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Asserting our right "…to petition the Government for redress of grievances."
Amendment 1, U.S. Constitution, Dec. 15, 1791

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THE COAST GUARD ABUSED CAPTAIN ROGERS JUST BECAUSE THEY COULD

National Mariners Association Foreword

The background of Captain Murray R. Rogersô case appears as Chapter 13 in The Coast Guard ñInjusticeò Handbook, NMA Report #R-204, Rev. 1.

If the purpose of the Coast Guardôs Administrative Law program is ñé to provide a low-cost and timely method of helping to maintain safety in maritime operationsò[(1)] then this case clearly demonstrates one of the most abject failures of the ALJ system. The cost in legal fees paid by Captain Rogers to contest the Coast Guard has been astronomical. However, American taxpayers are expected to foot the bill for all of the Coast Guardôs expenses for pushing this case to extremes. *[(1)Refer to the DHS Inspector General's Report #OIG-10-107, p.2. reprinted as part of NMA Report #R-429-V.]*

For years, the Coast Guard ALJ Suspension and Revocation (S&R) program tried to drive a square pegs into round holes using a pile driver. Whenever they encounter resistance, they simply assemble more forces and drive the square peg even harder. Captain Rogers was put under pressure by a Coast Guard Investigating Officer and faced with an unfair attempt on their part to escalate a series of arbitrary penalties. Administrative Law Judge Jeffie J. Massey understood what was happening and stepped in to protect Captain Rogers. This angered Coast Guard officials to the point where they forced Judge Massey to retire.

The original charge against Captain Rogers was a very minor matter that our Association believed would have been simple to resolve and offered to do so. However, his request to even discuss the matter with two Coast Guard Marine Safety Office Commanding Officers holding the rank of Captain was refused even after our Association made the request.

Captain Rogers appealed directly to the Eight District Commander and later to U.S. Senator David Vitter to no avail. He finally brought suit against the Coast Guard in Federal District Court in New Orleans. His case is currently on appeal to the Fifth Circuit Court of Appeals.

There are a number of other cases our Association followed and new cases it is still following that are collected in The Coast Guard Injustice Handbook. We added this foreword and lightly edited the content for readability and will add this material to the next revision of the ñHandbook.ò

The Ongoing Story of Capt. Murray Rogers

This story deals with the continued abuse of the Coast Guardôs Administrative Law System. The whole story rests in NMA Report #R-204, Rev. 1, The Coast Guard Injustice Handbook. This report is just one of an increasingly lengthy string of reasons why we urge prospective mariners not to jump into a career in the ñlimited-tonnageò segment of the U.S. merchant marine. Effective with the issuance of Newsletter #75 and NMA Report #R-276-D, ***our Association no longer recommends a career in the towing segment of the marine industry***.

Our mariners earn their living on the water. Yet, the Administrative Law System designed to maintain ñlaw and orderò as well as compliance with statutes and regulations has, on a number of occasions, literally ***destroyed the lives of mariners*** for relatively minor offenses. This happened in a sufficient number of cases to attract the attention of our Association. In certain cases, the degree of career disruption and/or punishment far exceeded the crime. Yet, ***our tax dollars were used to support the notion that the Coast Guard is always right and that it must crush or destroy individual mariners that challenge them.*** This is not true all the time or even most of the time, but it has happened often enough that we cannot ignore it.

Captain Murray Rogers

Captain Rogersô story is an exceptional story of how the Coast Guard cited a minor but routine incident and carried to extremes. The case moved out of the Coast Guardôs Administrative Law System into Federal District Court and into the Fifth Circuit Court of Appeals where it now awaits a second hearing. The expense for Captain Rogers as well as for the government has been extremely high. ***Our Association is convinced the matter could have been resolved with one face-to-face meeting between Captain Rogers and the Commanding Officer of the Coast Guard Marine Safety Office in Morgan City, LA.*** Apparently a licensed mariner, even if he is a former Coast Guard enlisted man, has no right to present his case before a real Coast Guard Captain commanding a Marine Safety Office. And, in addition to that is the highly offensive attitude that ï perish the thought ï the Coast Guard is NEVER wrong. To admit its actions were wrong apparently would result in the pinnacle of humiliation.

