboat almost swamped the skiff leaving six to seven inches of water in their model-bow craft. This occurred at approximately 11:15 on Saturday morning at approximate LMR mile 497.4. At the time there were six people in the skiff wearing orange work vests and life jackets, and they were plainly visible. This, in the opinion of all concerned, represented either a lack of situational awareness or an act of incompetent seamanship on the part of the Master of the M/V PENNY ECKSTEIN.

NTSB SHOWS HOW COAST GUARD OBSTRUCTS PREVENTIVE MAINTENANCE

*[**Source:** Excerpts from report NTSB/MAR-06/02, adopted April 4, 2006.]*



The $800,000 Fire

On the morning of October 17, 2004, a fire broke out in the engineroom of the U.S. small passenger vessel EXPRESS SHUTTLE II while it was entering the mouth of the Pithlachascotee River near Port Richey, Florida. The shuttle was returning from the Gulf of Mexico , where it had ferried 78 passengers to an offshore casino boat, and was on its way back to the marina operated by the vesselös owner, Paradise of Port Richey. Only the Master and two deckhands were on board when the fire broke out.

None of the crewmembers activated the vesselös fixed carbon dioxide fire suppression system. The crew attempted to fight the fire with portable fire extinguishers, but when the fire burned out of control, they prepared to abandon ship. A passing recreational boat rescued all three crewmembers.

The National Transportation Safety Board determines that the probable cause of the fire was a fractured, improperly installed fuel injection line that allowed diesel fuel to spray onto the engine and ignite. Contributing to the cause of the fire was the ***owner's failure to have a preventive maintenance program*** which could have identified the companyös ongoing problem with the vesselös fuel lines (i.e., 13 fuel lines replaced in less than one year) before a failed line led to the fire. Contributing to the extent of the damage were the vesselös faulty fire detection system and the crewös failure to employ proper marine firefighting techniques. As a result of the fire, the vessel was declared a constructive total loss and the value of the vessel was $800,000.

A Previous $1,200,000 Fire
Previous NTSB Preventive Maintenance Issues

On Nov. 17, 2000, the T-Boat PORT IMPERIAL MANHATTAN experienced an engineroom fire that the NTSB determined ***could have been prevented if the vessel's owners had had an effective preventive maintenance program***. The vessel was damaged to the extent of $1,200,000.

In September 2001, the T-Boat SEASTREAK NEW YORK had an improperly secured lube oil hose that became brittle, broke and started a fire while 198 passengers and six crewmembers were on board. Contributing to the cause of the fire was ***"lack of inspection and maintenance procedures"*** by the vesselös operator. Fortunately, the crew activated the CO_2 fire suppression system and the vessel suffered only $81,000 in damage with no injuries.

In December 2002, the M/V PANTHER, another T-Boat, carrying 33 passengers including five children sank near Everglades City, FL with one serious injury. ***The NTSB discovered serious deficiencies in vessel maintenance.*** All of these were Coast Guard-inspected vessels carrying passengers for hire. This was recognized and still is a very serious issue.

NTSB Recommendations

The NTSB can only recommend, but only the Coast Guard can enforce. As a result of the PORT IMPERIAL MANHATTAN fire, the NTSB recommended to the Passenger Vessel Association (PVA):

> **"M-02-06** ï Provide your members with guidelines for developing a preventive maintenance program for all systems affecting the safe operation of their vessels, including hull and the mechanical and electrical systems.ò

The NTSB discussed the lack of Federal regulations regarding preventive maintenance for small passenger vessels as follows: ñThe Coast Guard does not have specific regulations requiring a preventive maintenance program for small passenger vessels. The Federal regulators of other transportation modes recognize the importance of preventive maintenance to the safety operations and require that operators have a systematic program for performing inspections and maintenance.

ñThe Federal Aviation Administration has promulgated for all airplane operators comprehensive maintenance requirements, which include provisions for inspections, repairs, and preventive maintenance.

ñThe Federal Motor Carrier Safety Administration requires that every motor carrier systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all motor vehicles subject to its control. In addition, the Federal Railroad Administration has extensive inspection and maintenance requirements for locomotives, train cars, crossing signals, and tracks.

ñBecause no authority other than the Coast Guard exercises

oversight over domestic small passenger vessels, the Safety Board believes that the Coast Guard should require that companies operating domestic passenger vessels implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and the mechanical and electrical systems.ò

As a result of the PORT IMPERIAL MANHATTAN fire, the NTSB issued this safety recommendation to the Coast Guard on July 3, 2002:

> **"M-02-5** ï Require that companies operating domestic passenger vessels develop and implement a preventive maintenance program for all systems affecting the safe operation of their vessels, including the hull and mechanical and electrical systems.ò

[GCMA Comment: The Coast Guard also has no preventive maintenance requirements for over 5,200 towing vessels which Congress also expects it to bring under inspection in the near future.]

The Coast Guard "Just Doesn't Get It"

On Nov. 21, 2003, almost a year and a half later, the Coast Guard notified the NTSB: ñWe do not concur with this recommendation. Small passenger vessels are subject to a comprehensive set of regulations that are designed to promote vessel safety. The operators of these vessels are responsible for maintaining the vessel in compliance with all applicable regulations at all times. Additionally, the Coast Guard allows vessel operators to participate in the Streamlined Inspection Program (SIP) that enables the owners to more effectively manage the oversight of inspection requirements. We believe that the recommended requirements would be unnecessarily burdensome and duplicative of existing requirements. We intend to take no further action on this recommendation and request that it be closed.ò

The NTSB Does Not Back Down

The NTSB patiently explained its position to Coast Guard officials as follows: The Safety Board generally agrees that small passenger vessel regulations are comprehensive in that they list the vessel components and devices that are subject to inspections and tests and stipulate the standards with which these devices must comply to allow for the safe operation of a vessel. However, regarding the upkeep of the vessel, the regulations state only that repairs and maintenance must be accomplished in compliance with existing standards. The regulations do not promote or require a vessel owner or operator to develop a systematic program for addressing repairs and maintenance. The continuing occurrence of small passenger vessel accidents that stem from maintenance failures demonstrates the need for vessel owners or operators to develop such programs. Preventive maintenance programs should not be considered "burdensome" to vessel operators but rather a means of improving the quality, reliability, and safety of a vessel and its operation. Such a program would help maintain the safety of a vessel between periodic Coast Guard inspections, which at present are often the only time a vessel's condition and its safety systems are inspected and tested.

[GCMA Comment: If the NTSB had not cut itself off from investigating most towing vessel accidents in their Sept. 12, 2002 Memorandum of Understanding with the Coast Guard, they would find a real horror story of preventive maintenance shortcomings on vessels that have never were subject to Coast Guard inspections.]

The Commandant's reply states that participation in the Coast Guard's Streamlined Inspection Program (SIP) "enables the [vessel] owners to more effectively manage the oversight of inspection requirements. "Under the SIP, vessel owners and operators work with Coast Guard representatives to develop company and vessel action plans. Procedures for developing and approving those plans (46 CFR §8.530) specifically require a description of the company's safety program, environmental protection program, and training infrastructure. They do not, however, specifically require a description of the company's preventive maintenance program. Although participating in the SIP has good potential for improving overall vessel safety, it is not clear how the SIP can ensure proper preventive maintenance on safety-critical vessel systems. According to the Coast Guard's latest figures, only 29 small passenger vessels had enrolled in the program as of October 2003 (representing 0.29 percent of the 10,125 small passenger vessels the Coast Guard inspects). Those figures indicate that the SIP has generally been ignored by the small passenger vessel industry.

[GCMA Comment: Industry's lack of participation in the Streamlined Inspection Program (SIP) shows that boat operators simply want the Coast Guard to inspect their vessels and then vanish! Likewise, only 7% of the owners or operators of the approximately 83,500 commercial fishing vessels make their vessels and crew available for voluntary dockside examinations. The Coast Guard has become increasingly irrelevant to commercial boat owners.[(1)]]
*[[(1)]**Source**: 2008 USCG Legislative Proposal]*

On April 7, 2005, based on the correspondence received from the Coast Guard, the Safety Board classified Safety Recommendation M-02-5 "Open ï Unacceptable Response.ò

The EXPRESS .SHUTTLE II fire further demonstrates the need for vessel owners and operators to develop preventive maintenance programs. The operating company did not follow a regular maintenance schedule, did not keep adequate repair records, did not recognize that the vessel was experiencing a large number of failed fuel lines, did not follow the manufacturer's guidelines for clamping and tightening the fuel lines, and most important, did not recognize that the failing fuel lines exposed the vessel and its occupants to the risk of fire.

The Safety Board remains convinced that regulatory requirements addressing the maintenance of safety-critical equipment on small passenger vessels are essential. Moreover, the Passenger Vessel Association's (PVA) action in establishing readily accessible materials that vessel owners can use to establish preventive maintenance pro rams demonstrates industry acceptance of the importance of preventive maintenance.

The Safety Board therefore believes that the Coast Guard should reconsider requiring operators of inspected small passenger vessels to develop and implement preventive maintenance programs for safety-critical vessel systems, including the hull and the mechanical and electrical systems. Consequently, the Board reiterates Safety Recommendation M-02-5.

NTSB Assails Vessel and Crew for its Bungled Crew Response to the Fire Emergency.

After the engines failed, the first indication of the fire on board the 65-foot small passenger vessel EXPRESS SHUTTLE II was the white smoke the deckhands saw coiling from below decks. The deckhands tried to identify the source of the smoke by lifting a small access hatch to the engine space. They did not first notify the master or take the precaution of having a fire extinguisher at the ready before opening the hatch. The deckhands' opening the hatch served only to feed the fire with oxygen. From what the deckhands told investigators, it is even possible that they left the hatch open.

After one of the deckhands informed the master of the smoke in the engineroom, the crew continued to take actions that exacerbated the fire and the smoke conditions. First, the deckhands opened the larger hatch over the starboard engine, whereupon flames shot out. Then, after the master came down to the cabin, he and one of the deckhands again opened the larger hatch while the other deckhand stood by with the portable extinguisher. That action fed more oxygen to the fire and allowed smoke to fill the cabin.

