NMA REPORT #R-429-Q

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[Formerly Gulf Coast Mariners Association, Founded in 1999.]

U.S. COAST GUARD versus LT. ERIC N. SHINE

By Capt. Richard A. Block, Secretary, National Mariners Association

Our Association presented the ***background*** of Eric Shineôs story in our ***Report #R-429-L, Rev. 2***, dated July 9, 2008 titled The Coast Guard Hates Whistleblowers: The Eric Shine Story. That report is available on our website under ñResearch Reports.ò ***This papersupplements and updates Report #R-429-L, Rev.2 .***

Eric Shine is a 1991 U.S. Merchant Marine Academy Graduate who earned a naval reserve commission along with his Coast Guard engineerôs license. He is a member of our Association who brought to our attention a number of serious complaints of his entrapment within the Coast Guardôs Administrative Law system that extended over a six year period.

This multi-faceted complaint brought by the Coast Guard reached back to events that occurred on vessels he had served on and involved lawsuits ***Shine*** had filed in several Federal District Courts. To shut down these lawsuits, the Coast Guard went after his license through Administrative Law Suspension and Revocation (S&R) proceedings. These proceedings required that Eric Shine actively defend himself before the Coast Guardôs Administrative Law system that assaulted him with charges, hearings, and paperwork for approximately six years. ***During this six-year period, the Coast Guard effectively destroyed his reputation, his personal life, his maritime career, and his military career at a time when he was up for promotion to the rank of Lieutenant Commander in the U.S. Naval reserve***.

As Secretary of the National Mariners Association, I regret that I did not have the necessary funds available to attend Eric Shineôs ñhearingò before Administrative Law Judge (ALJ) Walter J. Brudzinski in Long Beach, California. To date, I have attended over 20 Administrative Law hearings as an ñobserverò before a number of different ALJs. Nevertheless, I carefully read a 1,000-page transcript of the hearing that took place over a period of ***four days.*** As a direct result, I addressed a letter to Vice-Commandant VADM Vivien S. Crea on June 30, 2008 as displayed in full in presented in our Report #R-429-L on pages 12-16. It is only fair and balanced to include in this report the reply to our letter from C.M. Lederer, Acting Judge Advocate General dated Aug. 1, 2008 writing on behalf of the Vice Commandant. I credit their prompt reply to the fact that our Association directed copies of our June 30th letter to members of Congress and the media already focused on the Administrative Law Judge scandal in Washington.

Observing ALJ Proceedings

My experience has been that ***very few mariners, except for those directly involved as a respondent or witness, ever attend these ALJ hearings.*** In attending these hearings as an ñobserver,ò I often find myself at a disadvantage because I am not a lawyer by profession. Rather, I am a teacher by profession and a licensed ñlower-levelò Master by trade. However, I noted that Vice-Admiral Crea, under whose orders hearing that is the subject of this report, was held, is not a lawyer either. I find that disconcerting. However, it does not require any legal skill to observe the unfairness and abuses I found recorded on the transcript. These abuses in the transcript are plainly visible as I reported to VADM Crea.

Ms. Janine M. Sullada, a personal friend of Mr. Shine, participated in this case from the outset. However, Ms. Sullada is more than an ñobserver.ò She has a great familiarity with the case as a professional paralegal with significant prior courtroom experience. Her work includes a familiarity with this case from its outset. She knows many of the people involved and has handled all of the papers, whose copies fill two drawers of our Associationôs file cabinets. Ms. Sullada is also a college graduate who majored in Psychology ï facts that provide added credibility to her affidavit that comprises a significant part of this report.

Throughout his ordeal, ***it is clear that the Coast Guard was going to do the things that it always intended to do – to find Eric Shine "Guilty."*** The tactics they used are clear in the transcript ï a bulky and time-consuming document. However, they are summarized and pertinent points extracted in Ms. Sulladaôs ñAfffidavitò that accompanied Eric Shineôs appeal brief.

Unfortunately, we have little reason to believe that anyone in the Coast Guard will ever read, study, or act favorably on Eric Shineôs appeal. There are too many issues the Coast Guard covered in our two reports that they would like to sweep under the rug. However, Ms. Sulladaôs ñAffidavitò exposes the resulting lumps in the carpet that must serve as a warning to all our credentialed merchant mariners.

If these abuses in the Coast Guardôs Administrative Law System are allowed to continue, our Association hereby warns our mariners that your professional career is in jeopardy until Congress acts to investigate allegations of abuse within the system.

Eric Shine was found "Guilty" in the hearing conducted before Judge Walter J. Brudzinski of some sort of "mental disease" although never examined by a fully qualified medical professional. Instead, Captain Arthur French, who was the head of the Coast Guardôs Medical Branch at the National Maritime Center sat in the courtroom and ñdiagnosedò this disease during the hearing before offering his testimony. ***As a Coast Guard officer in charge of the Medical Review Branch at the National Maritime Center, Dr. French was present in person to relay the news that he would not approve Eric Shine's license as a Second Assistant Engineer for renewal***. By flexing his authority to do so, he thereby ended Eric Shineôs career that had started with his graduation from the U.S. Merchant Marine Academy in 1991.

I point out as well that Captain Frenchôs controversial new ñMedical NVICò (NVIC 04-08) has similarly ended the career of many of our merchant mariners. ***This case is controversial because it may serve as a terrible precedent to end careers of other merchant mariners for undiagnosed "mental diseases" that the Coast Guard may choose to allege in the future.***

Letter to the Attorney General

Our Association, in a letter to U.S. Attorney General Eric Holder with copies to Members of Congress, specifically asks the U.S. Department of Justice to examine this case (and others like DRESSER, ROGERS, and KINNEARY) to determine ***whether the Coast Guard abused its authority or whether the Coast Guard simply usurped the authority to adjudicate "remedial" matters in a court governed by a military organization***. Indeed, this begs the larger question of whether the entire ñMarine Safetyò function of the Coast Guard now should be returned to civilian control.

It is clear that the process has drifted far off course from the words of CAPT Richmond[(1)] who stated in 1946: ñShould the person desire counsel but have no means of securing it, the Coast Guard supplies an officer to act in his defense. Further, it is the duty of the examining officer to subpoena any or all of the witnesses that the person charged desires to appear in his behalf.ò *[(1) Statement of Capt. A.C. Richmond, USCG, Reorganization of Executive Departments, before the Committee of the Judiciary, 79th. Congress, June 14-27, 1946, p.271.] Capt. Richmond would later become Commandant of the Coast Guard. Mr. Shine and all other mariners are not provided with counsel in so-called "remedial" hearings.]*

Eric Shine's Letter to the Attorney General

I e-mailed a copy of the letter our Association proposed to send to the Attorney General to Eric Shine for comments. In our letter, I tried to use and balance my observations relative to a number of different cases. In doing so, and before mailing this letter, I asked a number of other concerned mariners to review and comment on it.

In doing so, Mr. Eric Shine not only reviewed our letter but also contributed significant additional information, views, and interpretation to my material. I submitted as **[Enclosure #8]** to the Attorney General Mr. Shineôs thoughtful ***editing of our Association's letter*** based upon years of his own personal experience trying to redress his grievances he observed in regard to the Coast Guardôs Administrative Law system. ***I enclosd his letter in full and commend it to the Attorney General's attention***. In places where **[Enclosure #8]** varies from the text of our Associationôs letter, we pointed out that those thoughts reflected Mr. Shineôs views and reflected his own considerable research, thoughts and experiences. As a member of our Association, we encouraged him to express his views and chose to present them as an enclosure to ***this*** report ï ***unedited***. Please consider this enclosure both as timely and supplemental in nature.

U.S. Department of
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Mr. Richard A. Block
Secretary
National Mariners
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Dear Mr. Block:

I am responding to your letter of June 30, 2008, on behalf of the Vice Commandant, in which you raise a number of issues, the most prominent being concerns regarding the fairness of the procedures for the suspension and revocation of merchant mariner credentials. You assert that the Coast Guard's suspension and revocation process (both initially when cases are at the administrative law, judge level and, thereafter, when matters are on appeal to the Commandant) is and has been, fundamentally flawed. In so doing, you point to allegations of bias and undue influence raised by former Coast Guard administrative law judge Jeffie Massey, a number of individual suspension and revocation cases, press reporting, and recent litigation involving several mariner appeals.