Our Association would be remiss not to keep The Coast Guard Injustice Handbook updated as many of the problems of the Administrative Law System have not been resolved. Consequently, this report will be incorporated into the ñHandbookò.

"Indictment of the Office of the Inspector General of D.H.S..."

[Filed with U.S. Attorney for the Western District of Louisiana, Jan 23, 2011]

Madam Prosecutor:

I submit this letter to inform your office of new information concerning allegations I have filed with your office previously, concerning criminal acts committed by top Coast Guard Administrative Law officials. This additional information displays the critical necessity that those federal crimes must be prosecuted. The additional acts identified herein expose that the crimes and cover-up committed by United States Coast Guard (USCG) officials do continue, and are now evidenced to be further expanded than previously alleged. In this letter I will present, identify, and evidence additional federal criminal violations that also supplement, support, and confirm the criminal allegations I have previously filed with your office. Moreover, evidence on paper now clearly shows that the cover-up of crimes as previously alleged extends to department-level officials within the U.S. Department of Homeland Security (DHS).

This letter also serves as my response to correspondence I received from an Assistant U.S. Attorney in your office dated July 28, 2010, sent in response to criminal allegations against USCG officials I previously filed. Finally, I will also be submitting a copy of this letter to the office of H. Marshall Jarrett, Director of the Executive Office of U.S. Attorneys- in my continued effort to compel your office to prosecute the perpetuating and continuing obstructions to justice and cover-up committed by persons within the DHS and USCG. Said crimes have allowed Coast Guard officials to continue to exercise unconstitutional powers, allowing for further crimes and abuses of power and authority to be committed against citizens of the United States. These crimes were and are still being committed by officials entrusted with the duty of law enforcement for the government of The United States of America. Notably, this case and related cases have already gained both national and international attention.

In the allegations I previously submitted, I identified and evidenced a long list of crimes committed against the United States, crimes committed against a (now former) U.S. Administrative Law Judge while acting in the performance of her judicial duties, crimes committed against myself, and committed against other citizens by top ranking officials within the USCG. Evidence that the previously alleged cover-up is further expanded is now finally published in two reports and on paper with Department (DHS) letterhead. The continued cover-up does further aid and abet the perpetrators of crimes already evidenced and alleged. This evidence is irrefutable beyond mere preponderance and is already conclusive beyond any reasonable doubt.

The Evidence

New evidence is contained in two reports recently published by the Office of the Inspector General of the Department of Homeland Security (DHS-OIG). Those reports were published as OIG-10-107 and OIG-10-108. In those reports the DHS-OIG admits to allegations included in both civil and criminal allegations I have previously filed. Many of those identified actions were simply impossible to deny outright, since they were perpetrated and published on paper and cannot now be re-hidden. Instead of alleviating and correcting problems caused by those now admitted alleged acts, the DHS-OIG attempts to divert and redirect attention away from the crimes and violations committed by simply neglecting to label the acts as violations or as criminal acts.

Further, the OIG attempts to offer some individualized reasoning for each identified act as though it were some mitigating factor on the effect each action had on the conspiracy as a whole. The record shows this is untrue. Though addressing a few separate specific acts in some detail, the DHS-OIG simply fails to put the whole effort together ï as though each act was an individual act, and as though the perpetrators had no knowledge of, or effort

towards a single and devised end. The simple fact is that all of these efforts were each and all directed and committed towards the sole goal and purpose of retaining illegal and unconstitutional powers for the Coast Guard. Each identified act was necessary and pivotal in accomplishing this overall objective.

Attached with this letter is a common-sense brief explanation of the ôinspectionô of violations of USCG officials by the DHS-OIG. This exposes that DHS-OIG officials are culpable through their efforts to cover-up USCG officialsô crimes by refusing to acknowledge or label those crimes as identified, and instead attempting to rename and re-characterize admitted acts though thoroughly evidenced in departmental documentation. The included brief is six pages entitled: ñIndictment of the Office of The Inspector General of the Department of Homeland Security for the Cover-Up of Crimes by U.S. Coast Guard Command and Administrative Law Officialsò. Said brief addresses the two reports proffered by the Office of the DHS-IG in late 2010 (OIG-10-107 and OIG-10-108), which were published in response to allegations of corruption in the USCG Administrative Law system.