Even if the deckhand had been able to discharge the portable extinguisher, he would not have been close enough to the fire for the extinguisher to be effective. A portable extinguisher has a limited range and must be directed at the base of the fire to be effective. The deckhands' actions demonstrate that they were not properly trained in the use and limitations of the various types of fire extinguishers. Neither deckhand could tell investigators what kind of portable extinguisher they had used in fighting the fire on the EXPRESS SHUTTLE II.

The master's actions demonstrate that he too lacked training in using the vesselôs firefighting apparatus. On discovering the extent of the fire, he left the cabin to retrieve the fire hose, then realized that the fire pump could not be activated if the engines were not running. It is possible that the master could have used that time to discharge the fixed carbon dioxide fire suppression system whose controls were located in the fuel room. However, by the time the master realized that the fire hose could not be used, the cabin had filled with smoke, and the crew had to evacuate.

Coast Guard regulations[(1)] require owners, charterers, masters, or managing operators to "instruct each crewmember, upon first being employed and prior to getting underway for the first time on a particular vessel and at least once every three months,ò about their duties in an emergency. *[(1)(46 CFR §185.420.]*.

The regulations [(1)] require masters to "conduct sufficient fire drills to make sure that each crew member is familiar with his or her duties in case of fire.ò Neither deckhand on the vessel had undergone any emergency training, including fire drills, even though they had worked 1 and 2 months, respectively, for the vessel owners. *[(1) 46 CFR §185.524.]*

The master told investigators that he did the required fire drills ñat least once a month, and when we get new deckhands, I do it more often.ò He said that he made sure the deckhands knew how to turn on the fire hose and where to direct passengers in case of fire. However, he said that he had never conducted a drill with either of the deckhands who were on the vessel the day of the fire "because they were new.ò

The master said the emergency drills were documented in a logbook that stayed with the vessel, and that the company did not keep a duplicate record of the drills in the office. Because the fire destroyed the logbook, the Safety Board could not determine when the company had last conducted the required emergency drills.

The Safety Board therefore concludes that on the day of the fire, the EXPRESS SHUTTLE II sailed without the owner, operator, or master having previously instructed the deckhands as to their duties in emergencies such as fires, as required by Coast Guard regulations.

Previous Accident Investigations

The Safety Board investigated past accidents on small passenger vessels where crew training in fire emergency procedures was a safety issue. In its report on the PORT IMPERIAL MANHATTAN fire, for example, the Safety Board found that the crewmembers on the vessel did not use proper firefighting techniques: thus, they were ineffective in controlling or extinguishing the fire. They did not take appropriate actions to prevent the heat and smoke of the fire from spreading to other parts of the vessel, which endangered their own safety and the safety of the passengers on board. In the Safety Board's opinion the crewmembersô inability to appropriately respond to this emergency was the direct result of a lack of adequate training.

Establish Firefighting Training Requirements

As a result of its investigation of the earlier PORT IMPERIAL MANHATTAN fire, the Safety Board issued the following Safety Recommendation to the Coast Guard on July 3, 2002:

> **M-02-9**: ï Establish firefighting training requirements for crewmembers on board small passenger vessels in commuter and ferry service.

On Nov. 11, 2003, the Coast Guard responded that it partially concurred with Safety Recommendation M-02-9, but that it believed ñthe current requirements and recommendations are sufficientò and that it intended ñto take no further action on this recommendation.ò However, Federal regulations do not require masters and deckhands on small passenger vessels to undergo formal firefighting training. Rather, the requirements [(1)] stipulate that newly hired deckhands be instructed as to their duties in an emergency and that masters hold ñsufficient fire drillsò to familiarize crewmembers with their duties in case of a fire. The format and depth of the required instruction for new deckhands are left to the discretion of individual companies. The requirement for masters to hold ñsufficient fire drillsò is also subject to discretionary compliance. Moreover, because masters are not required to complete training in firefighting techniques, they may not be prepared to train others or to evaluate the effectiveness of fire drills. [[(1)] 46 CFR §185.420 and §185.524.]

According to fire safety professionals and training materials such as those offered by the Passenger Vessel Association (PVA), effective marine firefighting, requires crewmembers to know about the various fire classes (A = paper and other common combustible materials, B = flammable liquids and gases, C = electrical, D = combustible metals such as magnesium), the basic chemistry of fire (fuel, heat, oxygen, chemical reaction), and the proper use of various extinguishing agents (water for cooling burning materials, dry chemicals or CO_2, for extinguishing a fire). Effective marine firefighting also requires practical knowledge of the sequence of steps crewmembers should follow in combating a fire on board a vessel. The first step is to locate the fire and report

it. The next step is to prevent the fire from spreading by closing doors, portholes, ventilators, and other openings (hatches should not be opened). Finally, the fire should be extinguished by using appropriate agents and methods. Afterward, crewmembers should monitor the area in case the fire reignites.

Training Could Have Prevented This Loss

Because the crewmembers of the EXPRESS SHUTTLE II did not use proper firefighting techniques, they were ineffective in controlling or extinguishing the fire. Crewmembers delayed in notifying the master of the fire, and the master did not respond immediately to their warning. When the master saw smoke coming from he engine space, he should have realized that the fire was already beyond the first stage. The deckhands should have been instructed to secure the engineroom ventilation and close all access to the space containing the fire. Instead, crewmembers opened the hatches to the engineroorn at least three times, feeding the fire with oxygen each time. Next, the master made no attempt to activate the vessel's fixed CO2, fire-extinguishing system, which neither deckhand even knew about. The deckhands had had no formal firefighting training and had participated in no fire drills during their employment with the company. The Safety Board therefore concludes that the crewmembers' firefighting efforts were ineffective in controlling or extinguishing the EXPRESS SHUTTLE II fire because they lacked adequate firefighting training and because the master did not take appropriate fire suppression measures.

In light of the evidence from this and previous vessel fires that it has investigated, the Safety Board believes that the Coast Guard should establish firefighting training requirements for crewmembers on board all small passenger vessels. The Safety Board recognizes that rulemaking by the Coast Guard to require firefighting training for crewmembers on all small passenger vessels will take time. Until such time as the Federal regulations are revised, the Safety Board believes that the owner of the EXPRESS SHUTTLE II should develop and implement a training program in marine firefighting for its crewmembers. To do so, they could use the training videos and written material related to basic firefighting, and marine fire safety that were developed by the PVA and that the organization makes available for a small fee.

The above recommendation to the Coast Guard builds on Safety Recommendation M-02-9, expanding it from commuter and ferry vessels to all small passenger vessels. On April 7, 2005, pending further action by the Coast Guard, the Safety Board classified Safety Recommendation M-02 ñOpen ï Unacceptable Responseò Because of the new recommendation stated above, Safety Recommendation M-02-9 is classified ñClosed ï Supersededò

The first stage of a fire, known as the incipient stage,*(1)* begins at the moment of ignition. During this stage, the flames are localized and the fire is fuel-regulated (regulated by the configuration. mass, and geometry of the fuel). In the incipient stage, the oxygen content is within normal range and normal ambient temperatures still exist. *[(1)Source: National Fire Protection Association, Fire Ignition and Development, Catalog No. V-54 (Quincy, Massachusetts: NFPA, 1998.]*

Interim Steps Are Necessary

Considering the time needed to promulgate new regulations regarding firefighting training for crewmembers on board small passenger vessels in commuter and ferry service, as recommended in Safety Recommendation M-02-9, on July 3, 2002, the Safety Board issued the following safety recommendation as an interim measure the Coast Guard could take:

> **M-02-l0** ï Revise Navigation and Vessel Inspection Circular No. 1-91 so that it provides more in-depth guidance in training and drills for firefighting on board small passenger vessels.

The Coast Guard's response letter of Nov. 24, 2003, stated that it did not concur with Safety Recommendation M-02-10 because NVIC 1-91 was intended only to give general guidance to marine employers and masters and that it intended to take no further action. On April 7, 2005, the Safety Board responded that NVIC 1-91 ñprovides the Coast Guard's ***only*** guidance to the small passenger vessel industry concerning fire training and qualifications of deckhandsò and that the list of tasks in the NVIC ñprovides ***no guidance*** to deckhands on what they need to know in an emergency, what their responsibilities are or reference to further information, guidance or instruction.ò Pending further action by the Coast Guard, the Board classified Safety Recommendation M-02-10 as ñOpen ï Unacceptable Response." The Board continues to believe that NVIC 1-91 should provide detailed guidance, rather than only a list of tasks, regarding training *and* drills for firefighting on board small passenger vessels. The Board therefore reiterates Safety Recommendation M-02-10.

GCMA Comments to the NTSB

In a June 17th letter to Mark V. Rosenker, Chairman of the NTSB, GCMA commented on our review of NVIC 1-91 as follows:

Dear Chairman Rosenker,

(We) just reviewed NTSB/MAR-06/02, Fire On Board U.S. Small Passenger Vessel Express Shuttle II, in which Recommendation M-02-10 forms a significant part.

Our Association reviewed NVICs 1-91 and 1-95 as a part of MERPAC Task Statement #55. GCMA Director Glenn Pigott initiated this project and urged the Coast Guardôs Merchant Marine Personnel Advisory Committee to look into this project that is covered in pages 10 through 30 of the attached GCMA Report #R-428, Rev. 1. [Enclosure #1] Since it made no progress through Coast Guard channels, our Association adopted the project and added a nine-page introduction that should provide you with our mariner views on training.

It is no wonder that the Coast Guard shies away from preventive maintenance. The Coast Guard refuses to concede (and has done so for the past 30 years) that a person serving as an unlicensed engineer, ñdeckineeer,ò or deckhand **on any vessel of less than 200 GRT** requires any mechanical training whatsoever to perform his job intelligently because these individuals are not required to hold a Coast Guard license. This approach is extremely shortsighted, but has led to much larger problems exposed by the Coast Guardôs refusal to concur with your recommendation M-02-10. Consequently, the whole sad story of the unsecured high pressure fuel line fracture that occurred on the EXPRESS SHUTTLE II is completely believable and will manifest itself again and again in many other ways.

It is also so tragic because this attitude has allowed and even encouraged vessel operators to use the cheapest available untrained

labor. It has also denied hundreds, probably thousands, of our lower-level mariners useful mechanical knowledge and training they could use to improve their skills while also promoting safety.