The Coast Guard recognizes that mariners spend a great deal of time and effort to receive and to maintain the credentials necessary to support their livelihood. We recognize that they have both significant property and libert^{y} interests in continuing to hold those credentials. Whenever a decision is made to seek suspension or revocation of a merchant mariner document, the Coast Guard has a system to ensure that sufficient due process is afforded to mariners by providing administrative hearings, the right to be represented b^{y} counsel, and a multi-layered appeal process including the ability to appeal to an independent agency, and ultimately, to federal court.

One of the most basic responsibilities of the 11S Government is to protect the lives and safety of its citizens. The Coast Guard is charged by law to ensure that over 200,000 licensed merchant mariners are competent and their conduct promotes marine safety, security and protection of the marine environment. Congress has authorized the Coast Guard to suspend or revoke mariner licenses and credentials where necessary to achieve these goals. This federal authority to revoke merchant mariner credentials has been in place since the Act *of February 28, 1871* created the Steamboat Inspection Service. Nearly 50 years ago, the Coast Guard stated "...Suspension or Revocation proceedings are intended to aid and assist the Coast Guard in performing its statutory duty to promote safety of life and property at sea. These proceedings are to protect the integrity of licenses, certificates, and documents issued by the Coast Guard rather than proceedings seeking to discipline or penalize the holders of such licenses, certificates. or documents." The purpose of our suspension and revocation proceedings has not changed. We continue to believe that the proceedings *arc* remedial and not penal in nature.

In addition to the value of lives saved, suspension and revocation actions minimize damage to property, the environment, and the economy by ensuring that those mariners that demonstrably do not possess the necessary skills, experience, and character to safely operate in the increasingly complex marine transportation system do not endanger themselves and that system unless and until they can demonstrate rehabilitation. Over the years, Congress has recognized the value of the Coast Guard's suspension and revocation process and has expanded our suspension and revocation authority. After the EXXON VALDEZ oil spill, the *Oil Pollution Act of 1990* expanded our authority to initiate suspension and revocation proceedings after mariners are convicted of operating a motor vehicle while under the influence of, or while impaired by, alcohol or dangerous drugs. After the terrorist attacks on September 11, 2001, the *Coast Guard and Maritime Transportation Act* granted the Coast Guard the authority to suspend or revoke merchant mariner credentials for individuals deemed to be a security risk that poses a threat to the safety or security of a vessel or a public or commercial structure located within or adjacent to the marine environment.

The administrative law judge program underwent significant changes in the mid-1990's to include, among other things, creating a centralized docketing center and revamping the procedural rules to remove the quasi-criminal aspects of the suspension and revocation hearing process and align our proceedings with the hest practices in administrative law. These changes have allowed the administrative law judge program to make significant positive strides and the program is currently managing a large caseload with fairness, efficiency, and productivity.

Coast Guard investigating officers serve complaints that can result in suspension or revocation of a merchant mariner's credential when there is credible and sufficient evidence of negligence, incompetence, misconduct, a threat to maritime security, violations of laws or regulations intended to promote marine safety, dangerous drug use, dangerous drug law convictions or other convictions that affect maritime safety. Administrative law judges preside in over 600 suspension and revocation adjudications annually. These proceedings provide mariners with, among other rights, the rights to he represented by counsel, to call and cross-examine witnesses, and to enter evidence to respond to the charges against his license or document. Coast Guard administrative law judges also adjudicate cases on behalf of other federal agencies.

If the administrative law judge issues a decision and order that is adverse to the mariner, the mariner has a right to appeal the decision to the Commandant of the Coast Guard. Mariners may also appeal the Commandant's decision on appeal, if adverse, to the National Transportation Safety Board. A mariner may further appeal the National Transportation Safety Board's final decision, if adverse, directly to a federal Court of Appeals.

Concerning, the role of the Commandant in the appeals process and the delegated role of the Vice Commandant, you specifically asked tithe Vice Commandant is an attorney. While she is not, she is ably assisted by the Judge Advocate General of the Coast Guard and his staff' of judge advocates and civilian counsel. This type of legal counsel arrangement is fully consistent with agency administrative practice and efficient use of government resources.

The Coast Guard has taken all allegations, including those you have cited, regarding the suspension and revocation appeal process seriously. Based on the information we are aware of, the Coast Guard categorically denies the allegations of bias and undue influence contained in former administrative law judge Massey's affidavit. Because litigation is still pending, it is improper for the Coast Guard to comment further on this matter.

While I cannot comment on individual suspension and revocation cases, I understand the concerns you and members of the marine community have raised regarding the administrative law judge program and the suspension and revocation process. While I believe that the record shows we have a fair and impartial administrative judiciary and that many of the allegations are unfounded, the Coast Guard is committed to a[g]gressivel[y] addressing any shortcomings and correcting any misperceptions.

In response to concerns raised at the July 31, 2007, Coast Guard and Marine Transportation Subcommittee hearing on the Coast Guard's Administrative Law Judge program, the Commandant directed a comprehensive review and assessment of the program with the express intent of ensuring not only that bias, but also the *appearance* of bias is removed from Coast Guard suspension and revocation actions and system integrity is ensured. We chartered a Work Group with specific direction to identity areas where action could he taken to enhance our ability to carry out this mission and to insure that mariners can trust the system designed to protect their due process and property rights while also insuring public safety.

While the core processes, authorities and practices used in the Coast Guard adjudication system are sound and consistent with the Administrative Procedure Act which forms the basis for administrative adjudication in the United States, we have identified areas where meaningful improvements can, and will be made. While we firmly believe that we have a fair and effective system, we have taken steps to improve this system. The cornerstone of our improvement plan is a strategy with specific actions to:

- improve the transparency and accountability of the adjudication system;
- enhance the responsiveness and effectiveness of the administrative law judge program and our suspension and revocation process;
- build and sustain critical capacity; and
- restore the confidence and faith of mariners and the marine legal community in the independence and neutrality of' the administrative decision-makers.

We have communicated our plan to Congress and will be providing updates on the progress we arc making in implementing these improvements.

While the Coast Guard acknowledges that the independence and impartiality of administrative law judges is vital to adjudicatory processes, the Coast Guard opposes legislation passed by the House concerning the suspension and revocation process due to the adverse impact it would have on mariners and the Coast Guardð in terms of judicial effectiveness, efficiencies, safety at sea

and costs. In the Coast Guard's view, the proposed legislation could, among other negative effects:

ÅI**mpose Substantial Travel Burdens for Mariners:** The Coast Guard currently has six geographically-dispersed administrative law judges, in addition to the Chief Judge. Further, the existing Coast Guard administrative law judges are stationed near mariner population centers and travel to additional cities to decide suspension and revocation cases, to further attempt to accommodate the mariner. The National Transportation Safety Board (NTSB) administrative law judge system only has administrative law judges in Washington, D.C., Denver. Colorado, and Arlington, Texas, While the NTSB administrative; law judges travel, reduced numbers and decreased dispersion could result in a system, under the draft legislation where many mariners would be compelled to travel farther for adjudication of their appeal, thus imposing a substantially increased financial and inconvenience burden.

Å**Impose increased Litigation Costs on the Mariner:** The draft legislation adopts the Federal Aviation Administration (FAA) model of adjudication', more importantly, it adopts more sweeping discovery rules. This change could effectively compel legal representation to effectively pursue an appeal. In turn, the cost of adjudication would increase considerably for mariners who might otherwise choose to represent themselves or have non-lawyer representatives before a Coast. Guard administrative law judge.

Å**Reduce Procedural Protections for Mariners:** Under the existing suspension and revocation process, all cases, even those where a settlement is reached, are reviewed by the administrative law judge. Under the draft legislation, the Coast Guard could enter into a settlement as final agency action without administrative law judge review. Further, since the NTSB routinely deals with private pilots, who are readily available, as opposed to commercial mariners, who are frequently unavailable for extended periods due to service at sea, significant procedural protections, in terms of response timelines and matters would have to he added to the NTSB administrative law judge process, such as currently exist in the Coast Guard suspension and revocation process.