Previous Correspondence

As mentioned, the last correspondence I received from your office was a letter dated June 28, 2010 by Assistant U.S. Attorney James T. McManus. In that Letter, Mr. McManus closes with the following statement, ñThis office is declining to prosecute this case noting that these allegations would be more appropriately handled in your civil litigation.ò This previous position held by your office as evidenced by that statement is now clearly insufficient to prevent manifest injustice in light of the new evidence noted herein.

In light of the new evidence, I offer the following response to Mr. McManusô statement just quoted:

- Firstly: If I prevail in the ongoing civil litigation, then only some of the perpetrators of these offences even could be assessed to pay damages for the offenses committed.
- Secondly: The legal relationship between the perpetrators of the criminal acts alleged and the U.S. Government will not change as a necessary result of any conclusion to the civil litigation.
- Thirdly: Not all of the perpetrators even could have been sued in civil court.

To refuse to prosecute this case criminally is inexcusable. To allow such blatant, flagrant, and egregious violations of the U.S. Constitution to remain unpunished by the Government of the United States would be in itself a malfeasant act. The evidence is on public record forever. It will not go away. There have been full and concentrated efforts and public relations campaigns to attempt to justify these acts, but the proof and the truth remain on public record- ï -permanently. They cannot usurp the truth. The perpetrators are now cowards to the truth. This will prove to be not conducive to good order and discipline in the Coast Guard and will destroy respect for the chain of command within the Coast Guard over time if not prosecuted and corrected.

These matters cannot be fully corrected in civil action. Corrections to these crimes cannot be rested on an ôifô as any possible outcome of civil suit(s). These acts were and are a breach of the public trust and public corruption. Such disregard and disrespect for the authority of the U.S. Constitution by military and court officers of the United States is intolerable. Those officers are unfit to remain in federal service. Their actions have shown blatant contempt to the courts, to the Congress, to the law, and to justice. If they are not prosecuted it will only confirm their apparent belief that they are ôabove the lawô. You must send that message and inform them that they are not.

As I was aware that a report by the DHS-OIG was forthcoming, I did not respond to Mr. McManusô letter until now. I expected DHS-OIG report to be published prior to the Appeal to the U.S. Fifth Circuit Court of Appeals in my civil litigation. As such, I was aware that the expected report would be published just in time for any favorable conclusions in the DHS-OIG report to be included in the appellate briefs of the government ï in the governmentôs defense of the perpetrators in concurrent civil litigation. They were. I therefore waited to write this letter until those things that I knew would occur, did occur ï and until all briefs had been filed in the appeal of the civil suit.

As yet another in a long and perfectly orchestrated line of governmental ñcoincidencesò: The lead author of the DHS-OIG reports is a man named Richard Reback. Mr. Reback once worked for one of the judges on the Fifth Circuit: Judge Thomas Reavley, according to Mr. Reback. Judge Reavely is married to Fifth Circuit Judge Carolyn King, according to sources. Judge King was on the panel of judges in our previous appeal to the Fifth Circuit. Now, I am not alleging any impropriety on the part of Judge King in or with these statements, but such an appearance of yet another such a ôcoincidenceô in these matters is yet again unsettling to a litigant, to be sure.

The Crimes

It is undeniable and inexcusable that Chief Administrative Law Judge (CALJ) Ingolia attempted to secretly influence presiding ALJ Masseyôs rulings with his own private interpretations of rules directed towards pending cases. His actions also directly affected the prosecutorsô tactics in continual refusing, failing to disclose, and hiding evidences. CALJ Ingolia did clearly obstruct justice: identified in that one act alone.

To reappoint him with that overwhelming evidence on record while the scandal was underway was not showing loyalty to the CALJ, it was showing disloyalty to the nation. To have Ms. Liddington reassigned to write the appeal decision in the case over which both she and the Commandant were both sued was self-incriminating for Coast Guard officials. The mere lack of a prohibition to keep Ms. Liddington away from cases in which she had prior secreted contacts with prosecutors, the same actions in cases for which she was and is being sued, directly makes retired Admiral Thad Allen further culpable in obstruction of justice.

