

#### Question one

The United States Coast Guard is the primary enforcer of these laws. However, depending on factual circumstances there can be overlapping jurisdiction with other federal agencies including the Federal Bureau of Investigation (FBI), Department of Justice and Environment Protection Agency (EPA). Some states exercise concurrent enforcement and control with the Coast Guard within the waters of the individual state.

#### Question to

Under the assumption that the Coast Guard would be the leading investigative agency the Marine Safety Office or Marine Safety Unit of the port/area involved would be responsible for determining the level of investigation undertaken. Depending on the severity of the environmental impact of the event the Coast Guard investigators can be supplemented by personnel from other agencies such as the National Oceanic and Atmospheric Association (NOAA).

When the casualty includes factors such as collision, explosion or loss of life, the National Transportation Safety Board can become involved and will usually perform their own investigations, hold their own hearings and issue reports that are separate and distinct from the Coast Guard.

Against that we must reiterate that the individual states (and sometimes local) governments are permitted to perform their own investigations and can bring charges separate from the federal proceedings.

#### Question three

In the current legal environment following September 11, 2001 the Coast Guard seemed to have abandoned their matrix for a determination on which pollution incidents warranted criminal investigation. Wide discretion is now granted to the Captain of the Port as well as the Department of Justice in conjunction with the Coast Guard's Criminal Investigation Division and other agencies with potential jurisdiction on whether to bring criminal charges. Again as stated in the prior questions, individual states have the ability to bring such charges on their own against ship personnel. Evidence gathered in any casualty investigation can be used by prosecutors in criminal proceedings.

Perhaps ironically there exist for seamen bearing U.S. licences a noncriminal sanction of licence suspension or revocation which is not available for foreign seamen, thereby making a criminal action against foreign seamen more likely in potentially less egregious situations.

#### Questioned 4

Assuming that question three response answers this question. However, in noncriminal matters the NTSB and/or Coast Guard have administrative responsibilities for performing casualty investigations. State and local authorities can also exercise their concurrent authority to investigate.

#### Question 5

Both federal and state law permit the detention of those individuals who would be considered "material witnesses" or "persons of interest" through the issuance of a subpoena ordering their sworn testimony and/or grand jury appearances. As these individuals are not being criminally charged at the time, the usual constitutional safeguards are not triggered. In many instances separate criminal counsel is appointed for the crew members by the owners or the court may appoint a lawyer at public expense to protect their interests. Often court-appointed lawyers are not well versed in maritime matters. There have been occasions where the crew members have been required to stay within the good jurisdiction for months while awaiting the various court proceedings. Some crew members have been held in jail, others have been kept in hotels at the owners expense and others have been left to provide

their own places to stay. In one recent case the news media reported that detained crewmen are sleeping on the floor of a church.

#### Question 6

The general answer to this question would be "No" when applicable to non-U.S. seamen. By the nature of their nationality and occupation government authorities consider them to be "flight risks". There have been occasions where the prosecutors have allowed vessel personnel to be repatriated against a promise by the owners to return them at the necessary time. This is usually accompanied by a demand for a substantial cash deposit or bond guaranteeing the return of the subpoenaed crew members.

In this regard, there is a procedure available for the release of crew that crew members that have been designated as "material witnesses" to return to their vessels and/or country of origin which involves either the crew member or his employer, or both, posting material witness bonds (secured or unsecured, as may be ordered by the court) in amounts determined by the court. Generally, as one of the conditions of the bond, the crewmen and his employer promised that the crewmen that crew member will be returned to the jurisdiction if his or her appearances required by either the authorities or the court.

#### Question 7

See the answer to question 6. The amount of the security is discretionary and can be based on the number of potential criminal offenses as well as the maximum fine for each offence. There is a wide diversion between the various Coast Guard districts and the Department of Justice on the amount of security requested. Sometimes the security amount can be negotiated.

#### Question 8

The Coast Guard has the responsibility for the safety, health and security of seafarers. It must be noted, however, that the Coast Guard while being charged with the protection of seamen's rights has a seemingly conflicting duty to investigate, enforce and assist in the prosecution of civil and criminal violations of environmental law. This dual mission has left the Coast Guard in an unenviable position of being protector and enforcer at the same time. The Department of Justice, the crewmen's lawyers and Courts are also charged with responsibility of protecting the rights of seafarers.

Questioned 9.

The expected role of vessel crew members is full cooperation with authorities in their investigation. U.S. constitutional rights include the right against Self-incrimination (Fifth Amendment), the right to counsel, the right to have a Court proceeding in their native language and the right to confer with officials from the flag state or their own nation on their legal situation

With respect to the Fifth Amendment right against self-incrimination, no seafarer can be forced by the authorities to speak to them or make any statement on the matter where doing so may expose that seafarer to criminal liability. However, if a seafarer chooses to speak to the authorities, anything that he or she may say can and will be used against them. Moreover, if the seafarer lies or makes any other type of false or misleading statement to the authorities or presents a vessel record with false statements or induces others to make false statements, such seafarer can be separately charged with a number of independent criminal charges such as False Statement, Obstruction of Justice, Conspiracy, Interference with a Government Proceeding, etc. All of such charges are felonies and can subject the seafarer to jail time, if convicted.