Overall, it is our view that the proposed legislation would undermine the leadership authority of the Commandant and Secretary with regard to merchant mariner licensing functions and would dilute their responsibility and accountability for safety at sea, a foundational Coast Guard mission.

The Coast Guard has, and will continue to take the issue of improving the suspension and revocation process very seriously, We have heard Congress, mariners and the industry and arc committed to executing our aggressive plan to ensure needed enhancements are made. We agree with you on the need to make the suspension and revocation process even more transparent and efficient.

You should note that we have processed your petition for rulemaking in accordance with 33 Code of Federal Regulations. Section 1.05-20. As such the Coast Guard assigned it docket

number USCG-2008-0802 and placed your petition along with this response in the docket. You may access the docket at www.regulutions.gov.

Thank you for expressing your comments and concerns and for your continued interest in the proper functioning of the Coast Guard. I look forward to garnering your support for the important improvements *we* are implementing that will better serve and honor mariners and the public.

Sincerely,

C. M. LEDERER
Acting Judge Advocate General
U.S. Coast Guard

UNITED STATES OF AMERICA
U.S. **DEPARTMENT OF HOMELAND SECURITY**

UNITED STATES COAST GUARD

UNITED STATES COAST GUARD Complainant, vs. **ERIC NORMAN SHINE** Respondent	**Docket Number** **CG S&R 03-0166** **U.S.C.G Case No. MISLE 167145**

AFFIDAVIT OF JANINE M. SULLADA

I am not a party to this action and over the age of 18.

I have personal knowledge of the matters stated herein and that they are true of my own and personal knowledge and experience, except as to those matters which are stated on information and belief, and as to those matters I believe them to be true as well.

BACKGROUND INFORMATION

1. I have a B.A. in Psychology and a paralegal certificate. I have worked in the legal field for 18 years. In March of 2003, I was hired to perform contract paralegal work on Lt. Shine's case, USCG v. Eric Norman Shine, by attorney Frank Brucculeri, formerly of Haight, Brown & Bonesteel. This work ended several months later, after Brucculeri recused himself due to conflicts of interest expressed by Lt. Shine.

2. I was instructed to assist Lt. Shine ("Respondent" herein) in the organization of his files, which were at his home in Pacific Beach, San Diego, where Lt. Shine was still residing at that time. In the process of beginning to organize his documents, I reviewed hundreds of

documents from three lawsuits Respondent had filed through various attorneys of record, against two different shipping companies, Shine v. Matson Navigation Co., Shine v. ASM, and a third lawsuit against his Union/Federal Officers Association, Shine v. MEBA.

3. Lt. Shine's position as an Officer in the U.S. Merchant Marine requires a Professional Engineering License and is tied directly to his Naval Commission that he received from Kings Point. As direct result of the Coast Guard's complaint filed against him, because he was prevented from working in his profession, and eventually as he waited for promises by MEBA and the shipping companies to be upheld regarding arbitration of the APL JACKSON disputes and others grievances, and the intentional delays created by MEBA and counsel for shipping companies, it got to the point where he could not pay the mortgage on his two homes, or pay his attorneys who were handling his federal lawsuits. Eventually, there was no money for food, and the utilities were being shut off one by one.

4. Weeks after Brucculeri had been assigned by MEBA to Respondent Lt. Shine's S&R proceeding, Respondent discovered on the law firm website that attorney Frank Brucculeri advertised himself *as* a "Risk Manager" and "Defense Counsel" for the Shipping Companies and the Professional Liability and Indemnity Clubs "P&L" Numerous shipping companies were defendants in Lt. Shine's federal law suits. The "MEBA Plans" is a joint federal trust controlled by the shipping companies and Federal Officer's Association or "MEBA" (Union). Lt. Shine demanded that Brucculeri recuse himself, due to this conflict. A month or so after the charges were brought by the Coast Guard on March 06, 2003, Brucculeri moved to recuse himself, but stayed on while he found counsel who would substitute in, and Brucculeri continued to file documents on Lt. Shine's case. Brucculeri recommended to MEBA that attorney Peter Forgie take over Lt. Shine's representation.

5. Respondent was adamant that Peter Forgie must not represent him either, because Forgie was not independent counsel chosen by him, and he was entitled to independent paid legal representation under the MEBA joint federal trust plans. Just after Frank Bruculeri recused himself, and prior to Forgie's first appearance, when Respondent was not represented by counsel, Lt. Tribolet and the first Adminstrative Law Judge in this matter, Parlen L. McKenna, called Lt. Shine at his home and held a *sua sponte* unrecorded and undocumented hearing. They harangued him for about an hour in an attempt to get him to voluntarily surrender his license. I was there at the time still going through documents on Respondent's case, and heard one side of the conversation. Even though he was only weeks away from being forced out of his home that had been repossessed, and he was trying to find a place to store his case documents, and was under insurmountable stress, Respondent had the presence of mind to state that he was not represented by counsel at that time, and that he wanted them to allow him time to retain counsel to replace Brucculeri, and he continually tried to end the conversation with them.

6. After just recently reading CFR Section 5.203, *Voluntary surrender to avoid hearing,* I was stunned to find out the ramifications of the decision that the AU and Lt. Tribolet were trying to force Lt. Shine to make. CFR Section 5.203 provides:

(a) Any holder may surrender a license, certificate or document to the Coast Guard in preference to appearing at a hearing.

(b) A holder voluntarily surrendering a license, certificate or document shall sign a written statement containing the stipulations that:

(1) The surrender is made voluntarily in preference to appearing at a hearing;

(2) All rights to the license, certificate or document surrendered are permanently relinquished; and,

(3) Any rights with respect to a hearing are waived.

(c) A voluntary surrender of a license, certificate or document to an investigating officer in preference to appearing at a hearing is not to be accepted by an investigating officer unless the investigating officer is convinced that the holder fully realizes the effect of such surrender, This *sua sponte* telephonic hearing occurred sometime in April of 2003, just prior to a proceeding that was carried on at the San Diego Coast Guard station in May of 2003, at which attorney Forgie made a special appearance for Lt. Shine.

7. After months of motions practice (Respondent was at that time and has been denied all his motions for discovery), attorney Forgie was ultimately unsuccessful in defeating the Coast Guard's Motion for Summary Judgment (that was granted without a due process hearing). MEBA then cut off any further monies from MEBA's federal legal trust fund and refused to pay for Lt. Shine's continuing legal representation to file an appeal of the final judgment. Lt. Shine was then forced to file his own appeal, and he did so in a timely fashion, even though the final judgment declared Lt. Shine was "medically and mentally incompetent" "unfit for duty" and he had recently become homeless.

8. The Coast Guard had just filed a complaint on March 6, 2003 against Respondent for the suspension and revocation of his Merchant Mariner's License, allegedly for "being depressed." The Coast Guard alleged that Respondent served under his license and documents and position between the months of March 6, 2001 and June 11, 2001 and between December 2, 2001 and January 5, 2002, and from January 5, 2002, until present (even now in 2008). The Coast Guard further alleged that Respondent "is incompetent due to a major depressive disorder, or other psychiatric condition, **the exact najure to be determined thrsueb t4e bearing process."**

9. The Coast Guard, a branch of military, alleged that Lt. Shine, an officer and a licensed professional marine engineer, was incompetent and suffering from some kind of mental illness. They obtained information in violation of Supreme Court case precedents, HIPPA Exemption 6 of 5 U.S.C. § 553(b)(6), and even falsified medical records in a document they filed, and has spent the past five years **"through the hearing process"** attempting to prove that Respondent is incompetent, all at the taxpayer's expense.

10. I think I now understand why the Coast Guard JAG prosecutor Lt. Cmdr. Tribolet's has continued to press on with the charge of incompetence against Respondent. ALJ Brudzinski asked him if wanted to continue with the charges against Respondent at the October 23, 2007 hearing, and he answered "yes, your honor" on the record. He could have dismissed the charges at that hearing if he wanted to, but he did not. Respondent stated on the record at the May 2008 hearing that Lt. Tribolet had been "stalking" him for 7 years. To clarify his statement, it is now 2008, and I believe Respondent stated that Lt. Tribolet was the original investigating officer who investigated the explosion that occurred onboard the SS COMET in October of the year 2000, when Lt. Shine had reported safety hazards, which included an explosion and dumping of contaminated boiler water into the San Francisco Bay to the MSO of the Coast Guard in San Francisco. A Marine Safety Incident Report form 2692 was filed by this vessel or company, but it was pm after Lt. Tribolet's investigation, and even longer after first reported by Respondent and overlooked as to the violations on reporting and other infractions. After a review of official documents regarding the SS COMET, the APL JACKSON, the SS MAUI, and other vessels and owners as well, it became evident that a cover-up of the true facts had been conducted by the shipping companies and the Coast Guard involving the safety violation incidents on these two vessels, as well as disputes on the SS MAUI.