I confronted retired Admiral Allen with just that one question last month during his public ôKeynote Speechô at the ôInternational Workboat Showô in New Orleans, LA to give him at least one opportunity to directly respond to civil and criminal allegations that have been lodged against him for a number of years now. That question and answer are now posted on the internet. I gave opportunity for him to address the matter directly and clear his name if he so chose. I took the opportunity to ask this question of the admiral directly, only because he is no longer óunder suitô. He was only sued only in his official capacity as Commandant of the Coast Guard, and since his retirement his successor in that office is now a defendant in that capacity. He did, of course, refuse to answer.

Promoting co-defendant Jordan to ALJ while these matters are officially still in review is a mockery to justice. And to highlight yet another necessity of the obligation for prosecution, ALJ Smith enjoys absolute judicial immunity to civil suit. ALJ Smithôs failure to refer LT Spolarichôs lying under oath to your office completely neglected adherence to 46 CFR 5.69. Worse still, the ALJôs answering for that same witness opposite of what the witness had just stated was absolutely unbelievable to watch. And that is on the transcript.

ALJ Smithôs refusal to acknowledge 46 CFR 5.101(b) and other regulations is inexcusable, most especially through his effort to interpret regulations out of existence in their practical application. Though he clearly violated regulation, and those violations did aid and abet Coast Guard conspirators in their continued effort to cover-up their crimes ï Smith, as a presiding judge, simply cannot be sued. He can however be prosecuted. So can the investigators, and their bosses.

Investigators <u>recorded</u> efforts attempting to intimidate me into bearing false witness against other persons, offered as a trade to ñsettleò a citing those same investigators constructed against me. Their later refusals to produce those same and other recordings although ordered by the court were plainly criminal and contemptuous refusals. They also repeatedly refused to abide by, and attempted to intimidate a presiding judgeôs rulings <u>on record</u>. That corrupt Coast Guard is not my Coast Guard. It is not our Coast Guard. We demand better.

Resolve

These allegations are not conclusory, as they are based in fact and evidence. The perpetrators of these crimes refused to follow the law though entreated to do so time, and again, and again. The conspiracy was exposed and the cover-up following is unforgivable. These crimes were organized and concerted. The Department of Justice has thus-far wholly failed to protect or secure my rights, my evidence, witnesses, or my person from those committing illicit acts against me with their abuses of power and authority.

On a side of one of the government buildings in New Orleans it reads, ñWe are a nation of laws and not of menò. That statement should ring true. To allow these crimes to be perpetrated using taxpayer dollars and go unpunished is unconscionable. To allow the further cover-up by the Department through repeated denials, tailor-made reports, press releases and all other methods again while using citizensô monies is unscrupulous, inconceivable, and unforgivable.

You have an unenviable task. The punishments listed in the U.S. Code awarded for such misdeeds could possibly mean that some of those persons may very well spend the rest of their natural lives in prison. Given the severity and nature of the crimes committed, such punishments would be appropriate, if so awarded by a jury. This is a begrudging and solemn matter. As a Coast Guard veteran from a Coast Guard family, this was no more desirable to me, and was as uncomfortable for me to suffer and then to have to redress. It is my sincere hope that in the end this will prove to have been a sobering experience for the USCG and DHS.

My job has been to redress my grievances and to perfect those appeals to my government. It is your responsibility to do something about it. I have no delusions about my peculiar and potentially precarious position. I have filed complaints against the head of an entire military service and law enforcement agency and Department of the government of the United States of America. I have assured that my complaints, my evidences, and witnesses will not go away even in the event of my untimely demise, or in the case of any other single conceivable or disastrous event. This matter will neither end with a certain finish to civil litigations. When that litigation ends, it will only free my pen to tread where it dare not now ï solely due to that pending litigation. As will all correspondences from here forward, this letter will be publicly distributed and posted on the internet. I wish you success in this somber and noble endeavor of necessity.

Indictment of the Office of the Inspector General of the Department of Homeland Security for Covering-Up Crimes by U.S. Coast Guard Command and Administrative Law Officials

By Captain Murray R. Rogers

Introduction

The Office of the Inspector General (OIG) of the Department of Homeland Security (DHS) published two reports in mid-September 2010 (though dated August 2010) in response to allegations of misconduct of officials within the Coast Guard Administrative Law Program. In the first report (OIG-10-108),[(1)] the authors attempt to offer legal justifications to multiple illegal and criminal acts committed by Coast Guard military and court officers ï those acts having been committed while acting in official capacities and bound to the oaths of the federal offices of those same officers. *[(1)Reprinted as NMA Report #R-429-W available on the internet.]*