We see that this basic training problem and its attendant ignorance extends far beyond small passenger vessels to other vessels especially towing vessels....

While revising NVIC 1-91 would be helpful, there is no requirement that anyone abide by the recommendations of ANY NVIC. We are pleased, however, that the Passenger Vessel Association responded to earlier recommendations for establishing a preventive maintenance program for their members. s/Richard A. Block, Secôy, GCMA

LETTERS TO THE EDITOR

Sickening Hypocricy

Dear Captain Block,

Thank you for the recent materials you have sent regarding the USCG/drug testing and your continued efforts on behalf of merchant seamen. Is it just me, or do you also sense a sickening hypocrisy? We are sending young men and women to be blown apart in some God-forsaken desert in the name of democracy, yet psychologically beheading innocent mariners at home. Regards, ***Captain Joe Kinneary***

[GCMA Comment: "Sickening hypocrisy" certainly describes both situations. Hopefully, a good dose of "truth" will help our nation's electorate to put our country on a new course.]

Rationalization By Idiots

You just got to love management in this industry.

FIRST they downsize the crews by up to forty percent adding that responsibility to the remaining crew. Then because accidents increase, they come up with a paperwork cure completely ignoring they caused the problem by downsizing. They make the crew responsible for administering all the paperwork further increasing their load.

They then act surprised when people refuse to work for an industry that overworks their employees. The result is they have less crew with less experience because of recruiting problems and huge turnovers.

They then conclude they should hire a new person to identify a problem that has been staring them in the face for years but they have continuously ignored. The new person, because of pressure from management will tell them only what they want to hear, and the problem itself will become exacerbated, and will result in even more paperwork.

The cycle will continue, and they will conclude people just don't want to work as Mariners anymore.

Rationalization by idiots is still and will always be an oxymoron. ***Capt. Bill Beacom***

Unlimited Master Criticizers USCG Performance

*[**Source:** Maritime Executive Magazine, Internet website, contained in two letters to the editor, June 2007.]*

I disagree with your current article. I am a retired shipmaster and Pilot, Kings Point graduate, (holding a) a 9th issue of a currently valid Unlimited Master's license.

The Coast Guard can handle the offshore security, harbor security, search and rescue, aids to navigation, ice breaking, etc satisfactorily, even though onboard ship they operate at Sea Scout performance level. As Pilot aboard many Coast Guard ships, from the Campbell class cutters to the latest ice breaker, I have had the unpleasant experience of trying to keep those amateur ship operators from destroying everything in the harbor.

In my youth, I was interested in joining the Coast Guard Marine Inspection service. At that time, marine inspection was manned by experienced, professional seafarers, Masters and Chief Engineers. My first four licenses were graded by people who understood what I was saying in my detailed written responses.

The deterioration in quality and performance in Coast Guard ***Marine Inspection*** is disgusting. There is no professional continuity in Marine Inspection and a constant turnover of Coast Guard officers. Knowledge of the functionality and operation of ships is totally lacking. When a mariner responds to a Coast Guard officer's land-lubberly questions, the response is met by a blank uncomprehending face, like trying to describe the operation of a tractor type tug to an Iowa row crop farmer.

I advocate the re-creation of a modernized "Steamboat Inspection Service" manned by professional mariners.

[GCMA Comment: We echo this comment and know many of our experienced Masters and Chief Engineers who, through their years of practical experience afloat and in shipyards, would be well qualified to enter training in such an inspection program.]

The license upgrade schools in the USA offer assured licensing to anybody with a warm body and a few thousand dollars. They run rote memorization programs with no real teaching. It makes no difference if the question answer is correct or not, memorize the first 5 words of the question and the approved answer is "C". This can only happen because nobody in the Coast Guard marine inspection office knows the difference between the rounded end and the pointy endé

So that you can better identify me, I am Kings Point (class of) 1958, formerly an U.S. Naval Reserve officer, served as Master of the SS Thomas M, a 624' tanker. I retired as a Senior Panama Canal Pilot (18 years) (with) full retirement 1986. I served the PCC and the American people as Canal Pilot, Panama Canal Port Captain and as Pilot Training Officer during the transition to Panamanian control). Then I had a second 18 year career as a State of Hawaii Port Pilot, finally retiring again in 2004, including 2 years as President of the Hawaii Pilots Association.

What I wrote to you is how most senior level U.S. Merchant Marine officers feel about the U.S. Coast Guard Marine Inspection Service. Most U.S. harbor pilots who handle USCG vessels have a poor opinion of the operational capability aboard USCG vessels. The Coast Guard routinely

hides the frequency of marine casualties of (their) vessels.

This is not the way my observations of the Coast Guard have been during my long career. Until about the 1980s, the Coast Guard operated ships as well as comparable U.S. Navy vessels.

When I was subject to retaliation from the Coast Guard as a Pilot and during license renewals, I would have never dared to expose the Keystone Kops performance level that I observed in the USCG. Even former Coast Guard officers are embarrassed by todayôs Coast Guard.

[GCMA Comment: The only way a mariner can speak out about the Coast Guard is when they cannot retaliate against him. Don't think they won't stoop to do so. GCMA is preparing a new report on this is the subject.]

You have my permission to use my e-mails including my permission to use my name in your publication. I still have hope that somebody cares enough to fix these problems and not just hide them. Truth is truth, I'm not a politician. I stand by my words, intact.

I will not go through the personally degrading experience of renewing my USCG license, even for "Record Purposes Only." Most other senior officer retirees are also preferring to avoid dealing with the USCG marine Inspection and are not renewing for Record Purposes Only. This is a great loss to our country, because if the need for experienced ships officers ever develops again like during WWII, there is no way to track and recruit retirees.

It is likely that we have mutual friends. I invite you to check my bona fides. Aloha, Captain Frederick Hoppe

*[MarEx **Editorial Note:** A strong opinion, but one taken from a wealth of maritime experience. (Captain) Hoppe says that he stands by his words and granted MarEx permission to use his name….]*

[GCMA Comment: Congratulations, Captain Hoppe, for being one of the first experienced senior merchant marine officers to step forward.]

Reports Good Service at REC Baltimore

Iôm a new member of GCMA and enjoy your news letter very much. I share the newsletters with the crew of the tug that I work on. Iôm also a retired USCG Chief Boatswain Mate (1971 to 1990).

The Coast Guard was my family for many years. I was in Search and Rescue for my career. I was not aware of the problems in the RECs.

I joined the Coast Guard to help and save lives at sea, which I did without hesitation.

Today the Coast Guard has been tasked with jobs they were not intended for. A suggestion: letôs return to the Life Saving Service, and let the Coast Guard do all the other dirty work.

Let me get to the point of writing you this letter. In my career of tug boating and dealing with CG regulations, I have to hide that I was Coast Guardsman and just listen to the complaining by my crew members, some which have no idea why these regulations are in effect. I have heard of the problems the Coast Guard has given my shipmates. This disturbs me very much which is why I have joined and support your organization. In your newsletter I read of the problems that are out there.

A situation arose today which I would like to share. Iôm renewing my MMD. I sent in the application, and used the new web site to check its status. I e-mailed a question to the contact in West Virginia, which was answered the same day. I was very impressed. I continued to e-mail this contact with questions, which were answered in the same timely manner.

It came to a point I needed to contact the Regional Exam Center in Baltimore. I e-mailed Mr. Cassidy one afternoon. Less than 10 minutes from the time I hit the send button, I received a call from Mr. Cassidy, who wanted to answer my questions in person on the phone ï which he said is better than e-mail. We spoke for 10 minutes or more. At the end of our conversation, he told me he would have my evaluator contact me. Again it was not 10 minutes after hanging up that my evaluator called me to help me with me my situation. The problem was solved! I was very impressed with this response.

Do you think all the publicity that GCMA has had about the REC has worked?

Regards,
Earl Wilson, BMC USCG ret
Master 200 tons, near coastal and Master of Towing Vessels
[Contact: Capt Earl Wilson, East Coast Marine Services, 910-340-0485, www.eastcoastmarineservices.com]

[GCMA Comment: You described the type of quality service every mariner should expect from the Coast Guard.]

[GCMA Comment: We never received a word of feedback from the Coast Guard in response to GCMA Report #R-428-D Report to the 110th Congress: Substandard Coast Guard Merchant Marine Personnel Services. The intent of the report was to improve the situation for our mariners. If this caused them improve their services, they deserve full credit for doing so.

17 different offices with 17 different regional issues and local CG control, you will have vast differences with respect to the mariners and the CG personnel who manage the MLD program.ò

Currently, the 17 REC Chiefs work for 17 different Sector Commanders. To Andy Hammond's way of thinking, NMC is the program manager and, through the normal chain of command, it could implement strong and clear guidance on best practices. David Kranking disagrees. He says that firm technical and document standards have been in place for a long time, yielding mixed results and less than consistent performance from the individual RECs. Rather than lose the personal, one-to-one customer contact that Andy Hammond feels will soon be a thing of the past, Kranking maintains that ñThe individual RECs will now be free to focus on customer service, while operations and production will be centralized in West Virginia.ò Kranking is firm in his belief that this will build quality on the front end of the process. In the end, Kranking and Hammond certainly agree on one thing: The system needs to be improved. Centralization may be the key to getting some parts of the equation into place, but it is here that their points of view divergeé .ò

[GCMA Comment: Throw Coast Guard Officers out of merchant marine training and licensing! After cleaning up their mess, never look back.]

GCMA GIVES FEEDBACK ON USCG MARINER LICENSING & DOCUMENTATION PROGRAM

On June 20, 2007, the Coast Guard announced that their Merchant Marine Personnel Advisory Committee had established a website at MERPACfeedback@gmail.com to organizations and individual mariners on how the mariner licensing and documentation program and its relocation to West Virginia was affecting them. We encourage our readers to use this website to tell members of the Advisory Committee of each problem they experience with the system. We provided a few introductory comments of our own as follows:

1. Control of the Coast Guard MLD program must be taken away from supervision, control, and manipulation by Coast Guard officers and placed under the civilian control of knowledgeable merchant marine officers with seagoing experience. The U.S. Merchant Marine Academy and six state maritime academies graduated trained merchant marine officers for years. Many graduates go on to attain considerable operational and managerial experience operating commercial vessels. On the other hand, many Coast Guard officers gain little or no such experience.