11. Respondent asserts that this matter is not properly before this administrative "kangaroo court," because the constitutional issues raised in this administrative proceeding simply can not be adjudicated within this forum. The Coast Guard stated in their *Memorandum of Points and Authorities* pg. 3, lines 1-4, that under 46 CFR 5.65, "The decisions of the Commandant in cases of appeal or in review of decisions of Administrative Law Judges are officially noticed é and are binding upon all Administrative Law Judges, unless they are modified or rejected by competent authority." To my knowledge, the United State Supreme Court is competent authority, and is in fact controlling, and it disallows the Coast Guard from doing precisely what it is doing to Lt, Shine, and many other mariners and marine officers. They are being denied due process of the law and equal protection under the law. Criminals and alleged terrorists are seeing a fairer and faster day in court than our seamen and marine officers.

12. The Coast Guard should have brought any alleged charges for violations of 46 or 33 CFR against Respondent Lt. Shine in U.S, Federal District Court, where Respondent, who is a federal officer, already had 3 federal court cases against two former employers Matson and American Ship Management/ Patriot Contract Services/ Neptune Orient Lines, and MEBA. The United. States District Court had jurisdiction over cases brought against the United States or its agencies and its agents (federal officers), and admiralty and general maritime law.

13. The Coast Guard's complaint and their involvement in Lt. Shine's labor disputes and the Coast Guard's collusion with the defendant shipping companies prevented Lt. Shine's ability to prosecute his federal court cases, and even though the MEBA case was stayed by Judge Matz pending resolution of this S&R proceeding, that case was just now was recently dismissed due to "lack of prosecution" because Lt. Shine could no longer afford counsel.

14. Further, it is clear from a review of FOIA requests and other records that I have reviewed that Lt. Shine's Naval Commission ended as a direct result of the Coast Guard's report to the Navy. The Navy Discharge, which Lt. Shine disputes as improper and retaliatory, was allegedly issued prior to a meeting in of the FY-04 Naval Reserve Lieutenant Commander (Line) Promotion Selection Board, that was scheduled to convene May 5, 2003 and not *as a* resultant of action by the Board. In fact, Lt. Shine was actually up for a promotion to a Naval Reserve Lt. Commander, *as* stated in M.K. Brubaker, Department of Navy's letter dated December 27, 2002 to Mr. Shine. The Coast Guard brought **S&R** charges on March 6, 2003, and in May or June of 2003, allegedly the Navy sent a letter of honorable discharge to Lt. Shine two months after the Complaint filed by the Coast Guard. The alleged discharge from the Navy should never have been issued in the light of these circumstances.

15. At this hearing, five years after the charges were brought on March 06, 2003 and over eight years after some of the alleged events, although Lt. Shine is alleged to be incompetent by the USCG, Lt. Shine has not been afforded counsel, which is guaranteed in our Bill of Rights. Lt. Shine was a commissioned Naval Reserve Officer when charges were brought by the Coast Guard. I do not understand why Lt. Shine was not afforded Navy JAG Counsel, let alone denied counsel that the United States pays to the Federal Contractors to provide within these circumstances, as in the assignments of paid counsel, i.e: Brucculeri and Forgie.

16. The Coast Guard ALJ hearings are oceans away from any real adjudication or even remedial or informal resolution as outlined in the APA. The Coast Guard is superseding and overreaching its authority in all regards in attempting to deem a person incompetent due to an alleged mental disorder through the improper forum of a Coast Guard ALJ administrative **proceeding.** All the Coast Guard's arguments that Lt. Shine committed an alleged act of

incompetence or simply was incompetent while he was "acting under the authority of his Merchant Mariner License" have simply run aground. 46 U.S.C. §7703 does not allow the Coast Guard to revoke a seaman's Merchant Mariner License where the alleged "acts" occurred long after the mariner had been discharged from the ship.

17. Further, if the Coast Guard disputes Respondent Lt. Shine's proper discharge, as Respondent does, from the SS COMET, and SS MAUI, and the MV JACKSON, Respondent should have been and should still be receiving compensation in the form of maintenance and cure for the past 8 years. Lt. Shine was entitled to compensation from the wrongful termination of his shipping articles aboard these vessels. His federal officers' association MEBA breached its duty of fair representation and wrongfully denied him paid legal counsel, which MEBA had a duty to pay for. MEBA has to pay for legal counsel against any action against his Merchant Mariner's License, as provided for under the Medical Plan.

18. In addition, the Coast Guard, to present, has not proved Lt. Shine's behavior has ever been a threat to marine safety. My review of the M/V JACKSON LOG and official records and correspondence indicates the ship Lt. Shine allegedly made "unseaworthy" sailed directly to Dutch Harbor, Alaska afterwards. A vessel cannot sail if it is unseaworthy. How could the vessel then immediately sail to Dutch Harbor, directly after it had been logged as unseaworthy?

19. It is apparent from a reading of the simple timeline or docket in Lt. Shine's three federal lawsuits, and the U.S.C.G docket, that the Coast Guard was assisting the shipping companies in defeating Lt. Shine's pre-existing lawsuits [see attached Notice of Related Cases]. Specifically, there is overwhelming documentary evidence that I have read that was obtained from responses to FOIA requests, that Lcdr. Tribolet communicated directly with Archie Morgan at ASM, one of the defendants in Lt. Shine's lawsuits in district court, and exchanged Shine's

personnel, personal, and medical files with ASM, in violation of Lt. Shine's constitutional rights and in violation of HIPPA. From my very basic understanding of HIPPA, the U.S. Supreme Court case of *Jaffee v. Redmond,* 518 U.S. 1 (1996), legislation of all 50 States, even Executive Order in this regard, a defendant in a federal lawsuit does not have the right to plaintiff's private and privileged records without affirmative release from plaintiff, and to date, that does not exist.

20. **Further, the defendants in Lt. Shine's federal lawsuits filed as an exhibit (to evidence why the lawsuits against them should be dismissed, and their summary judgment motions granted), Judge McKenna's final Order Granting Motion for Summary Judgment. This Order stated that Lt. Shine was medically and mentally incompetent and therefore he was unfit for duty, and that his Merchant Officer's License was revoked.**

21. AU McKenna's Order was **vacated** by the Vice-Commandant's Decision on Appeal by Vice-Admiral Crea **two years later,** who then **ruled that this was a case of "first impression"** without much definition as to how or why, but remanded the case for a **due process hearing,** which Lt. Shine was denied before the first AU. The first AU Parlen L. McKenna granted the Coast Guard's Contingent Motion for Summary Judgment because that Lt. Shine would not submit to a forced or compelled psychiatric examination by a doctor of the Coast Guard's choosing to disprove the charges and prove his innocence.

22. The Coast Guard had not at that time -- and still has not met its burden of proof in determining that Lt. Shine had ever violated any rule of law or regulation or was ever a safety hazard to himself others, or carried out an act of [professional] incompetence while acting under the authority of his Merchant Mariner's License. In addition, the Coast Guard, to present, has still not proved that Lt. Shine's behavior ever posed or poses a danger or potential threat to

marine safety, although the Coast Guard would like to have everyone believe that Lt. Shine is a clear and present danger.

23. In the summer of 2003, the Coast Guard actually even put out a BOLO "Be-On-The-Look-Out" wanted or warning poster of Lt. Shine and posted it at Coast Guard installations and even Naval installations, (as Lt. Shine was advised via an email communication from someone in the Navy), even though Lt. Shine has never violated any law, rule, or regulation. The BOLO stated that Lt. Shine was a "Disgruntled Mariner" who may be dangerous, and if you see him or encounter him to "contact the Coast Guard or the police." An official BOLO must state what the individual on the BOLO actually did or is accused of in order to be valid, amongst other requirements, which this BOLO failed to meet. This is just another glaring example of the Coast Guard's falsification of documents and defamation of Lt. Shine, when he has done absolutely nothing wrong. There is a term for what the Coast Guard has done to Lt. Shine. It is called "railroading."