The second of these two reports (OIG-10-107),[(1)] contains suggestions for improvement of the Coast Guard Administrative Law Program. However, the effectiveness of those suggestions are dependent upon the correctness of conclusions in the first report. The assertions and conclusions in the first report are wrong, both factually and legally. As such, any suggested corrections in the second report are insufficient ï and thereby: not solutions at all. Both OIG reports are accessible on the internet. *[(1)Reprinted as part of NMA Report #R-429-V.]*

Instituting visual separations and ñpoliciesò without prosecuting and punishing the perpetrators only further damages the honor and integrity of the Coast Guard. It also sends the wrong message: to not get caught cheating, rather than imposing punishment or remedy for having cheated, and for violating the law. The proposed ñfixesò are aesthetic. The true problems were not addressed.

Injustice Through Legal Unfairness

It is important to state that the legal process in the United States is based upon the concept of fairness. Fairness is most basically achieved by evenness. Each, or all parties in a legal case have the right to evidence, and the right to present their case before a judge not biased towards, or influenced by any presenting party in the case. Each party is entitled to fair and even access to evidence, and each party has the legal right to compel the other side to disclose evidence in their control or possession that is relevant to the case.

In a nutshell: what is accessible to one side must be equally accessible to the other side as well. The administrative law system Congress constructed has protections in place to ensure this fairness is afforded both parties, but the Coast Guard refused to follow those rules. The significance of those acts is that Coast Guard officialôs continually violated federal law while engaged in the duty of federal law enforcement. The evidence of those violations is clear even without the testimony of former Coast Guard Administrative Law Judge (ALJ) Massey. Judge Masseyôs testimony serves to confirm and corroborate irrefutable evidences already on paper.

Violations of Law

Coast Guard officials devised and instituted a system within their Administrative Law Program to refuse the constitutionally protected rights to fairness afforded by due process of the law to those accused by the Coast Guard in that administrative law system. This was accomplished through violations of law and federal statute by Coast Guard officials. The DHS OIG reports specifically neglected to address that was the problem. What actually occurred were attempted coercions, intimidations, disrespect, and attempted illegal influences of a presiding judge by the agency for which the judge worked. Moreover, that entire legal system was improperly manipulated by the very same officials charged with supervising and administrating that system.

Specific Criminal Acts Committed

In United States Code: Title 18-- CRIMES AND CRIMINAL PROCEDURE, Section 1512(c) states:

ñWhoever corruptly ï (2) ...obstructs, influences, or impedes any official proceeding, or attempts to do so, shall be fined under this title or imprisoned not more than 20 years, or both.ò

In OIG-10-108 the authors declare that the Coast Guard (CG) Chief Administrative Law Judge (CALJ) Joseph Ingolia é ...declined to review ALJôs pending cases although his job description authorizes him to do so.ò, (p.13) and ñFurther, the Chief ALJ may review and discuss pending cases...ò, p.17.

In a standard *Webster's Dictionary* the word ñ***review***ò is defined as: *(noun) "...* judicial reexaminationò and *(verb)* ñ é to view or see again; to reexamine judicially;: to look back on : to study material againò. The word

ñ***pending***ò is defined *(adjective) as* ñ é not yet decided; being in continuanceò.

One cannot ñre-examineò that which is ñnot yet decidedò ï that is a ñ***preview***ò. While it is agreed that the CALJ has the authority to review cases, nothing in the law does or can fairly allow him to preview pending cases and inject his own secret ñpolicyò interpretations in order to influence pending rulings. That action constituted a federal crime in violation of 18 USC 1512(c)(2) and 18 USC1 503(a).

When the CG CALJ sent a policy letter to CG ALJ Massey without informing the parties of his ñinterpretations,ò that action also violated Administrative Procedures Act (APA) provisions requiring agencies to publish policies publicly: 5 USC 552(a)(1)(D) & (a)(2)(B), and 5 USC 554(b)(3). The CALJôs intent was clear: ñThe intent remains the same (1) limited discovery...ò In fact, the CALJ used the words ñlimitedò and ñdiscoveryò together six times in the first two pages of the policy letter. As this was all done in secret, it could not be formal or binding policy, but was rather a simple attempt to influence the presiding ALJôs pending ruling on sanctions against the agency for flatly refusing to ñhonorò a subpoena. This policy was drafted after ALJ Massey ordered sanctions proposed against the agency for the subpoena refusal, and the respondent in the case proposed dismissal as the appropriate sanction.