   It is time to return the Coast Guard officers little or no comparable merchant marine experience to the Coast Guard ï and the sooner the better. In fact, it a larger sense, it is time to transition all merchant marine functions out of the Coast Guard and back into an agency of the U.S. Department of Transportation. Our merchant mariners are, after all, transport workers.

2. Our Association noted a great many specific problems our mariners faced in dealing with the National Maritime Center and with the individual Regional Examination Centers in GCMA Report #R-428-D which we mailed to every MERPAC and TSAC member as well as to over 100 members of Congress. We believe it is time to close some poorly performing Regional Examination Centers such as REC New York whose sector Commander even refuses to respond to correspondence.

3. One GCMA Attorney recently asked Congress to re-evaluate Coast Guard regulations (namely 46 CFR §10.201) that interpreted a statute that allowed Regional Exam Centers to hold up the issuance of credentials for ñAssessment Periods.ò We note that the minimum assessment period is an entire year with many extending for multiple years.

   While originally designed to keep the ñbad guysò from obtaining licenses, in effect ñassessment periodsò prevent both the ñbad guysò as well as those who have turned their lives around from advancing in the merchant marine. ***"Assessment periods" do not "assess", rather they delay and deter. In effect, an assessment period punishes a mariner a second time for the same crime – often years after the original offense occurred***. It actively discourages and in many cases, prevents mariners with experience and interest from returning to duty. It deprives the industry of human resources and places the Coast Guardôs administrative regulations above, beyond, and in addition to sentences handed out by other courts of record.

   The current Coast Guard policy effectively prevents employers from using mariners with maritime skills from being employed as ñofficersò because it denies them access to credentials. However, some of the vessels these ñlicensesò authorize service on are small commercial vessels that have only one officer and perhaps one deckhand. The boat owner rather than the Coast Guard should have the freedom to exercise his own judgment to whether he can entrust a person seeking a job with his business investment. Yet this regulation gives the authority to the Coast Guard and takes it away from the boat owner. Nevertheless, a boat owner must deal with the crew shortages in the industry and a shrinking pool of mariners who will even consider taking a job afloat.

4. The Coast Guard has consistently failed to assist merchant mariners to obtain ñsea serviceò letters from their employers. Without these letters, mariners cannot advance in their careers. Finally, however, the Coast Guard came up with a weak-kneed legislative proposal submitted to Congress last March as Section 501 of the Coast Guard Authorization Bill for FY 2008. This provision would allow the Secretary to prescribe regulations that would require ñvessel owners, operators, or employers of commercial vessels to maintain records of mariners on matters of engagement, discharge, and service for not less than 5 years from the date of the completion of the service. A vessel owner, operator, or employer shall make these records available to the mariner and the Coast Guard on request.ò They propose a civil penalty of not more than $5,000 for failing to provide a ñsea serviceò letter. The problem with this proposal is that it is 35 years too late.

5. Moving the National Maritime Center to a new home in West Virginia was touted by the Coast Guard as a solution to many problems. We watched the ñMerchant Marine Personnel Division,ò predecessor of the NMC move from Washington to Oklahoma City and back to Arlington, VA with little more than confusion and a change in faces and how they interpret policy as a result.

   If we look to the ñcomputerò to revolutionize the way the Coast Guard conducts its business, I suggest that you read GCMA Report #R-401-B, Finally Answered: How Bureaucracy Wrecked the Coast Guard Merchant Marine Licensing and Documentation Computer System. This report is based upon information gleaned from a 1998 FOIA request by the National Association of Maritime Educators. The Coast Guard has done a monumentally poor job of maintaining mariner information and has driven many people from the industry be constantly asking them to provide the same information time and time again.

6. Although a vast majority of all merchant mariners are lower-level mariners (Refer to GCMA Report # R-353, Rev.2, Lower-Level Mariners Are a Majority of U.S. Merchant Mariners), the Coast Guard seldom recruits any of its employees for the National Maritime Center or the individual Regional Examination Centers from the ranks of individuals with lower-level licenses. Consequently, these government employees at many Regional Exam Centers never learned how to deal with our mariners and with their unique problems and became part of the problem and not the solution.

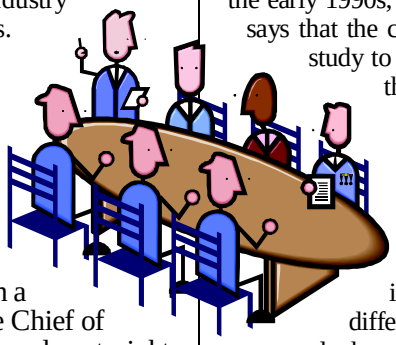
   The Coast Guard seems to think that any government employee armed with a detailed checklist can handle merchant marine personnel. They practiced this approach for the last 35 years. They were wrong!

7. Chief Engineer Glenn Pigott brought the problem of **entry-level training** to the attention of MERPAC in Task Statement

#55. When it stalled in MERPAC, last October we took the same material, added an introduction, and presented it to Congress as GCMA Report #R-428, Rev.1, Report to Congress: The Forgotten Mariners. Maritime Education & Training for Entry-Level Deck & Engine Personnel. The Coast Guard ignored entry-level mariners as well as lower-level engineers for far too long. This neglect on the part of the National Maritime Center has been inexcusable.

8. The Coast Guard at the National Maritime Center and at the individual Regional Exam Centers did an inexcusably poor job of transitioning from the old towing vessel regulations to the new regulations from 2001 to 2006. Dividing the management of the program between the NMC and local Marine Safety Offices was a failure in leadership at the national level that still has not been remedied. The idea that individual companies currently are ñcutting dealsò at the NMC level and reducing sea service time required of new towing vessel license holders is destroying morale within the towing industry and degrading the value of existing licenses.

9. Mr. Andy Hammond, former Chief of the Boston REC, made some comments in a recent edition of Maritime Executive magazine that are worth considering. Here are some excerpts from the article:



Andy Hammond is the Executive Director of the Boston Pilots Association. In a former life and until just recently, he was the Chief of the Boston, MA. REC, where he worked for almost eight years. Hammond is also a licensed mariner with more than a few years spent as a customer of the very same system he helped to administer. He's not all that comfortable with the direction in which the Coast Guard is headed as it tries to reform a credentialing system that some say is broken and most knowledgeable observers (including Hammond) agree needs to be overhauled to meet growing customer demands and a regulatory environment which could bring the process to a virtual standstill.

Hammond is in a unique position to comment on the plans to move and centralize operations at the Coast Guard NMC. Away from the process for just a couple of months, he's not shackled by the constraints of parroting the party line, but also speaks from a position of knowledge and experience. He also says that this isn't the first time that the Coast Guard has proposed sweeping overhauls of the documentation and credentialing process. Two previous attempts were, in his words, ñPoorly planned and designed. Coast Guard senior leadership declined to fund them.ò The current effort has the advantage of occurring after 9/11, and the need for tighter, more secure controls on any government credential made this plan easier to sell. Beyond that, Hammond says that (Commander David) Kranking is a good choice to guide the restructuring.

As Chief of the Boston REC, Hammond was the main representative of, and reported to, the local OCMI in Boston. His replacement will report in the very near future directly to the NMC in Martinsburg. Hammond, however, is less concerned with whom the REC Chief reports to than what kind of authority he or she will have in the new hierarchy. Hammond told MarEx in November, ñWhile the Coast Guard must streamline the process of issuing credentials, removing the authority from 17 field offices to one location will not ensure the same level of customer service.ò While he also conceded that not all RECs are the same and there is a need for greater consistency, he stressed that ñtaking the authority away from those presently performing that function will not resolve the issue.ò

Hammond also stressed that mariners are not vessels. When the Coast Guard centralized the vessel documentation function in the early 1990s, the process yielded some good efficiencies. He says that the current NMC command cites that example in its study to centralize the licensing program, but also warns that documenting a vessel is not as complex or as specific as certifying a mariner's competency for the numerous and varied types of credentials that can be issued. Beyond this reality, he says, ñ17 RECs equals 17 ways of doing business. It's only natural that when you have 17 different offices with 17 different regional issues and local CG control, you will have vast differences with respect to the mariners and the CG personnel who manage the MLD program.ò

Currently, the 17 REC Chiefs work for 17 different Sector Commanders. To Andy Hammond's way of thinking, NMC is the program manager and, through the normal chain of command, it could implement strong and clear guidance on best practices. David Kranking disagrees. He says that firm technical and document standards have been in place for a long time, yielding mixed results and less than consistent performance from the individual RECs. Rather than lose the personal, one-to-one customer contact that Andy Hammond feels will soon be a thing of the past, Kranking maintains that ñThe individual RECs will now be free to focus on customer service, while operations and production will be centralized in West Virginia.ò Kranking is firm in his belief that this will build quality on the front end of the process. In the end, Kranking and Hammond certainly agree on one thing: The system needs to be improved. Centralization may be the key to getting some parts of the equation into place, but it is here that their points of view divergeé .ò

[GCMA Comment: Throw Coast Guard Officers out of merchant marine training and licensing! After cleaning up their mess, never look back.]

MM&P TESTIFIES ON TWIC CARD BEFORE SENATE COMMERCE COMMITTEE

***[Source:** IOMM&P April 16, 2007]*

The Transportation Worker Identification Credential (TWIC) ***should*** pre-empt local port access schemes and be compatible with international seafarers identity documents, MM&P headquarters staffer Mike Rodriguez told members of the Senate Committee on Commerce, Science and Transportation at a hearing on April 12. As currently written, the TWIC regulations allow any state, port or facility to develop its own unique and duplicative access control system.

ñThe imposition of numerous inconsistent local requirements would require transportation workers to file numerous applications, undergo numerous background checks and pay the fees associated with all the perhaps dozens of identity cards that workers would have to carry,ò Rodriguez,

the executive assistant to MM&P International President Tim Brown, told the senators. ñSuch a system clearly places an unreasonable burden on workers and on interstate and foreign commerce,ò he said.

Rodriguez expressed other concerns that have been raised repeatedly by MM&P throughout the TWIC rulemaking process. First, because the TWIC system will not be interoperable with international standards, the vast majority of ships and crews in U.S. deepwater ports will not even be covered by the regulations. ñU.S. ships working cargo in a U.S. port with U.S. labor will have to complyé while a competing foreign ship with a foreign crew at the same terminal will be exempt,ò he testified.