SCHEDULING. AND NOTICE OF HEARINGS

24. On May 20, 2008, I attended the alleged "due process" hearing in this matter. In fact, I attended all four days of the hearing. The notice indicated the hearing was for a one day hearing only, to commence at 9:30 a.m. on May 20, 2008. I later learned that very same day from Lt. Shine that he had just been advised by the court reporter that first day, that the hearing would in fact continue for at least four days. Because there was no proper or sufficient notice from the Court that the hearing would go longer than one day, most of the witnesses and others who came to support Lt. Shine planned for and only attended the first day of the hearing. A few weeks notice for a hearing that was actually to go four days is **not** sufficient notice. From my personal experience as a legal assistant, there is usually a trial setting conference between

counsel and the judge, prior to setting a hearing or trial of any kind, although it was requested by Respondent numerous times, it was denied by ALJ Brudzinksi. This actually created personal problems for me, because I had only taken two days off the week of the hearing ï the day before and the day noticed for the hearing. I had to call in to work and tell them that the hearing was actually scheduled to go four days, and that I was going to be out all week, instead of missing only 2 days of work.

25. In addition, average notice for a regular state or federal court trial with thousands and thousands of documents like this matter, is at least 4-6 months, with the bare minimum of 100 days notice. Even top notch law firm with a large number of attorneys and paralegals would have had trouble doing what was expected of Lt. Shine, a *pro se* Respondent, given just a few weeks notice.

26. Although I understand discovery is often limited in administrative actions, the virtual landslide of binders and boxes and documents and exhibits that Lt. Shine was forced to carry in each day to the "hearing" is further evidence of the overly broad scope of time from which the Coast Guard obtained their discovery, in violation of prior ALJ McKenna's order limiting the scope of discovery. ALT McKenna denied Respondent's four motions for discovery, although the Coast Guard was allowed to obtain just about every piece of personal and privileged information they regarding Lt. Shine.

MAY 20, 2007 – DAY ONE OF THE ,HEARING

27. The Coast Guard and Lcdr. Tribolet have a mission. They are attempting to determine Lt. Shine medically and mentally incompetent through an administrative hearing and this proceeding is being "administered" by members of the Coast Guard, which is a branch of military, to quote from Lcdr. Tribolet directly. Lcdr, Tribolet, in his Coast Guard JAG Officer

uniform, began his opening statement, (which is not considered "testimony" according to the ALJ, overruling Lt. Shine's objections), by disclosing Lt. Shine's privileged and private information in violation of HIPPA and the U.S. Constitution, and 5 U.S.C. § 553(b)(6).

28. This "due process" hearing is a public hearing, and there were total strangers who came to see the first day of the hearing, and Lt. Shine's private information and other information was intentionally disclosed to them in this hearing by Lcdr. Tribolet. Tribolet's behavior at the hearing (at one point he was red-faced and shouting at Lt. Shine) was not what I would expect of a gentleman who is a Lt. Commander in the Coast Guard or even an attorney *as* an officer of the court, for that matter.

BIAS AND ABUSE OF DISCRETION

29. This "administrative proceeding" before former and current military officers was so far and away from what can be construed as a due process hearing, it was absurd. The Coast Guard took away Lt. Shine's right to work and to earn a living in his industry by filing the complaint against him for the suspension and revocation of his Merchant Mariner License without a due process hearing, and denied him the real ability to afford him a proper defense.

30. At the first day of the hearing, and at all subsequent days, I was troubled most by the disposition of the Administrative Law Judge, Walter J. Brudzkinsi. ALJ Brudzinski was continually telling Lt. Shine to shut up and sit down, denied every motion and request of Lt. Shine, and he overruled every single objection made by Lt. Shine to quote from Lcdr. Tribolet directly. Although Lt. Shine's objections were logical and relevant to the question Lcdr. Tribolet was asking, Lt. Shine is not an attorney. Lt. Shine requested repeatedly for these proceedings, for all proceedings to be videotaped, so all would be a matter of record. Lt. Shine was just trying

to get his objections noted on the record, and the ALJ continually cut him off and overruled all of his objections.

31. As soon as Lt. Shine would stand up and begin to object, the ALJ would say "overruled," and then tell the Respondent repeatedly to "shut up and sit down" over and over again, often purposefully long after Lt. Shine had already sat down. It seemed to me the ALJ was trying to intentionally fill the record with his own long list of admonishments to Lt. Shine. Lt. Shine would always respond "Yes, your honor, thank you your honor" when he was told to sit down and shut up, and he would sit down. Lt. Shine did stress his points with ALJ Brudzkinsi, if he felt it necessary and an important point.

32. The ALI would not let Lt. Shine clarify his objections, even the though Lt. Shine was *a pro se* respondent without proper counsel or assistance, and the Coast Guard was trying to prove he was "incompetent". When Lt. Shine would attempt to present legal arguments ALJ Brudkinski would repeatedly threaten to call in security.

33. In fact, I had asked Amanda Withers, a work acquaintance of mine, who has a degree in finance, to come to the hearing. She was able to attend later in the day when she was available, to assist handling documents and exhibit binders. Amanda arrived and I asked her if she would help out and finish tabbing exhibit binders. She silently watched the proceedings for a while from a different point of view or perspective of the other witnesses *as* she was turned sideways at a 90 degree angle she was able to observe both ALJ/ Lcdr. Brudzinski and Lcdr. Tribolet at the very same time. She asked who Lcdr. Tribolet was, and if he was an attorney, because he did not seem to know what he was doing. I told her he was the prosecuting officer and a JAG officer. She was the first one who noticed that the All and Tribolet were "signaling" to each other, because of the angle at which she was sitting. She was amazed at was occurring

right in front of her, given the fact that she had some moot court training in the past, and the ALJ is not supposed to be silently communicating in any way, or advocating for one party over the other.

34. Amanda and I were not there *as* Lt. Shine's assistants, but there as friends who were trying to help him out as best we could. This was not a fair and impartial proceeding at all, *as* it was clear from the ALJ's demeanor and rulings that he was going to rule in favor of the Coast Guard -- no matter what evidence was presented on Lt. Shine's behalf. Further, when Lt. Shine tried to clarify his objection for the record and with ALJ BrudzIdnsi, the ALJ would continunlly threaten to call in security and have him removed from the proceedings, and hold the proceeding without him in absentia.

35. Security was actually called in quite a few times by the Judge, and for no apparent reason other than the fact that Lt. Shine was trying to present legal arguments and objections to ALJ Brudzkinski and kept reminding the ALJ that he had motioned for his recusal repeatedly and this ALJ should not be on his case and he should not have authority over the proceedings.

36. Lt. Shine was representing himself, and although he naturally has a very clear and loud speaking voice, he was not doing anything wrong and was not threatening anyone. He was just advocating his position. I could not understand why the ALJ would threaten to call security every time Respondent Lt. Shine would present a legal argument or factual discrepancy.

37. Also, at some point, when the witnesses were on the stand, the Judge even began to summarize the testimony of that witness for them and for the record. He did this, from my recollection, while Captain Arthur French, U.S.C.G, was testifying. There is simply no need for the judge to summarize testimony of a witness on the record when the witness is already on the stand. Some of the things Brudzinski said were not even statements of Captain French, which

Lt. Shine properly objected to. It appears that this was redacted from the record or it is at least unknown what happened to this portion, by I do recall that it did happen, because Captain French had a strange expression on his face when the ALJ started summarizing, and I thought it was very odd. Personally, after observing ALJ Brudzinski for four days, I had serious doubts about his judicial competency.

38. Even at the October 23, 2007 pre-hearing conference that I attended as a witness, I found ALJ Brudzinski's behavior biased against the Respondent, and recall describing ALJ Brudzinski to an acquaintance after the hearing as a "drama queen" because he got so upset at that hearing he ripped he off his robe and threw it down and said "this hearing is adjourned" and stormed out the back door. He may deny doing this, but I was there and I saw it. I also overheard him stating to someone off the record, perhaps it was the court reporter, that he had sat on the 911 hearings and was used to dealing with emotionally charged hearings like the one he was at today.