For respondents,[(1)] no guidance was received on exactly what procedure to employ in order to obtain evidences held by the agency, and kept secreted away from the court. Those accused and their attorneys knew the Coast Guard had evidence that would help to prove the respondentôs cases, but were not made aware of the secret creation of a policy constructed to deny them access and fairness. *[(1)Captain Murray Rogers was the respondent(i.e., the accused") in this case.]*

Though the Coast Guard held evidence that would assist the accused in three separate cases to adequately present their cases before ALJ Massey, the prosecutors never intended to allow for a full disclosure of facts in those cases. The prosecutors in the contested cases held evidence and information they did not want to present to the court of ALJ Massey, because the evidences could be detrimental to their prosecutions of those three cases. This was proved by the actions of the agency in ócoast Guard vs. Rogersô (CG S&R 04-0537). Consequently, this was the only one of those cases to even eventually make it all the way to final judgment. CALJ Ingoliaôs actions were pivotal in the concealment of evidence. None of this was a result of the Coast Guard Investigating Officersô inexperience. They had a motive.

Though the DHS OIG repeatedly attempts to offer justifiable reasons for the CG CALJ to inject his opinions and interpretations into cases pending before other ALJôs, there is no legal argument to support those claims. In fact, the OIGôs assertions are completely opposite to the Order of U.S. District Court Judge Helen Berrigan who stated in her ruling on November 8, 2007: ñ...it is not objectively reasonable for one ALJ to influence another.ò Though she ultimately dismissed the lawsuits against CALJ Ingolia and others on technicalities, she also was publicly quoted as stating from the bench: ñI know that I wouldnôt dream of doing things that Judge Ingolia seemed to feel was appropriate to doò. Though the CALJ pressured ALJ Massey to not dismiss cases on technicalities, the government seems comfortable having lawsuits against the CALJ dismissed on technicalities ï as this has been their repeated strategy for the past three straight years.

In Professor Abraham Dashôs testimony before the House Subcommittee on Coast Guard and Maritime Transportation,[(2)] he states in his conclusion: ñIt is clear that any attempt to pressure an administrative law judge by a superior or the agency to rule favorably for the agency is a violation of the Administrative Procedure Act and the Fifth Amendment.ò Whether or not the CALJ ever directly instructed ALJ Massey to rule for the agency in any specific cases, or generally in all of her cases (as she testified under oath) ï the CALJôs attempt to pressure or influence ALJ Masseyôs pending rulings remains clear and evidenced. OIG-10-108 authors did not adhere to their own correct declaration on page 3, ñAn ALJ must be an impartial finder of fact, free from the influence of the Coast Guard or any other person or entity when hearing and deciding Coast Guard cases.ò *[(1)Emeritus Professor of Law at the University of Maryland School of Law. (2)July 30, 2007.]*

The Secret Meeting Resulted in a Secret Policy:

OIG-10-108, page 19, states: ñNo prohibited *ex parte* communications took place at the February 24, 2005, meeting because the relevant agency decision maker, i.e., ALJ Massey, was not in attendance.ò The Appellate attorney for the agency who attended the meeting with, and wherein prosecutors discussed facts in issue of pending cases was then assigned to write the appeal decision for one of those same cases. That assignment was a violation of the Administrative Procedures Act (APA), and upon accepting that assignment without noticing the parties of the prior meeting, the prior secret meeting contact immediately became a violation of the APA as well.[(1)] These violations extend to include the Appeal Decision as well, written by that same attorney. *[(1)5 USC 554(d) & 5 USC 551(14).]*

The case assigned was the one where ALJ Massey ordered a subpoena to the Coast Guard, and the Coast Guard refused rather than filing a Motion to Quash the subpoena.

How many of ALJ Masseyôs cases had sanctions ordered proposed against the agency for refusing a subpoena by the date of the secret meeting between prosecutors and appellate staff?: The Answer is ñOneò.

How many cases were then assigned to that same attorney on appeal after being dismissed as sanction for the Coast Guardôs refusing to follow a subpoena? The answer is ñOneò ï again.