The union also objects to the fact that mariners and other transport workers will be required to pay for the TWIC card. ñSecurity threats against ports and ships are aimed at governments and the public they represent,ò he said. ñThe general public is the principal beneficiary of maintaining a secure maritime transportation system and a secure global supply chain.ò It follows that it is the role of the government, not individual workers, to respond to the terrorism threat, the union says.

Several senators at the hearing criticized the Transportation Security Administration (TSA), the agency with primary responsibility for implementing the TWIC regulations, about the delays and cost overruns that have plagued the program since its inception. ñWeôre stuck in limbo but weôre going to ask workers to pay $137 for this card,ò commented Sen. Frank Lautenberg (D-N.J.).

Congressional investigators reported that 1,700 of the cards have been issued to workers during testing, well short of the programôs goal of screening 75,000 workers and assigning them cards by this time. Lautenberg commented wryly that since the government has already funded the program to the tune of $99.4 million, ñthat works out to [a cost of nearly $60,000 per card issued.ò He called the TWIC program ñanother example of mismanagement and poor planning by this Administration.ò

MM&Pôs testimony at the hearing also touched on the fact that the list of disqualifying offenses that would bar workers from getting a TWIC remains overly broad, a concern that was echoed the next day by Larry Willis of the AFL-CIOôs Transportation Trades Department at a TSA-sponsored panel on TWIC.

During the Senate hearing, MM&P urged regulators and lawmakers to ensure that there are an adequate number of administrative law judges (ALJs) in place to handle requests for review by transportation workers who are turned down for a TWIC on the basis of information uncovered during a background check. ñCurrently the Coast Guardôs ALJ system handles a caseload generated by approximately 200,000 credentialed mariners,ò Rodriguez testified. ñIt has been estimated that the initial surge into the TWIC program will be approximately 850,000 workers. It is imperative that a sufficient number of ALJs be in place to handle the vastly increased caseload.ò

[GCMA Comment: Our Association expressed very serious doubts in the lead article in GCMA Newsletter #48 as to whether the existing ALJ system, unless completely reconstituted, can fairly and impartially address ANY future mariner complaints.]

Other witnesses at the hearing included: Rear Adm. Brian Salerno of the U.S. Coast Guard; Kip Hawley of TSA; Norman Rabkin of the Government Accountability Office; Lisa Himber of the Maritime Exchange for the Delaware River and Bay; and Paul Pomaikai, Sr., who represented the American Waterways Operators (AWO).

Pomaikai said AWOôs primary concern about the TWIC is that ñthe process for obtaining a card will become a barrier to entry into the maritime industry for new hires,ò noting that in Hawaii, where he is based, applicants could conceivably have to travel several times to a different island to apply for and receive the card.

Himber said the regulations do not include an effective mechanism for addressing the use of casual workers who may enter ports as infrequently as once or twice a year to handle surges in seasonal cargo, such as crops. The Coast Guardôs draft NVIC on the topic calls for such workers to be ñescortedò into secure areas by a TWIC-holder, but Himber pointed out that such a scenario would be impractical, to say the least. ñAt the hiring hall, a longshoreman offers to drive three or four day laborers to the pier to report for work,ò she hypothesized. ñUpon arrival, these individuals may be assigned to work different ships, and therefore the TWIC-holder is no longer in a position to serve as escort. Or perhaps one of the workers is female and the TWIC-holder is male. Surely he cannot be expected to stay by her side during the entire workday.ò Himber also asked how a TWIC-holding worker could escort several others while still fulfilling his or her own professional responsibilities on a ship or in a port.

Although the GAO gave TSA points on moving forward with such a complex project, Radkin said he was ñnot as optimistic as [TSAôs] Hawley: the prototype test was underwhelming and enrollment is not off to a very good start. And card issuance is the easy part,ò he told the senators. ñThen we have to start with the technology.ò

COAST GUARD STACKS THE DECK AGAINST OUR MARINERS

[Reference: GCM File #61; Docket #USCG-2002-12578]

On July 16, **2001,** the Gulf Coast Mariners Association prepared a Petition for Rulemaking as permitted by 33 CFR §1.03-20(a) in opposition to a new regulation that allowed the Coast Guard to appeal an adverse decision by an Administrative Law Judge (ALJ). In our letter to the Executive Secretary of the Marine Safety Council, we stated that ñAlthough our Association recognizes the agenciesô right of appeal under the Administrative Procedures Act, we now firmly believe that the exercise of this right already has impaired the rights of at least one respondent ï a working mariner and member of our Association.ò

GCMA Monitors Mariner Cases Brought Before Coast Guard ALJs

The case we cited was the ñCaptain Kenò case described in detail in GCMA Report #R-315-C. We recently updated that report and sent to all members of the House Subcommittee on Coast Guard and Maritime Transportation.

In what our Association established in three similar instances as a typical Coast Guard pattern of conduct (and for which we actually received an apology from the then Vice Commandant), the Marine Safety Council mishandled our well documented request opposing this regulation for over

three years. Finally, on July 13, **2004** (i.e., three years later) we received the following response from Captain M.B. Karr, Chief, Office of Investigations and Analysis rejecting our request to change the regulation that stated:

ñWe have reviewed your request and enclosures to your petition and have decided that no rulemaking is necessary.

ñWe believe your concerns were addressed adequately in the rulemaking process which resulted in the subject regulation (33 CFR §20.2001) being issued in 1999. Similar concerns were raised then and we feel the Coast Guardôs response remains valid. Your main concern seems to be with the possibility that the Coast Guard Investigating Officers would abuse their discretion to appeal cases where the ALJ ruled against the Coast Guard. Our data does not support this claimé ò

[GCMA Comment: As a result of the recent story in the Baltimore Sun, we can see that the abuse of this regulation is very real!]

Concerns Raised in 1998

This comment appeared in the Preamble to the Notice of Proposed Rulemaking on May 24, 1998.[(1)] *[[(1)]64 FR 28062] 1998]*

33 CFR Section 20.1001 General (Appeals). **Comment**: Several comments oppose allowing the Coast Guard the right to appeal an ALJ's decision. One comment would like the right of appeal restricted to the respondent because it feels that the Coast Guard will have had a chance to prove its case during the hearing, at the ALJ level.

USCG Response: The Administrative Procedures Act recognizes the agencies' right of appeal [5 U.S. Code. §557(b)]. The Coast Guard is the only agency that does not use such a right. The Coast Guard does not believe that its exercise of this right will impair the rights of respondents.

The ALJ is the finder of facts, and his or her findings will not be overturned lightly. Under existing case law, the Commandant will overturn such findings or determinations of credibility by ALJs only if they are clearly erroneous.

If the agency seeks an appeal, then there must be grounds for appeal. The agency, like a respondent, may seek appeal only on the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(3) Whether the ALJ abused his or her discretion.

(4) The ALJ's denial of a motion for disqualification.

If an ALJ errs in finding against the Coast Guard, there should be review to ensure consistency. Any detriment to a respondent is offset by improved consistency in the administrative process.

We believe that the Equal Access to Justice Act is a sufficient deterrent to an agency's abuse of its right of appeal. Accordingly, the Coast Guard will retain its right in these rules.

[GCMA Comment: We also believe the Coast Guard violated the Equal Access to Justice Act on at least two occasions.]

The Coast Guard's Right to Appeal

Less than two years earlier,[(1)] the Coast Guard promulgated a new rule that would allow them to further assault a mariner for a second time even after an ALJ had dismissed the case against him. In the notice of Proposed Rulemaking,[(2)] the Coast Guard rationalized this as follows: ñThe Coast Guard will have the right of appeal in S&R cases. Under the current S&R rules, the Coast Guard reviews only cases in which the charges were found proved and the respondent files an appeal. The inability of the agency to seek review or appeal, in cases where the ALJ ruled against it, is unique to those rules. Neither the APA[(3)] nor the statutory authority for S&R cases prohibit appeal by an agency. All other Federal administrative agencies can appeal ALJ rulings, and the proposed rules in (33 CFR) Part 20 provide for such an appeal.ò *[[(1)]64 FR 28062, May 24, 1999. [(2)]63 FR 16731, April 6, 1998. APA = Administrative Procedures Act, 5 U.S. Code §551-557.]]*

David Versus Goliath

The Coast Guard has the full power and authority of the U.S. Government behind it to suspend or revoke a marinerôs license or document. Mariners, on the other hand, must depend on their own resources to defend themselves against charges of misconduct, negligence, incompetence, or violation of law and regulation. When the matter cannot be settled in an informal setting, a mariner is well advised to seek the help of a maritime attorney. Aside from a ñLetter of Warningò that goes on your permanent record and must be recalled at every license renewal, penalties are meted out in months of suspension ï which generally means months of being out of work without a salary. Typical attorney fees for representation before an ALJ start at $5,000.

If Coast Guard Investigating Officers (IOs) are going to exercise this vast power over our mariners, they really ought to get their case together and in good order before presenting it to an administrative law judge. The burden on these officers should be commensurate with the potential damage they can cause our mariners and the travel and salary of an Administrative Law Judge in adjudicating the case. In one example, a small towboat captainôs license was suspended for one month in a minor accident that caused no personal injuries and $5,000 damage. The one-month suspension cost him $13,000 in lost wages during suspension.

The Coast Guard Right to Appeal Cases They Lose Is at the Root of Their Current Problems

In a number of the current cases involving ALJ Jeffie J. Massey, the judge dismissed the Coast Guardôs case against the mariners involved ï and the Coast Guard appealed those decisions. We saw how the Coast Guard abused ñCaptain Kenò by appealing his case and dragging him into court on three separate occasions on trumped-up evidence. His legal fees for representation in the Coast Guardôs bogus case approached $10,000.

We often suspected but now we know how the Coast Guard was tilting the scales of justice to support their cases. The ñfixò was in. Even though Captain Ken was not convicted, neither did the Equal Access to Justice Act reimburse him for his legal expenses. That, too, is one of the Coast Guardôs ñwin at any costò tactics available to use against our mariners who challenge the system and is just one more reason why control of our merchant marine must be wrested from the Coast Guard.