39. ALJ Brudzinski also made objections for the prosecution during Lt. Shine's cross-examinations, even when the prosecution did not object to Lt. Shine's questions on cross-examination of the witness. ALJ Brudzinksi also began to ask questions of the witnesses on the Coast Guard's direct. At one point I got so frustrated by what the ALJ was doing. It was *as* if he was trying to take over the prosecution of the case and wear every hat. I threw my hands up, and apparently made an expression of disbelief. The ALJ told Lt. Shine to tell his "assistant" to "stop making faces at the Judge." I stated for the record that I was frustrated, because it was my understanding that the prosecution is to ask questions of their witnesses on direct examination, and not the Judge. The ALJ then yelled at me and said he was "in control of this proceeding, Not Mr. Shine, Not Mr. Tribolet." I replied that "I was confused." After having to spend four days

while ALJ Bcudzinski was in "control" of the proceeding, I came to the conclusion that ALJ Bnidzinski should not be in a position of authority such as an administrative law judge. His personal bias against toward the Respondent was apparent, and he should have recused himself as a matter of honor, as he had been requested to do by Respondent.

40. ALJ Brudzinski does not seem capable of making unbiased decisions, even when the law requires him to do so. This may or may not be because he was a prosecutor and a retired Lt. Commander in the Coast Guard, as stated on the record by Lt. Shine, which ALJ Brudzinski admitted to on the record.

41. The Coast Guard ALT proceedings allows unrestrained railroading and abuses of mariners that has been reported to Congress, yet has still continued for years since the Coast Guard has been conducted S&R proceedings. It is my humble opinion that the ALJ system within the Coast Guard should have been permanently removed from the Coast Guard long ago, and must now be immediately removed, *as* there has been essentially no oversight, and the abuses and injustice within this system are a blight upon the very constructs of the U.S. Constitution, and is injuring our Merchant Officers and crew,

42. Further, a paradox exists wherein the Coast Guard, a branch of the military, is in charge of giving and taking civilian licenses. One does not need to be in the military to apply for a Merchant Mariner's License, yet currently, if an S&R proceeding is brought against a holder of such license, it is brought by members of the same agency who administered the test for the license, not an independent court or agency, but a Branch of the Military For example, if you get a speeding ticket from the Police, and you get a notice that your license has been suspended or revoked unless you want to fight it, you do not go to a Police hearing to get your license back. You actually go before a civilian judge, who has limited jurisdiction, in state court. In Lt.

Shine's case, which is a suspension and revocation proceeding against his Merchant Mariner's License, both ALJ and prosecutor are current and/or former members of the Coast Guard, a branch of military.

43. Five years ago I spoke to a Naval Reserve Officer who had also graduated from Kings Point Merchant Marine Academy. He is an attorney at a prominent admiralty law firm in Long Beach. I spoke to him in person to ask him for a referral for legal counsel for Lt. Shine or even if he himself could assist. When I told him the Coast Guard had brought charges against Lt. Shine, he asked if Lt. Shine could move to another state, or country, or even change his name. I thought he was joking. He was not. As I later learned several years later, the Coast Guard has a 97% conviction rate, a startling indication that the ALJ system within the Coast Guard is "fixed," This finding is further corroborated by former ALJ Massey's testimony before Congress in July of 2007 that I have read, and from what I have seen, read and experienced myself in regards to these proceedings.

CECIL REY –COAST GUARD'S 1ST WITNESS

44. The Coast Guard's first witness was Cecil Rey, an elderly white-haired and bearded man and retired 1St Assistant Engineer and relief Chief Engineer (hereinafter "C/E Rey"), who worked with Respondent Lt, Shine aboard the Matson Navigation vessel the SS MAUI [see pre-existing civil complaints]. [Note: Respondent was not advised *as* to which witnesses COAST GUARD would call, and in what order, until the time they were actually called.] In addition, the prior ALJ McKenna denied three motions for discovery by Respondent, so witness testimony on direct was new testimony, not something taken five years ago in any deposition. This means that someone would have to really be on their toes and take fast notes in order to conduct a cross examination of this same witness right after this new testimony was

introduced. I confess that I do not see how a man who has been alleged to be medically and mentally incompetent by the Coast Guard would be, or could be able to, or should be required to conduct such a cross-examination, yet Lt. Shine did a pretty good job, and he managed to address some of the following key issues.

45. Cecil Rey's testimony was that Lt. Shine was incompetent because he failed to "turn to." The Coast Guard alleged because he failed to turn to, he was therefore incompetent. Respondent already stood a four hour watch from 4-8 a.m., and according to his testimony, if this watch is performed and pointed out contract provisions where, the person gets four hours time back, which makes an 8 hour day. Respondent stated that he did not refuse to turn to. The next four hours would be overtime, because in essence, he had already worked his 8 hours by doing the 4 hour watch with the time back as per the contracts or Shipping Articles [46 U.S.C. 103021. However, C/E Rey did not agree, and sent a termination letter to the Respondent after the Respondent had already been discharged (paid off the vessel on June 09, 2001) for his last day of work (June 11, 2001) on this two week long job. The Company later rescinded the termination. A letter that even the Coast Guard has a copy of and filed *as* one of its own Exhibits. When Respondent reminded C/E Rey that a higher authority, the company he worked for, had rescinded the termination, Mr. Rey stated "If you can't work an 8 hour shift, then you shouldn't be in this industry." Respondent stated he did not fail to "turn to." He said he would work, but he wanted overtime for any hours over the eight hours he had just worked, per his contract. Mr. Rey stated it was a safety hazard because there was a leaking boiler which Respondent had seen on his watch, and they could not sail without said repairs. C/E Rey admitted that they had sailed into port without a hitch, and were not scheduled to ship out that same morning, and he actually ended up calling in a rotary engineer from the union hall to make the repairs and relieve

Respondent of this work, as it was called for as a two weeks job, and Respondent's work was over and completed on June 11, 2001.

46. This safety issue of a leaking boiler was not created by Lt. Shine, but in fact discovered by him and reported upon by him, and logged by him. Lt. Shine reported potential danger he observed on this watch, and he said he would stay and work to complete the repairs if he was paid overtime for that time past his 8 hours work that he had already worked, and signed back on *as* he had already been paid off and given his release in the form of his Federal Discharge document CG 719K. C/E Rey wanted Respondent to perform the boiler repair work and not receive his time back as per the contracts, and basically do it on his own time. Clearly this is a labor issue and has nothing to do with failure or inability to perform a duty. The Coast Guard is strictly forbidden from getting involved in, except when there is a clear violation of law or regulation or the safety of the vessel or its crew is in question, pursuant to 46 CFR 5.71.

ALAN HOCESTETLER – COAST GUARD'S 2ND WITNESS

47. The Coast Guard's second witness was Alan Hochstetler. Mr. Hochstetler was a 1st Assistant Engineer (hereinafter 1st A/E Hochstetler) who worked with Lt. Shine aboard the MV JACKSON, an APL ship. Again, 1St AJE Hochstetler's testimony, was regarding a labor dispute, and the alleged fact that he and others aboard the MV JACKSON did not seem to like Mr. Shine. It is important to note Respondent had filed three federal lawsuits against these shipping companies, ASM/ APL being one of them, prior to his employment aboard the MV JACKSON, and while onboard filed an Anti-harassment complaint with the ship's Captain and asked for it to be sent to the CFO of ASM and entered into the ship's log. This was also a Coast Gaurd exhibit, as they were aware of it. The crew and captain seemed to be aware of these law suits, and invocation and claim by Lt. Shine under the posted onboard Anti-Harassment policies.

48. The crux of Hochstetler's testimony for ASM and MEBA and the Coast Guard [Hochstetler is an ASM Employee and MEBA member] regarding Respondent's behavior and how it somehow created a safety issue was regarding or focused around a "switch" turned on and off by Respondent, who was ordered not to turn on the switch, because 1St A/E Hochstetler did not know what the switch turned on and off. Respondent in fact, did know what the switch was for, and apparently showed 1St A/E Hochstetler, and that the switch could be turned on and off because it controlled the reserve bilge pump which was the only time that he turned it off and on. If there was internal leaking, then this pump must be activated to vacate the space it controlled.

