

# Gulf Coast Mariners Association



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### ACCIDENT INVESTIGATIONS

**If you are involved in an accident,  
don't expect to be read your rights  
by Capt. Tuuli Messer**

*[Source: Professional Mariner, Issue #72. Capt. Tuuli Messer is an associate professor and chair of the Marine Transportation Department at California Maritime Academy. She has a law degree from the University of San Francisco. Emphasis by underlining is ours.]*

You have the right to remain silent." Those are words you probably won't hear from the U.S. Coast Guard during the investigation of an incident.

The Coast Guard, as a federal law enforcement agency, has authority to "Mirandize" (read the rights to) people they are investigating, but it rarely does so. To understand why mariners are generally not read their rights, one must first understand how the Coast Guard interacts with other law enforcement agencies, the purpose of Coast Guard investigations, and the application of Miranda warnings.

Mariners may not realize that the reports generated as a result of Coast Guard investigations can and will be given to other law enforcement agencies, such as the Federal Bureau of Investigation, Drug Enforcement Administration, Environmental Protection Agency, state departments of fish and game or wildlife, and other state agencies that are interested in pursuing criminal indictments or additional civil penalties against the mariner and/or maritime company. One senior Coast Guard investigator indicated that other federal agencies appreciate having the Coast Guard do the investigations because mariners are used to working with Coast Guard personnel and tend to "clam up" when, say, an FBI agent starts asking questions. The Coast Guard's Marine Safety Manual (available online at the Coast Guard website) encourages such inter-agency sharing of information.

The Coast Guard is usually the lead investigating agency after a marine incident. Even in cases where the FBI or EPA will likely pursue criminal indictments, the Coast Guard will be the agency to investigate first. Coast Guard personnel will arrive on the scene, often in civilian clothes, and with full federal subpoena powers, they will begin asking questions and collecting documents.

The Marine Safety Manual offers specific guidance on

how Coast Guard investigators are to conduct an investigation. The manual advises investigators to act professionally and with the highest ethical standards, be highly cognizant of a mariner's rights, and take accurate and detailed notes after any interviews.

Investigators are advised not to take notes during the interview, as this may cause the subject anxiety. Arriving onscene in civilian clothes is another effort to put mariners at ease and to get them to talk. Many Marine Safety Offices adhere to this practice.

Investigators are required to show identification and to announce the type of investigation being conducted, and mariners are well advised to ask politely to see such identification before answering any questions. Investigators are not required to read a mariner his or her rights unless criminal activity is suspected. If criminal activity is suspected, the investigating officer may ask the Coast Guard's Investigative Service, a group of Coast Guard special agents who handle criminal cases, to assist in the investigation. Coast Guard investigators also can get assistance and guidance from Coast Guard lawyers who are stationed at various district offices.

Some incidents are difficult to classify as strictly civil incidents. Recent state and federal legislation has changed some "environmental accidents" into "environmental crimes." That adds the potential for criminal fines and incarceration to all the other forms of civil liabilities that already exist for these events. These penalties are in addition to any cleanup and repair costs.

There are two types of Coast Guard investigations: Part 4 and Part 5, corresponding to respective sections of 46 CFR (Code of Federal Regulations). A Part 4 investigation is a casualty investigation and usually is done first.

The Coast Guard is trying to determine what happened, and a mariner usually has no right to remain silent or to wait until counsel arrives before answering questions. A gray area is created, however, when answers to a Part 4 investigation may indicate criminal activity or when certain answers lead the investigator to ask additional questions he or she might not otherwise have known to ask and the subject mariner has not been read his or her rights.

At the first hint that criminal activity may have occurred, the investigator is supposed to stop and Mirandize the subject. A mariner generally has little right to delay answering Part 4 questions while waiting for an attorney. Undue delay may be construed as hampering the investigation.

According to a lawyer of the Coast Guard Investigative Service, information gathered during a Part 4 investigation is not admissible, as evidence, nor is it allowed to be used in future discovery efforts by other agencies. Thus, many questions asked during a Part 4 investigation will be repeated during the Part 5 investigation.