The Offending Regulation As It Now Reads
Must Be Changed

33 CFR § 20.1001 General.

(a). Any party may appeal the ALJ's decision by filing a notice of appeal. The party shall file the notice with the U. S. Coast Guard Administrative Law Judge Docketing Center; Attention: Hearing Docket Clerk; Room 412; 40 S. Gay Street; Baltimore, MD 21201-4022. The party shall file the notice 30 days or less after issuance of the decision, and shall serve a copy of it on the other party and each interested person.

[GCMA Comment: As was practiced before 1999, we believe the regulation must be changed so that only the ñrespondentò will have the right to appeal an ALJ decision. Unfortunately, the Coast Guard abused the regulation, disgraced itself in the process, and must be restrained in the future.]

(b) No party may appeal except on the following issues:

(1) Whether each finding of fact is supported by substantial evidence.

(2) Whether each conclusion of law accords with applicable law, precedent, and public policy.

(3) Whether the ALJ abused his or her discretion.

(4) The ALJ's denial of a motion for disqualification.

(c) No interested person may appeal a summary decision except on the issue that no hearing was held or that in the issuance of the decision the ALJ did not consider evidence that that person would have presented.

(d) The appeal must follow the procedural requirements of this subpart.

NEW & REVISED GCMA REPORTS

GCMA Report #R-436, Rev. 1
The Coast Guard Appeals Process

[Introduction: *This is not the first article we wrote on this subject. However, we just added this insight to a revised GCMA Report #R-436, Rev. 1 while reworking the entire report to collect our thoughts in one place. The full report is on our website.]*

The U.S. Coast Guard considers itself as an efficient, well run organization patterned after the U.S. Navy. They have evolved a personnel management system that maximizes the career development of individuals within their organization.

Military systems require rank-and-file loyalty both up and down the chain of command. How this all works out in an organization that is charged with regulating civilian endeavors seems to be less than desirable at least from the prospective of being among the ñregulated public.ò Regulated public applies to both individuals and corporate entities.

One example might be the operation of the appeal process. This is a legal system within law and regulation that allows an individual or organization that believes that the Coast Guard has wrongfully interpreted the law or regulation to seek reversal or modification of some requirement from an individual superior to the aggrieving party and in the direct chain of command. The idea is for the offended individual appeal to the superior officer who in theory takes a completely impartial position and researches afresh all issues before him/her and rules with no bias, prejudice, or prejudgment.

Where the System Fails

This process no longer works in maritime matters that are before the U.S. Coast Guard.

The Coast Guard allowed the appeal process to become a shadow of what it once was. This is the result of a number of factors, not least of which is the Coast Guard military rank and file system wherein everyone within the chain of command supports both those above and those below. It often takes something very unusual or untoward to get a superior to overturn a ruling of a subordinate. This is, of course, despite the ideal that any appeal should be treated fairly and judged only on its own merit.

In today's Coast Guard, promotion as well as system and personal loyalty mean everything. Officer OERs (i.e., ñfitness reportsò) are generally submitted semi-annually. Within the system, each individual is counseled by his or her superior. This is done with the core belief that an average performer can be turned into an outstanding performer if he or she is simply advised how to do so by his or her superior. To not support one's subordinates would be a breach of faith. It could also reflect back on the superior officer as a failure by the superior to effectively lead or motivate the subordinate.

In general terms the Coast Guard is very unlikely to ever acknowledge that one of their own erred because that would be potentially career ending and would have to be reflected somehow in his/her fitness report. Certainly it would at minimum be a black mark. The Coast Guard did not invent this system; it is used by military organizations around the world and clearly leads to a more cohesive and focused military force.

The problem with this is that it does not work well within the civilian regulatory environment. While this is true of many things military, in this case we are only addressing the appeal process.

Since the Coast Guard views itself as charged to protect U.S. waters and citizens from vessels and maritime operators, it is quite easy for them to rationalize that they are simply doing their job and protecting their constituency (the general public and ***not*** the maritime or regulated public) anytime they deny an appeal. Unfortunately, the Coast Guard does not seem to acknowledge they have any duty to the maritime public that they regulate.

In today's environment many within the business community strongly recommend against appealing any USCG decision. Business executives from trade associations, to corporate presidents can revisit appeal able decisions by schmoozing with superior officers in public or private meetings or politic up and down the line. However, most recognize that formal appeals simply do not work and affirmations of appeals are statistically inconsequential.

Of course, individual mariners and most mom-and-pop boat owners simply do not have these opportunities to influence Coast Guard policy. Senior Coast Guard officers have become so self-important that they shunt all the ñsmall fryò to their subordinates. For example, how many individual mariners ever successfully appealed the manning on a Certificate of Inspection on a vessel by whose crew is forced to work beyond the limit of endurance by appealing directly to the local Officer-in-Charge Marine Inspection? Then there are thousands of towing vessels that were never issued a Certificate of Inspection so that their manning level even could be appealed.

It would seem that anytime a strong well organized military organization regulates civilians, the most likely outcome is some form of tyranny. Is that what we have today? Certainly, as regards our mariners, we say, "yes, it is!"

[GCMA Comment: Remove civilian merchant marine personnel from military control.]

COAST GUARD AND MERCHANT MARINERS ARE ON DIFFERENT TRACKS HEADED IN DIFFERENT DIRECTIONS

On March 5, 2007 the Commandant of the Coast Guard submitted the Agencyôs ñLegislative Proposalò to authorize appropriations for fiscal year 2008 to Speaker of the House Nancy Pelosi and to the President of the Senate Richard Cheney. The proposal was remarkable in several ways.

The Coast Guard, in Section 201 of the ñCoast Guard Authorization Act for Fiscal Year 2008ò would like to give the President power to ñdesignate no more than four positions of importance and responsibilityò that ñwhile so serving, shall have the grade of vice-admiral with the pay and allowances for that gradeò and ñperform such duties as the Commandant may prescribeò because ñThe Coast Guard now operates in an evolving, dynamic multi-mission environment that requires both increased alignment with the other armed forces and greater organizational flexibility than the existing, geocentric command structure provides.ò

[GCMA Comment: The Coast Guard is good at feathering its own nest although it has never been worth a damn in superintending our mariners.]

Letôs not forget that the Coast Guard for many years has been an abject failure in its gross mismanagement of the merchant marine. GCMA pointed this out in a number of research reports posted on our internet website and sent to members of Congress.

[GCMA Comment: If the word "Congress" appears in the title of a research report, it means that we shared this information with members of Congress.]

Did the Coast Guard put anything on their wish-list to Congress that our mariners thought was necessary or supported? We spotted these three items:

- Section 501 would allow the Secretary, acting through the Commandant, to temporarily extend for a reasonable time, the expiration of a license or merchant mariner document when such action is deemed appropriate or necessary. Congress acted quickly to do just that after Hurricane Katrina wiped out the New Orleans Regional Exam Center. However, the Coast Guard so screwed up the good intentions of Congress to the point where they were barely recognizable almost a year later.

- Section 501 would allow the Secretary to prescribe regulations that would require ñvessel owners, operators, or employers of commercial vessels to maintain records of mariners on matters of engagement, discharge, and service for not less than 5 years from the date of the completion of the service. A vessel owner, operator, or employer shall make these records available to the mariner and the Coast Guard on request.ò They propose a civil penalty of not more than $5,000 for failing to provide a ñsea serviceò letter. This problem with this proposal is that it is 35 years too late. Judging by the time it takes for the Coast Guard to create a regulation that they give any priority to, even if Congress approved this proposal, it would take another 35 years to maneuver it through the Coast Guardôs own bureaucracy.

- Section 502 would require that tugboat masters and mates in the mineral and oil industry hold a towing license by removing 46 U.S. Code §8905(b). GCMA backs that proposal which should have taken place 30 years ago.

Understanding how totally self-absorbed and useless the Coast Guard has been in understanding and looking out for the health, welfare, and safety of our mariners, GCMA prepared our own ñLegislative Prioritiesò and submitted them to Congress as GCMA Report #R-332, Rev. 3 on March 15, 2007. These are the things we believe are important for our mariners.

Follow-up Report FRAUDULENT LICENSE LEADS TO JAIL

***[Source:** FOIA 07-1520, release date Jun. 18, 2007, Activity #2398186, MSO Chicago. GCMA Newsletter #48, p.16; GCMA file #M-710. In the previous article released by the U.S. Attorney's office, a tugboat Captain was sentenced to 30 months in prison and ordered to make $750,000 restitution to his employer.]*

Sinking of the Tug Margaret Ann (Taken from the Coast Guard Report – edited)

The M/V Margaret Ann sank in Calumet Harbor while towing two barges on a short tow line which subsequently "tripped" the vessel causing it to sink. The Captain of the Margaret Ann at the time of incident was Gary Burnham. The M/V Margaret Ann had the potential of causing a 3,500 gallon diesel spill but actually lost only 250 gallons into Lake Michigan.

On June 21, 2005, Gary Burnham was called back to MSO Chicago for clarifying interviews. During the interview he showed remorse for what had happed and reiterated what he said previous about it being his fault for towing on too short of a tow line. (LTJG ■)

On June 22, 2005, while drawing up charge and settlement papers, I noticed we did not have a license number to attach to the documents. I searched MISLE and found only two entries, one in 1993, and one in 1994, but nothing current. I called the Toledo Regional Exam Center but were closed for the day. I called Mr. ■■ at St. Louis. His information had Mr. Burnham obtaining a license in 1993 but surrendering it in 1994.

I called Holly Marine and asked if they had a file copy of Mr. Burnham's License. They said they did and faxed it over. They also told me that ■■■ handles all licensing arrangements for the company.[(1)] We received the copy and it shows the licensed was issued in 1999 which makes it an expired license. (LTJG ■).

[GCMA Comment: The Company should have immediately been able to identify a fraudulent license. The accident report shows no penalty assigned to the operating company for assigning an unlicensed person as Master of the vessel.]

On June 23, 2005, LT ■■■■ talked with Toledo and found they do not have any further information either but stated that this does not mean the license is not legitimate. We asked if they knew the Licensing Officer (who signed the license), and no one

there remembered that name. We also noticed the license was signed on a Sunday. They archive their files every 7 years so the file is in the archives. We asked for the record books, which are never archived, and they told us those books were misplaced. Toledo will check into getting the archive folder.