#### Question the 10

Assuming that there is a typographical error in the question and that it refers to question 9, the U.S. is not a signatory to most international civil liability and compensation schemes

choosing rather to rely on their own laws such as the Clean Water Act and the Oil Pollution Act of 1990 ("OPA 90"). The Clean Water Act and the OPA, by reference, contain criminal law provisions for any negligent act by the seafarer resulting in pollution. Other U.S. laws (i.e. Refuse Act and Migratory Bird Act) are unilateral, no-fault criminal statutes (not requiring negligence or criminal intent as a pre-requisite for their use) which can result in the Department of Justice bringing charges against seafarers and their employers.

In addition, a seafarer who has been deemed to have committed a negligent act resulting in the death of another can be charged under a federal statute commonly known as the "Ships Act", 33 U.S.C. sec. 1115, which is a felony, punishable with imprisonment up to 10 years and a fine of \$250,000. In the event of a pollution incident, the local authorities have a right separate from the federal government to pursue or applicable state criminal statutes relating to pollution resulting from a seafarers negligence, recklessness and/or intentional act.

#### Question 11

See the answer to question 10. Mere negligence without wilfulness can lead to a successful prosecution under existing U.S. and state environmental criminal laws. Because many of the environmental laws in this country are based on "no-fault" or "strict liability" statutes the prosecutor need not establish the requisite mental state of criminal conduct ("mens rea") in order to proceed with the case.

#### Questioned 12

The U.S. considers the Exclusive Economic Zone (200 mile limit) is the area coming under U.S. law for the purpose of OPA civil liability. However, in order to invoke the criminal statutes of the United States, with some exceptions relating to violent crimes, the criminal act must have occurred within the territorial maritime boundaries of the United States, or must have resulted in damage within the territorial boundaries, which are 12 miles. It is possible that the individual states would not have jurisdictional powers unless the pollution directly threatened and/or affected their geographic area. Individual states criminal jurisdiction generally extends 3 miles out to sea.

#### Question 13

- a. The seafarer may be charged as a criminal defendant or, as mentioned in prior questions, detained as a material witness and federal or state law.
- b. The rights of the seafarer should be the same as citizens of the U. S.
- c. U. S. law requires the furnishing of copies of criminal complaints, indictments information and all other charging documents applicable to anyone charged with a crime. The seafarer is also entitled to copies of any statements made by him to authorities. Any seafarer may be detained as a "material Witness" would be entitled to a copy of the subpoena designating him or her as a material witness. A seafarer not versed in English language or our jurisdiction could find the process too complex to handle. Competent criminal counsel should be able to assist seafarers in such circumstances
- d. U.S. law requires "a speedy trial" of anyone charged with the crime. However, if there is a voluntary waiver of this law there is no specific time limit applicable. With respect to those seafarers detained as material witnesses, there is no specific time period by which they must be released. In this regard, once a seafarer is designated as a "material witness", his or her counsel needs to negotiate with the prosecutor to either release their client or to conduct a deposition under Rule 15 of the Federal Rules of Criminal Procedure as soon as practicable. If the prosecutor refuses to release a material witness or refuses to conduct a Rule 15 deposition, counsel for the seafarer would normally move the Court for an order to either release the seafarer or have his deposition taken forthwith and then to have the seafarer released. The problem area occurs where detained seafarers are not designated as "material witnesses", but are nevertheless not permitted to leave the country because they have passports and seamen documents have been taken by the authorities. In such instance counsel for the seafarers must negotiate, and at times pressure of the

prosecutors for the speedy release of their clients. If all else fails, counsel must move the Court for the release of the seafarer similar to the procedure utilised for material witnesses.

- e. Frequently the detainees are kept in hotels, sometimes under guard, although this procedure has not been insisted upon recently by U.S. authorities, at the expense of the owners. However, the place of detention can greatly vary depending on what authority is detaining the crew member.
- f. US law does give the right to legal counsel to all, and council would be provided at no cost to the defendant, if such defendant cannot afford counsel. However, the expertise of counsel can vary. Frequently owners in conjunction with their underwriters correspondents make recommendations for competent counsel to be provided to seafarers who are detained during an investigation.
- g. Usually legal counsel will be given access to the defendant although not necessarily on an immediate basis (or as quick as the detained individual might desire). As far as the others mentioned in the question, it would be expected and access will be in accordance with the visit of policy of the detention facility in which the crew member is held and some variations exist based on the local conditions where the flight facility is located
- h. Yes, as provided under the U.S Constitution. However, that right can unwittingly be waived by a defendant and particularly after sufficient warnings have been given to the seafarer regarding them the ability to use anything said in a court of law against the defendant (known as "Miranda" warnings which are based on a Supreme Court decision outlining prosecutorial responsibility versus constitutional rights).

#### Question 14

The promotion of uniformity and the facilitation of justice in maritime law are among the reasons for the existence of the MLA.. The uneven application of law with respect to seafarers involved in environmental incidents continues to be of serious concern to all the interests involved in the association. However, the uneven application of Justice for seafarers can now be observed internationally. Worldwide uniformity (while a lofty goal) on environmental law would promote cleaner seas and well-run ships.

We should also draw attention to the seafarer's right to confer with the diplomatic corps of their home country or flag state of the vessel. It was it seems that this right is seldom exercised and that more can be done through diplomatic channels to protect seafarers when they are exposed to the onerous penalties which they are increasingly facing worldwide.

i.