It is immaterial whether the attendees at the meeting ever discussed any of the three specific contested cases of issue by name. The fact in issue of the case with the subpoena refusal and subsequent dismissal was something, which had never before happened in the CG Administrative Law System. The Appellate attorney specifically assigned to that appeal a mere few months after the meeting recognized it. The OIG then goes on to state on page 20: ñHowever, there is no evidence...that contact between the adjudicative and prosecutorial arms of the Coast Guard influenced the outcome of any case.ò(OIG-10-108). Again, 18 USC 1512 (cited above) declares it is a federal crime, ñWhoever corruptlyé . influences...any official proceeding, or attempts to do so....ò

The most egregious violation and conflict of interest occurred when the same Coast Guard appellate attorney was reassigned to the appeal after review ï once she became a defendant in a lawsuit stemming from her prior secret involvement in that same case. She most certainly recognized the case on appeal for which she was being sued. It is funny how the Coast Guard created some informal and non-binding rules to limit contact between Coast Guard appellate attorneys and prosecutors in May 2008. For, in May 2008, the last appeal of the cases for which the appellate attorney was sued had been written (by her) and was also published. This was the last surviving case of issue from the February 24, 2005 meeting in which CG appellate staff had improper contacts and secret discussions with prosecutors.

Though the actions of Coast Guard officials were not inescapably intertwined with the merits of the case or cases, their violations were certainly relevant to the merits contained within the evidences they illegally conspired to keep out of the official records. Their illegal actions had an effect on the final outcomes of each of the cases involved. This also had a detrimental effect on those same respondents, financially and otherwise.

Concealing Evidence

The OIG espouses the same extravagant and disingenuous arguments that the Coast Guard used to previously refuse a subpoena. It stated that because the respondent did not title the subpoena request as a ñMotion,ò then the whole process following is without authority. 46 CFR 5.301 states: ñ(c) After charges have been served upon the respondent the Administrative Law Judge may, either on the Administrative Law Judgeôs own motion or the motion of the investigating officer or respondent, issue subpoenas...ò The ALJ so moved in this case. These subpoenas are issued with the same authority as a U.S. District Court. In denying the ALJôs authority, what the Coast Guard created was a multi-phase process of hurdles to get through to in order to acquire even the ñsmoking gun evidenceò they held which may implicate another person and/or exonerate the respondent they were prosecuting.

Apparently a respondent must formally ñMoveò to request; then the government must reply; then the subpoena can be issued; the government can move to ñQuash.ò At that point, the judge must decide. Then the subpoena goes to Washington where the agency may refuse to follow the order anyway.

To find out if this is the Coast Guardôs honest interpretation, put the shoe on the other foot. Do Coast Guard Investigating Officers have to file a ñMotionò to subpoena evidence from a respondent? Must they then allow 10 days for the respondent to respond, and only then issue the Order and give the respondent a second try to ñQuashò the order? That would be evenness, and fairness. To find that out, just look at the Coast Guardôs record.

The fact is, as a respondent, you do not have a chance to acquire that evidence, even if the Coast Guards own Judge orders that they produce it. That is certainly not what Congress intended in drafting the Administrative Procedures Act.

Both the Coast Guard and the OIG repeatedly state that the ALJ did not follow regulation at 33 CFR 20.601(d)(e). It only takes a brief look at those regulations to understand that an ALJ can determine within mere moments that the specifications in those regulations are, or are not met. There is not even an inference in the regulation that the ALJ must spell out each item in some long-handed form or fashion. To state that the regulation was not followed because ALJ Massey did not lead the Coast Guard along by the hand and spell out just how each point was met is a juvenile argument, without some proof that one or more points were specifically not met.

The fact is that the Coast Guard does not want evenness, fairness, or honest due process in their adjudicative system. They only want it to ***appear*** that they do. Their hyper-specifications of how rules must be hyper-interpreted in the agencyôs favor to be valid, proves that. This is also evidenced by their complete disregard of regulations when and where the regulations do not fit any instant agency argument.