49. Again, the issues aboard the MV PRESIDENT JACKSON were labor issues, or better yet safety issues as raised by Lt. Shine regarding the fuel oil trays and other issues. If Lt. Shine was truly creating a safety hazard and was a danger to himself and others, why didn't the 1st A/E call the Coast Guard and have the Respondent removed from the vessel? 1st A/E Hochstetler stated that he tried to give everyone a chance and always tried to "work it out" on the ship amongst themselves, which seems odd, and not in keeping with what they are supposed to do when someone is truly causing a ship to be unseaworthy.

50. Lt Shine reported many safety hazards and violations while he was aboard the MV PRESIDENT JACKSON, as were confirmed by the Company ASM ashore, by the Coast Guard and by a third neutral investigative party. These safety hazards and violations appear to have been covered up by the Coast Guard and were not reported by the shipping company, which I only discovered from a review of the documents regarding the vessel that were obtained through the FOIA.

51. Further, and review of the MV JACKSON LOG and official records and correspondence from the FOIA documents indicate the ship that Lt. Shine allegedly made

"unseaworthy" sailed directly to Dutch Harbor, Alaska immediately afterwards in January, 2002, in fact and instead in a rush to leave port. A vessel cannot sail if it is unseaworthy, nor can it "clear" itself and it requires minimally ABS or the Coast Guard to clear the ship, whether self ï declared to be unseaworthy or by someone else. How could it then sail to Dutch Harbor, directly after Shine had allegedly made the vessel unseaworthy? There were also reports made in Dutch Harbor of just some of the problems found onboard as reported by Lt. Shine, like the leaking and improperly repaired fuel oil trays as detailed in a report and letter by the Respondent,

CAPTAIN FRENCH

52. Captain French was the "medical expert" for the Coast Guard. He is the Chief Medical Officer for the National Maritime Center. According to his testimony, he has held this position for approximately two years. I feel it is important to note that Captain French is not a psychologist or psychiatrist, and he had never met Lt. Shine prior to his testimony at the day of the hearing or ever treated Lt Shine and was never Lt. Shine's health care provider. In short, Captain French can't make a diagnosis of any mental illness whatsoever, because he is not an expert, and his curriculum vitae has no indication that he has any training in the field of psychology, yet he is the Coast Guard's expert at this hearing, which is puzzling, Lt. Shine pointed this out in his cross-examination of Captain French, and Captain French Admitted, that he could not make a diagnosis, but he could make a "recommendation."

53. Further, I do not believe Captain French is even published or peer reviewed in order to be considered an expert as a medical doctor, and does not meet the *Daubert* standard, although he testified that he is currently working in a collaborative effort with others on a new Medical NVIC. Captain French stated on the record that he had not seen a release signed by Lt. Shine within the records he reviewed for his testimony, nor did he ask to see one. The Coast

Guard did not provide Respondent with a list of any and all documentation that Captain French reviewed to prepare for his testimony, which is required and was requested by Lt. Shine. We discovered during Captain French's testimony that he had reviewed, amongst other documents, a **defense IME** from one of Lt. Shine's district court suits [Shine v. ASK, by a doctor who had never treated Lt. Shine nor was she his medical provider, or health care provider.

54. All Brudzinsld allowed Captain French to remain and observe Lt. Shine while the COAST GUARD put on their case, and COAST GUARD witnesses testified on direct and then Lt. Shine's cross-examination of the witnesses, despite the fact that Lt. Shine had requested that Captain French be placed outside the hearing room with the door shut when other witnesses were testifying, invoking the rule on witnesses. However, Captain French was allowed to stay and observe and perform an "examination" of Lt. Shine's behavior, but left when Lt. Shine was set to present his own defense. Captain French was also working on a laptop computer while in the hearing room, which the ALT said was "okay" over Lt. Shine's objection.

55. At the very end of Captain French's testimony, he spoke directly to Lt. Shine who was sitting at the table: ***"You have a disease Lt. Shine and you need to accept it and get treatment."*** Also, I was told by Lt. Shine mother that she had a conversation Captain French *as* he was leaving the hearing room. Captain French actually approached Lt. Shine's 80-year-old mother, who had been there every day of the proceeding, and told her that she needed to do an "intervention." I feel that Captain French's communication with Lt. Shine's mother was shameful, extremely biased, and showed a lack of professionalism, especially since he had never met, treated or seen Lt. Shine prior to his day of testimony. Again he is not Lt. Shine's medical health care provider. This communication between the witness and Lt. Shine's mother was in

violation of ethical guidelines, and just common good judgment. It was just another attempt by the Coast Guard to "stir the cauldron."

56. One can only imagine the pressure and stress the Respondent Lt. Shine is and has been for the past five years, and was under at this hearing, because he had to represent himself because he can not afford an attorney, and all he is trying to do is to restore his license and right to work and his reputation, Naval Commission. I can attest from personal knowledge over a five year period that Lt. Shine's behavior before, during, and after such a hearing, is certainly not indicative of his every day personality and well being. Nonetheless, Captain French was allowed to observe Lt. Shine during this hearing and use it as "evidence against" him. In truth, it was a hearing that did not appear to comply with many rules in the Administrative Procedure Act.

57. Additionally, the Coast Guard's testimonial evidence given by the Coast Guard's witnesses C/E Cecil Rey, 1st A/E Alan Hochstetler, and Captain French, regarding Lt. Shine's behavior during employment disputes while he actually was onboard the MAUI and the APL Jackson, was not reliable, probative, or substantial.

58. To date, the Coast Guard has not met its burden of proof that Respondent's behavior over the past five years was ever a danger or potential danger to life or property at sea or that he ever was or still is incompetent. To the contrary, Respondent reported, even complained to his superiors when he was working aboard these vessels about actual safety hazards and violations of laws, rules and regulations, which include Shipping Articles codified at 46 U.S.C. 10302. Lt. Shine is a whistle blower, and the documentary evidence has shown that he has been retaliated against by the Coast Guard and his former employers for reporting violations and filing labor grievances.

59. It is clear this matter is not properly before this Court. The constitutional issues raised in this administrative proceeding simply can't be adjudicated within this forum. It is prohibited by the *APA,* and admitted by ALJ Brudzinski on the record. He cannot adjudicate labor disputes or constitutional issues, and by doing so, he exceeded his authority in his attempt to adjudicate the legal issues raised in this proceeding. More importantly, the Coast Guard *as a* Branch of Military is prohibited from becoming involved in any civilian affairs.

60. The Coast Guard does not get to pick and chose portions of Lt. Shine's labor disputes to support a charge of incompetence. Even if one is to suspend their disbelief and rely upon the Coast Guard's weak handful of administrative cases from the appellate decisions of the Commandant, there was no reliable or probative showing of any of the evidence or testimony presented by the Coast Guard to prove that Lt. Shine was incompetent in his duty or while attached to any ship. The only time the Coast Guard cites is when Lt. Shine was on the Maui and he was admittedly depressed because his father had passed away, which is a normal reaction for any person, and Cecil Rey denied him leave.

61. I have reviewed Lt. Shine's Shipping Articles and Shipping Rules that do provide requested leave to Lt. Shine, in addition to that granted under the FMLA. Mr. Rey's testimony and his obvious dislike for Lt. Shine was apparent during his testimony. Mr. Rey conveniently did not recall he had denied leave to Lt. Shine to attend to his father as he struggled for his life for 78 days, and subsequently denied leave to find out what had happened when Lt. Shine's father died unexpectedly, and then told him to "go" because he had it "all worked out." When Lt. Shine returned to the ship, he found he had been terminated and they had hired a replacement for him. This is all documented within the correspondence between Matson, MEBA, and Lt. Shine, and personnel aboard the MAUI, which I have read and is a matter of record.

62. ALI Brudzinski is exceeding his authority and abusing his discretion in the hearing of this matter. Several of the key legal issues presented are Constitutional in nature, and the ALT by his own admission, and under the *APA,* simply does not have the authority to adjudicate labor or constitutional matters which acts as a bar against proceeding.