[GCMA Comment: The Coast Guard report does not follow through on whether REC Toldeo ever found their missing records.]

Mr. Burnham came is as we had an appointment to issue charges and a settlement agreement. When he came in we asked if he had his license. He reiterated what he had said before that it went down with the vessel and never was recovered. We then asked if he applied for a renewal. He had not. We asked why. He said he did not know he had to and will do so.

We asked if he had ever been a party to a Suspension and Revocation procedure. He said he had. He went to a hearing and had his license suspended for a couple months back n the early 1990's. We asked if he has a copy of the license. He said he would have to look but thought he did. We then showed him the copy we had, and he said that was the most current. We informed him the license was expired and he could not nor should have been operating a towing vessel. We informed him we are working things out on our end and will get back to him.

I called Holly Marine and informed them that Mr. Burnham cannot operate a towing vessel.

On June 27, 2005, I received a letter from Gary Burnham admitting he had altered his license from issued in 1996 to 1999. This brings into question the issue number if the initial (issue) was in 1993 as this would not have been his third (issue). The letter was given to the Coast Guard Investigative service and placed into evidence. (LTJG ■

[GCMA Comment: The moral of this story is that operating on a forged license can lead to jail.]

THE UGLY FACE OF UNION-BUSTING

[***Source***: AFL-CIO. by Tula Connell. As it appeared in West Coast Sailors, May 25, 2007.]

Jen Jason started out in the Union movement with an internship at the AFL-CIO Organizing Institute and later put the skills she learned to work for UNITE HERE, a Union that represents primarily textile and hotel workers. But in the middle of a Union organizing campaign, Jason left to become an anti-Union management consultant, working for Cintas, whose workers she ostensibly was organizing. Seems she could make a lot more money ï her firm made $225,000 the first year she set it up. And she certainly makes a lot more than the laundry workers at Cintas, who are paid between $7 and $9 an hour.

In the high-paid world of union-busting, Jason is a small fry. The so-called "Union avoidance" industry is at minimum, a $4 billion-a-year business. But Jason is the modern face of Union-busting. At the turn of the 20th century, Union-busting took the form of Pinkertons inciting riots on picket lines so the government would have a reason to bash heads and break up strikes. At the turn of the 21st century, the practice is just as ugly ï only much more subtle.

John Logan, a professor in the Industrial Relations Department at the London School of Economics and Political Science, has analyzed this booming U.S. business and found that more and more employers are hiring anti-union consultants with less and less concern about doing so. Logan found that until the 1970s, union-busting consultants were relatively few ï only about 100 firms in the 1960s, compared with more than 10 times that number in the mid-1980s. Further, writes Logan:

Most employers were cautious about hiring consultants and attending union avoidance seminars. In the late 1970s, one consultant recounted that a decade earlier: ñEmployers used to sneak into [union avoidance] seminars... They were as nervous as whores in church. The posture of major company managers was, ôLet's not make the union mad at us during the organizing drive or they'll take it out at the bargaining table.ô ò That mindset changed dramatically in the 1970s and 1980s...when most employers no longer believed in the inevitability of unionization and shed their inhibitions about recruiting consultants, attending union avoidance seminars, and fighting organizing campaigns.

American Rights at Work, a workers' advocacy group, describes Union-busters this way:

Union busters operate under the radar intentionally. They often provide material and instructions behind the scenes while the employer's management and middle-management/supervisory staff carry out the actual communications with workers. In this way, the union buster does not deal directly with employees and, as a result, may avoid having to disclose financial reports about such activity to the U.S. Department of Labor. The union buster's name or firm is not used or referenced in the anti-Union materials distributed to employees, further masking the Union buster's involvement in orchestrating the anti-organizing campaign. More importantly, the anti-union company is rarely called on to divulge that it hired a union buster or reveal the specifics of such expenditures. [W]ithout a paper trail, union busters are hard to detect, underreported and not in the public eye.

One of the largest such firms, Labor Relations Institute (LRI), offers a ñGuaranteed Winner Package.ò If the corporation doesn't "win" ï that is, smash workers' efforts to form a union ï it doesn't pay. An LRI promo states: ñIf your organization purchases an LRI Guaranteed Winner Package and the union becomes certified, Labor Relations Institute will refund the full cost of the package.ò

Some 82 percent of employers hire high-priced union-busting consultants, according to American Rights at Work. Further, when employers are faced with organizing campaigns:

- 30 percent fire pro-union workers.
- 49 percent threaten to close a worksite when workers try to form a union, but only 2 percent actually do.
- 51 percent coerce workers into opposing Unions with bribery or favoritism.
- 91 percent force employees to attend one-on-one anti-union meetings with their supervisors

Chirag Mehta and Nik Theodore at the Center for Urban Economic Development, share an example that illustrates how quickly support for unionization can erode when a management consultant is involved: As soon as the employer found out the union was involved, they flew in their consultants. They had the consultant working in the nursing home for five straight weeks. We had 35 workers out of 43 who signed cards when we filed for an election. In the last week before the election, we had only 28 workers. Then, on the Monday night before the election, we had a meeting and no one showed up. We lost the election two days later by a landslide, 29 to 12.

But even if employees beat the odds and join to form a union, it doesn't mean they'll get one. Just ask Christopher Bloncourt, a telecommunications technician for Verizon Business. Bloncourt and his co-workers, who troubleshoot phone circuits for corporate clients such as Bank of America, IBM and Microsoft Corp. in the New York metropolitan area, sought to form a Union in 2006. Bloncourt became an outspoken leader in support of the union. Soon, he says, it seems he was singled out and his manager was scrutinizing his every move. Worse: A senior manager flew in from Pennsylvania to meet one-on-one with him. Bloncourt says his stomach was constantly turning under the pressure because:

You feel like you're going to be fired. It's a horrible, horrible, horrible feeling.

Bloncourt says the company not only sought to send him a message ï management meant to warn all workers. The company held several mandatory anti-Union meetings trying to scare the workers, while telling them the Union just wanted their money and predicting the Union would force them out of strike. Break rooms were littered with anti-union literature.

Despite the pressure, the workers signed majority verification cards authorizing the Union as their bargaining agent. But Verizon refused to recognize the workers' choice to form a union. The vote at Verizon happened less than a week after the Employee Free Choice Act passed the House on March 1, which, if law, would level the playing field for employees seeking to form Unions.

On hand to oversee the card count at Verizon were three co-sponsors of the Employee Free Choice Act ï Senator John Kerry and Representatives Stephen Lynch and John Tierney, all Democrats from Massachusetts, and Massachusetts Lt. Governor Tim Murray. Even though this high-power panel verified that 57 percent of the eligible workers signed cards saying they want a union, current labor law means Verizon can ignore workers' wishes. And that's exactly what the company is doing.

The Employee Free Choice Act would require that employees recognize a union after a majority of workers signed cards indicating their desire to form a Union. In addition, workers would still be able to choose to form a Union through the longer National Labor Relations Board election process.

[GCMA Comment: Many of our mariners were victimized by union-busting campaigns instigated by the Offshore Marine Service Association. We support the Employee Free Choice Act. Our mariners should be free to exercise their right to join a labor union if they desire to do so.]

Verizon already had reneged on an earlier agreement to voluntarily recognize the freedom of employ-lion representation when a majority of workers indicated their support. When the company took over MCI in 2005, it inherited a unionized workforce determined to stomp out any further unionization. And under current labor law, the company can do it all legally.

As Logan points out: Arthur Mendelson, a leading it in the field, explained, ñManagement can do so much within the confines of the law to combat unionism that they need not and should not break the law.ò

After all, under current labor law, the only thing corporations have to lose is their employees.

LOSS OF PROPULSION RESULTS IN SERIOUS ACCIDENT AT SMITHLAND L&D

***[Source:** FOIA 05-1398, release date May 2, 2006, GCMA File #M-562, Misle Activity # 2338052; Misle Case #227316, MSO Paducah.]*

On April 5, 2005, the M/V CAPTAIN BILL, a 131-foot, 2160 horsepower river towboat owned by Western Rivers Boat Management of Ash Flat, AR, pushing 15 loaded rock barges southbound on the Ohio River, experienced a loss of propulsion when the starboard engine went down due to possible drift accumulation

The vessel lost its starboard engine at 0430 for approximately 10 minutes while making the approach to the Smithland L&D. An average of 18 tows move through the Smithland Lock each day carrying 90 million tons of commodities a year according to the Corps of Engineers. Damaging this lock or the gates that control the level of the pool could have a serious economic impact on the regionôs and even the nationôs economy.

Apparently, engine failure was suspected, but never proven, to be caused by the accumulation of drift in the lock approach. However, the Chief Engineer was able to restart the engine immediately before the allision.

[GCMA Comment: We find the report incomplete because it contains no statement from the "Chief Engineer" of the vessel even though engine failure was the proximate cause of the accident.]

[GCMA Comment: The Coast Guard does not require that towing vessel engineers be trained or licensed. Consequently, many inland vessels operate with an insufficient number of trained personnel on duty to immediately restart a stalled engine when maneuvering near locks, bridges or other waterway infrastructure.]

[GCMA Comment: Deckhands or "deckineers" often replace trained engineers as an example of false economy that puts the public and waterways infrastructure at risk.]

Loss of his starboard engine contributed to the pilot's inability to maneuver, causing the vessel's tow to slam into the long wall at Smithland lock and dam at mile 918 on the lower Ohio River.

The allision at the first coupling of the tow broke the couplings, and allowed the first 12 barges to continue on into the lock chamber, where they rammed with the tow of the M/V F.M. BAKER damaging a number of barges but fortunately not sinking any of them.

M/V CAPTAIN BILL attempted to maneuver with the remaining three barges. However the two outside barges on the port and starboard side parted their wires, causing them to drift down onto the dam gates where damage attributable to the allision is unknown but caused both barges to sink at the dam. Two barges sunk and were determined to be total constructive losses. The lock and dam reportedly sustained damage but was not repaired since it remained operational.

Drug and alcohol testing was conducted approximately seven hours after the accident at the direction of Western Rivers Boat Management, Inc. in conjunction with this incident.