For example: 33 CFR 20.103(c) states: ñAbsent a specific provision in this part, the Federal Rules of Civil Procedure control.ò Control it says. The Coast Guard interprets this as: ñCoast Guard S&R hearings are governed by the Administrative Procedures Act and the provisions of 33 CFR Part 20, not the Federal Rules of Civil Procedure, although those rules may be used to supplement gaps in the applicable Regulations.ò, p.19, Decision of the Vice Commandant On Appeal No. 2679, dated April 2, 2008. While the regulation says the Federal Rules of Civil Procedure ***control***, the Coast Guard interprets that to mean that they may be used. Even a child could decipher this was no mere error. There was a motive.

Conclusions

The OIG, in both of their recent reports, repeatedly states how ALJôs must follow policy. Apparently, this is to include ñ***secre***tò policies of which the public is unaware. In OIG-10-107, the authors state that the CALJôs authority is to issue policy, ñto ensure that the penalties that ALJôs impose are generally consistent...ò, p.8.

One only needs to look at the Department of Commerce (DOC) OIG report on NOAA- National Marine Fisheries Service (NMFS), Fisheries Enforcement Programs (OIG-19887) to reasonably conclude that was not the CALJôs purpose in issuing policy. In that report the Department of Commerceôs Inspector General concludes that NOAAôs ñpenalties are disproportionateò and ñenforcement processes are arbitrary and lack transparencyò. NMFS uses Coast Guard ALJôs to adjudicate their cases. If you still think the Coast Guardôs Administrative Law program is fair? Just ask any commercial fisherman. It was further concluded that NMFS misused forfeiture proceeds to take trips overseas and for other inappropriate uses.

So where does all of this leave U.S. mariners? The OIG admitted that the Coast Guard did discuss the ñissuesò of cases in a secret meeting between prosecutorial and adjudicatory staff. What if those roles were again reversed? What if respondents had secret meetings with deciders and the supervisors of a judge they felt cheated or belittled them? How would the government then react?

Better yet, what did the Coast Guard do when their secret meetings, discussions, policies, attempted influences, and concealment were made public? They reappointed the Chief ALJ. They appointed one of his co-conspirators to become a new Administrative Law Judge.. They then wrote some rules to limit interaction of appellate staff with prosecutors ï but only after the appellate attorney, whose violable involvement and conflict of interest in writing one of those appeals completed writing that very same appeal. They left the prosecutors who had refused court orders in their jobs. They ñtook care of their own.ò Then the Coast Guard opened a new office, and dubbed it a ñCenter of Expertise.ò

Meanwhile, the testimony came out by the only two female Coast Guard ALJôs (both ***former***-judges by the time they testified before Congress), that the agency inappropriately pushed them out of their jobs. The government can publish all the rules and policy they want; they can train ALJôs and investigators they want. But, realize that all of them already know the drill. There is nothing that prevents them from disobeying the rules, regulations, or even the Constitution without punishment for doing so. Coast Guard officials can choose not to follow the rules because there has been no punishment. This is true from investigating officers in local units all the way up to the office of the Commandant and the Chief ALJ of the Coast Guard.

Solutions

The gravity and severity of the Coast Guardôs Administrative Law System is that decisions are made by that system to determine the causes and responsibilities for major and serious accidents that often-involving loss of life, and major impacts on commerce and the environment. Often the Coast Guard conducts the only pertinent accident investigation. If the Coast Guard is allowed to continue to deny a mariner the right to a full and open proceeding and to determine all of the relevant evidence, the wrong cause or person may well be declared responsible for an accident. This can happen for a number of reasons including malicious prosecutorial intent, to provide continuity of policy, or simply by ineptness or laziness. This cannot be allowed and Coast Guard officials must beheld accountable.

The persons involved in deciding and reviewing these actions all knew or should have known that the Coast Guardsô actions were violations and malfeasant because they are lawyers and trained as officers of the court. The Coast Guard officers and investigators, even if not officers of the court, know how follow rules because they are in the military. Unfortunately, the Coast Guard has not shown it has the temperance or maturity as a military service to engage in law enforcement, to conduct prosecutions, and also adjudicate fairly. Meanwhile, their acts continue to destroy lives and careers. This whole affair has been a violation of 18 USC 241 as a conspiracy against rights, regardless of its intention. In efforts to cover it up, Coast Guard officials also violated 18 USC 1001. The drafters of the DHS OIG reports also make themselves culpable as accessories in those violations (18 USC 3).

It is clear that Congress must remove adjudicatory functions from the Coast Guard.