During a Part 5 investigation, a mariner may be able to postpone questioning until his or her attorney arrives, especially if the questions don't directly affect rescue or cleanup efforts. This is another minefield for mariners, as the investigator may feel refusal to answer questions is hampering the investigation. Although the investigator wants information gathered as soon as possible after an incident, there is usually no immediacy to many questions and a mariner should make every effort to secure legal representation before answering questions during a Part 5 investigation.

Again, there is a fine line between hampering an investigation and a reasonable delay in answering questions that have no immediate impact on the casualty at hand. If the mariner is reasonable in his or her requests, odds are the Coast Guard will be, too. If a request to delay questioning is denied, careful notes should be made as to the circumstances of this denial.

Miranda warnings apply only in criminal, not civil, cases. Thus, a mariner can't remain silent or take the Fifth when the potential sanctions are only civil in nature. Interestingly, the Marine Safety Manual advises Coast Guard investigators not to read mariners their rights, as it may have "a chilling effect" on the mariner's willingness to speak. The Manual does, however, advise that subjects be read their rights as soon as it becomes apparent to the investigator that criminal sanctions may be pursued.

Unfortunately, despite the best of intentions, many junior Coast Guard investigators have little legal training, have been on the job a few years at best, and may not know what actions carry criminal implications. If the incident is of major proportions, there will probably be senior investigators present, or at least running the show. The Coast Guard's primary investigative efforts lie in determining what happened for statistical and educational reasons, and determining a mariner's fitness to hold a certain license or document. To this end, the Coast Guard conducts hearings before an administrative law judge, with no jury, to make administrative rulings that may result in civil fines and/or license or document suspension or revocation. The Coast Guard is not usually interested in pursuing mariners criminally – but other federal, state and even local agencies may be.

Generally, information gathered before a person has been read his or her rights will not be admissible in a criminal trial. This is not true of voluntary statements or actions made before an investigation has formally begun. Additionally, if a mariner is compelled to testify by way of a court order, that testimony cannot later be used against that person in a criminal trial. So, in some ways, not receiving a Miranda warning is a good sign. It means that at least the Coast Guard doesn't think there's any reason to suspect criminal activity. It also means that the information given by the mariner can most probably not be used against him or her, should there be a subsequent criminal trial.

Here are some guidelines for you to follow if you are involved in a marine accident

- Contact an attorney. If you have license insurance, contact your carrier. Your union may also have legal services available.
- Don't volunteer any information (unless such information would help cleanup or rescue efforts); wait until you are asked. Once asked, answer the question factually, without injecting opinions or suppositions. Remember, voluntary admissions are admissible as evidence, even if you have not been read your rights. Answer fully and truthfully, and avoid evasive responses. Don't speculate, and don't cop an attitude.
- Don't go have a drink or do anything else that would hamper post-incident drug-and-alcohol testing. Refusal to test has the same (and in some ways worse) ramifications as a positive drug or alcohol test.
- Always ask to see identification before answering questions, especially if the questioner is in civilian

clothes. Only three of the Marine Safety Offices have badges for their investigators, so they may only have the green active-duty armed forces ID and their business cards to offer. Usually, ideally, the Coast Guard investigators work as teams, so don't be surprised to see two investigators. This is to your benefit. It is not unheard of for opposing attorneys to misrepresent themselves, or not identify themselves at all, and just start asking questions.

- Ask questions if you are confused. Ask the investigator to explain what type of investigation is being conducted, and ask what your rights are. For example, can you wait to answer until an attorney is present? If you think you are in custody, meaning you are not free to leave, ask. Being in custody has serious legal ramifications and if you are in custody, that status should always be made clear to you. Being detained is not the same as being in custody – ask. The investigators are not out to trick you and should answer truthfully.
- Maintain notes, or preferably a recording, of any interviews. The senior investigator I spoke with indicated there would be no problem with a mariner making his or her own recording of the investigation and/or having an uninvolved third party present as a witness to the questioning. Be sure to note the date, time, place and circumstances, and to have all speaking parties identify themselves on tape so the voices can later be identified properly.

Investigators may write down notes after the interview. A mariner is entitled to review the notes taken by the investigator, and indeed, most investigators will show the notes to the mariner to be sure the testimony was accurately recorded.

- If you are advised that you have the right to remain silent, exercise that right.