[GCMA Comment: Coast Guard accident reports like this one, even though released a year or more after the accident, often fail to clearly indicate whether drug or alcohol abuse

occurred. In this case, apparently paperwork indicating a violation of drug regulations was initiated but never followed up. This leaves a dark cloud over all parties concerned.]

GCMA Tries to Connect the Dots

Our Association often receives calls from mariners who have information that may help clear up the mystery of some of these accidents. If we deem the source to be reliable, we notify the appropriate people.

We passed the following information to the USCG/ GCMA Liaison Officer at Eighth District Headquarters in a Fax four days after the accident:

ñOne river Pilot said that he heard that the engine(s) of the M/V CAPTAIN BILL died as the vessel was approaching the long wall on the upstream side of the dam and that was the immediate cause of the accident. Another river Pilot reported that it was well known ñup and down the riverò that the vessel was experiencing engine problems and possibly steering problems before the accident. ñWell-knownò may or may not include formal notification being given to the Coast Guard under 46 CFR 4.05-1(a)(3).

ñAnother river Pilot searched his daily logbook records and recalled that he witnessed a near collision between the tows of the M/V CAPTAIN BILL and the M/V BRONSON INGRAM on February 27th (2005) near 81-Mile Point in the New Orleans area where the vessel reportedly lost engine power on both engines. The Captain reportedly said he had ñclutch tireò problems although the eyewitness believes he lost power on both engines. The following day, he heard another radio conversation (but did not witness) that the vessel lost power again in the New Orleans area.

ñAlthough these incidents took place almost 800 miles apart, they should lead an investigator to look into a possible history of:

- lack of proper maintenance,
- running with an inexperienced or untrained engineer,
- unwillingness to call upon shoreside mechanics when necessary,
- sailing without a designated engineer,
- lack of tools, replacement parts etc.
- whether the operating company has a safety management system.

If these engine problems did occur, did the master or pilot of the vessel ever notify the Coast Guard of these problems in the New Orleans area or, subsequently, on the Ohio River above Smithland Lock & Dam as required by 46 CFR 4.05-1(a)(3)?

Into the Wild Blue Yonder…

This, like dozens of other letters never received an answer. When we received the final report it did not answer these questions and did not even indicate that anyone had ever sought the answers.

The Coast Guardôs ***inattention to engineering problems*** on vessels of less than 1,600 tons, whether on the rivers, other inland waters, or offshore over the last 35 years has been monumental. This accident report was another example of ñdata collectionò where follow-up gives way to pressure to crank out the paperwork to make the Coast Guard look like it is doing its job in the best CYA tradition. This report, like so many others, indicates a clear need for establishing a corps of professional accident investigators outside the Coast Guard.

RING BUOYS

By Paul Driscoll, BMCM, USCG (Retôd)

*[**Background**: Paul Driscoll is the inventor of the "Personal Retriever" a lifesaving device that is far more effective than the Coast Guard approved ring life buoys. His website is http://www.lifesafer.com/. Paul can be reached at 1-888-222-0373.]*

Report on ring buoys from England

In a recent article published by the British News Journal "The Independent", the article pointed out "Swimmers flocking to sunny shores are at risk as faulty safety equipment is more likely to hinder than help them." It went on to point out that "More people face the prospect of drowning because of poor rescue equipment" and how a surge in interest in water sports has exposed a lethal weakness in seaside rescue equipment, some of it so bad it can actually hinder attempts to rescue people. If youôre wondering what equipment they were referring to, in the second to last paragraph it stated, "Life-rings originally designed to be dropped from ships are commonplace and can be too heavy to throw. Some are anchored to safety lines that break or may not even reach the water."

American Lifeguard Association

The President of the American Life Guard Association expressed grave concerns with the public use/performance of the ring buoy and had ceased openly supporting its use, for the same basic reasons the U.S. Coast Guard terminated use of this device as a rescue tool throughout it's own fleet.

The Coast Guard

While the U.S. Coast Guard mandates the use of ring buoys aboard most other vessels, they do not use ring buoys for rescues aboard their own vessels.

The Coast Guard officially ceased all use of ring buoys as rescue/recovery devices aboard Coast Guard vessels over three decades ago.

Aboard U.S. Coast Guard Cutters, ring buoys are carried for use as datum markers. Datum markers are deployed from the cutter as floating reference points used during searches. A crewmember will drop a ring buoy with self-igniting light over the side during the "ALERT" phase of a man overboard drill in accordance with the directions found in both the U.S. Navy and Coast Guard Blue Jackets manual, where they specifically direct that it be "DROPPED" into the water, while other crew members are throwing PFDs, fenders and other floating jetsam to mark datum and to provide some floatation for the person in the water to swim to and hang onto until the ship can recover them. The water light is there to assist the cutter as a reference point and to assist the person in the water in finding this field of floating material. Throwing a datum marker with such a heavy light attached poses a serious risk of injury if it were to strike the person in the water.

During the "RECOVERY" phase, they do not employ ring buoys for use in their recovery. The crew is trained to cross two rubber ball heaving lines just beyond and behind the PIW, at which point the drill is concluded.

Within the text of the U.S. Coast Guard Boat Crew Seamanship Manual, there is a clear warning against throwing a ring buoy directly at a person in the water because of the risk of

injury this device poses. The only U.S. Coast Guard instruction, which instructs direct delivery of a ring buoy to a person in the water is the U.S. Coast Guard Cutter Rescue swimmer instruction, and only when the rescue swimmer, swims the ring buoy out to the person, in the same fashion a lifeguard is taught to deliver the can/torpedo float to a panicked victim.

It is widely known among present/past Coast Guard Cutter crews that the ring buoy has not been used as a rescue/recovery tool aboard cutters, for decades. In fact, over three decades ago, at the U.S. Coast Guard Training Center Yorktown, during a national gathering of senior Coast Guard rescue experts, the shortcomings of the ring buoy were reviewed and the need for a response/rescue tool with both reach and buoyancy, one that also possessed a low risk of injury was identified. Until the **Personal Retriever** was developed, nothing meeting these operational requirements existed and the need for a better response went unmet for decades. During this time, the Coast Guard was reporting that falls overboard during routine operations was accounting for 83% of the fatalities in the commercial marine industry. It should also be noted that during that time, the Coast Guard was mandated the use of ring buoys. And as a mandated device, ring buoys were present during the occurrence of the vast majority of these commercial fatalities, making it evident that it's time to try a new approach to resolving this longstanding man overboard response dilemma.

VETERAN MARINER WON'T RENEW HIS LICENSE

***[Source**: WorkBoat, July 2007]*

Joel Milton's article, ñLicensing SOS - Part I,ò WorkBoat, May 2007, really rang a bell with me.

Having been licensed as Master of Steam and Motor Vessels of Any Gross Tons-Oceans since January 1944, I've sat through a lot of exams and have a pretty strong feeling relative to the examination procedure. I probably won't renew my license again, and I have some not-so-pleasant memories of the last couple of times I've done so.

When I first sat for a Third Mate's ticket in early 1941, the Bureau of Marine Inspection and Navigation was under the U.S. Department of Commerce and was conducted almost entirely by merchant marine officers who joined the Bureau after serving time at sea. Shortly after, the Bureau was transferred to Coast Guard jurisdiction and the hull and boiler inspectors from the Bureau were given commissions in the Coast Guard ï including license applicant examiners ï so there wasn't much difference in the renewal procedure. In due time, the merchant marine personnel grew old, retired, and left the duties to the Coast Guard.

I have about six months left on my existing license and probably won't renew it. As my wife says, nobody will hire me at my age and I agree. But the main reason I won't renew is I don't like the idea of having to spend $400 or $500 including a mandatory physical exam, drug test and radar school. The Coast Guard also requires an exam. On top of all that, we're all subject to being, accused of being terrorists. Otherwise why all the requirements to prove we aren't?

I must agree with Joel that the licensing and certification of merchant mariners should be in the hands of people who grew up in that service and not the Coast Guard. I hope the Gulf Coast Mariners Association can succeed in their laudable endeavor. They're to be congratulated for their effort. Capt. Robert 0. Lee, Master Unlimited, Seattle, Wash.

ARTCO'S SIX-LONG TOWS COLLIDE WITH THE SEAMAN'S PROTECTION ACT
By Tim Akpinar, Esq

*[**Source**: WorkBoat Magazine, July 2007. Tim Akpinar is a Little Neck, N.Y.-based maritime attorney and former marine engineer. He can be reached at 718-2249824 or t.akpinar@verizon.net.]*

The Seaman's Protection Act protects seamen from being fired for refusing to perform duties ordered by the employer if the seaman believes that it would result in serious injury to them, other seamen, or the public.

This became an issue when a veteran towboat captain who did not want to participate in his employer's ñsix-longò program was discharged. In the six-long program. 48 barges are arranged six long, by eight wide. A captain's reservations about pushing a six-long tow is understandable for a number of reasons, not the least of which is safety and potential loss of his or her license. An extra set of barges can add 200 feet to the length of a tow.

The Seventh Circuit Court grappled with this issue in Gwin v. American River Transportation Company. Capt. Larry Gwin and five other former captains and pilots filed suit against ARTCO on the grounds that they were fired because they refused to perform duties they considered unsafe. The jury returned a verdict in favor of Gwin but against the other plaintiffs. Afterwards, ARTCO filed a number of motions, and the lower court again ruled in favor of Gwin. On appeal. the Appeals Court upheld the District Court's position and awarded Gwin compensatory and punitive damages.

Aside from the Seaman's Protection Act issue, the case is significant because it analyzes what it means to give an ñor-der.ò ARTCO argued that Gwin had not received an order to push six-long tows, and the captain's testimony supported this. However, the court felt there was sufficient evidence that the company had ñimplicitlyò ordered the captain to push the tows.

To illustrate, if you ask someone to do something in clear terms, that's an ñexpress" order.ò Please arrange for someone to cover Smith's watches next Tuesday and Wednesday.ò Obviously, no one is confused there. But it's different if you suggest to a person that you want them to do something, without quite coming out and saying it. That's, what the court said happened here.

After conveying his reluctance to pilot six-long tows. Gwin's performance ratings were lowered.

CURRENT GCMA "BROWN-LIST"

This list has not changed in the past month since our last Newsletter. In the interest of saving space, we will not reprint the earlier list. Please refer to Newsletter #48 on our website.

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