63. In fact, the growing body of case law and testimonial evidence, which includes testimony presented by former Administrative Law Judges Massey and Denson to Congress in July 31, 2007, supports the opinion of the House of Representatives in H.R. 2830, that the ALT system within the Coast Guard has gone awry, and its continua). abuses of discretion and authority, and the Coast Guard's long history of running roughshod over Mariners and destroying their careers and lives without any oversight whatsoever, is a cry for help to Congress to immediately shut down and remove the All system from the Coast Guard.

64. The cases of Dresser, Elsik, Rogers, Kinneary, Shine, and many others, all provide substantial evidence of the Coast Guard's Administrative Law Judges' continual violations of the rights of our seamen and marine officers in the adjudication of matters before them, and further indicate that the Coast Guard ALJs are unfit to perform their duty as fair and impartial hearing officers.

STANDARD OF PROOF — PREPONDERANCE OF TILE EVIDENCE

***APA5U.S.C.&* 556(d)**

65. A preponderance of the evidence requires the result or conclusion to be supported by a majority of the evidence in terms of weight. *APA § 556(d)* requires that a decision be supported by "reliable, probative, and *substantial* evidence,"

66. It became apparent throughout the proceeding that the ALJ was going to continually obstruct any testimonial evidence from Lt. Shine, and was not going to let Lt. Shine

get any substantial evidence in his defense on the record. In fact, the ALJ "terminated" the proceeding on the last day, after Lt. Shine had tried to submit numerous pieces of evidence on his behalf, but only got to submit several exhibits. One was an amicus brief by Amnesty International regarding military tribunals.

67. The Coast Guard's "consideration of the records" of a naval officer's or mariner's entire life ï or at least a good 25 year chunk of it - to deem this person "medically and mentally incompetent" through an administrative proceeding without proper due process, and force them into a psychiatric evaluation in order to disprove or prove their case -- is quite simply not fair or proper or in accordance with the United States Constitution.

68. Also, the fact that this proceeding has dragged on for **five years,** and left Lt. Shine homeless and bankrupt shows the unfair nature of the administrative process. Few members of congress understand the competitive nature of the work in the maritime industry. If a mariner loses a 90 day job, it may be his last bid for a job for the next year. If a mariner is prevented from completing a 90 day job or denied the ability to take that work because his license is suspended on spurious charges, it will most likely destroy him financially, *as* in the case of Lt. Shine. Lt, Shine's case is proof that justice delayed is justice denied.

69. The entire four days of the proceeding seemed like a witch hunt against an allegedly incompetent naval officer and mariner, who has for many years now been loudly speaking out against the internal corruptions of both the shipping industry and the Coast Guard on his radio program, public speaking events, and on his public access television shows.

70. After attending the October 23, 2007 hearing with Lt. Shine, *as* a witness, and attending all four days of the May 2008 hearing, it is clear that ALJ suspension and revocation

hearings within the Coast Guard are oceans away from any real adjudication or even remedial or informal resolution as outlined in the *APA.*

71. Respondent Lt. Shine was and was ultimately denied both procedural and substantive due process and was denied the ability provide an effective defense for the following reasons, which include but are not limited to: (1) the lack of sufficient notice for the actual date of the hearing to allow adequate preparation, (2) the fact that it was noticed for only one day when it went four days, (3) the denial by ALJ Brudzinski of Respondent's request to hold an evidentiary hearing prior to this purported "due process" hearing (4) the ALJ's denial of Respondent's requested two-week continuance to prepare for the hearing and to properly prepare exhibits in a timely fashion, (5) the fact that the Respondent was unable to call any of his own witnesses due to lack of cooperation from the Coast Guard with respect to subpoenas, even though Lt. Shine requested the Coast Guard's assistance, (6) the ALJ's and Lcdr. Tribolet's continual obstruction of Respondent's ability to get any evidence or testimony on the record, (7) the fact that Lt. Shine was a pro se respondent, (8) the fact that a branch of military is "administering" a civilian license and revocation proceeding, and (9) ALJ Brudzinki's abuse of discretion in his position of authority as noted above and throughout this affidavit with respect to:

(i) the committing of procedural errors *APA §* 706(2);

(ii) ALJ Brudzinski's violation of the Constitution *APA §* 706(2)(8);

(iii) the fact that ALT Brudzinksi exceeded his statutory authority APA §706(2)(C);

Janine M. Sullada

[Enclosure #8]

April 17, 2009

Hon. Eric Holder
Attorney General of the United States
U.S. Department of Justice
950 Pennsylvania Avenue
Washington, DC 20530

Subject: Abuses of Due Process in the Coast Guard's Administrative Law System

Dear Mr. Holder,

Our Association advocates for more than 126,000 lower-level credentialed merchant mariners who serve primarily on coast-wise, and inter-coastal vessels of up to 1,600 gross tons, and others as well who serve Deep-Sea. The coast-wise vessels are predominantly tugboats, towboats, offshore supply vessels, and small passenger vessels.

The authority for the Coast Guard's Administrative Court System is in open and ongoing dispute as no proper authority exists for what the Coast Guard has been carrying on when reviewed under closer scrutiny. This is especially so when the Coast Guard activities are looked upon in-keeping with a broader more all encompassing view of all the Acts of Congress enacted to protect our U.S. Merchant Marine. In fact, this Admiralty Law Court authority has been taken away from the Coast Guard several times before by directed Acts of Congress such as the moves taken after World War II in the enactment of the Administrative Procedure Act of 1946 ["APA"] and the simultaneous enactment of the Uniform Code of Military Justice in 1946/ 1947 ["UCMJ"] as well.

The Coast Guard had been caught during the time period from its creation in the midst of World War I in 1915, and up to a point including the end of World War II in 1946 in intentionally marrying civilian and military affairs together. In response Congressional hearings on these matters were held [see Attachment ___ of Congressional Hearings] the APA was passed to apply to the Civil Service personnel of the Coast Guard as employees within the Department of Treasury, and other Agencies or those who accompanied the Federal Government as "Civil Servants", and the UCMJ was also passed which was to apply to men and women in military uniform of an identified Branch of Military residing within the Department of Defense specifically and only to include the Army, Navy [Marines], and Air Force. The Coast Guard as was made very clear in these Congressional hearings in 1946 and 1947 was not, and has never been intended by Congress to be a "Branch of Military" or "Special Branch of Military." The Coast Guard is now once again self-declaring itself to be a Branch of Military, rather than a "Federal Maritime Police Force" for enforcing, and in this manner as a "Federal" and "Maritime" and "Police Force" the Federal laws pertaining to our ports and waterways and certain other specific areas.

Decades later, once again when the Coast Guard sought out to recreate these Military Tribunals of civilians on its own accord in the 1960's through a Common Law recreation of the courts as now, Congress once again interceded to restore the proper authority for adjudication back to our Federal Article III Judiciary in minimally the Suits in Admiralty Act of 1965, which restored proper authority to the U.S. Federal Court Systems.

Much of these un-Constitutional maneuvers were carried out from underneath the umbrella of the Korean War/ Conflict of the 1950ôs, within years of World War II, but were not addressed until the following decade. At the very same time in the 1960ôs to effect a more lasting and memorable cure the Coast Guard was also moved out of the Department of Commerce into a newly created Department of Transportation, where the Coast Guard remained as a ñCivil Serviceò throughout all of these changes from its inception in 1915 all the way up to the most recent changes that came about in 2003 with its move into the Department of Homeland Security. There are some important points and reasons the ñconfusionò has arisen, or the opportunity seized upon by certain individuals, this is due in large part to training of the Coast Guard on the UCMJ for the eventuality of it being moved into and under the Department of the Navy in a Declared War. In addition to this, the military -like uniforms that were adopted ñvoluntarilyò, the fact of having ships, being federal, having guns and ñAdmiralsò and more has only leant more confusion.

Prior to 2003 the Coast Guard was always a ñCivil Serviceò and would only come under Military Law, or the UCMJ [Title 10] when it was moved into the Department of Defense and specifically under the Department of the Navy. This only occurred, or was to occur by a Declaration of War by Congress and subsequent Act of Congress to accomplish this move or detachment from DOT and reattachment to DOD in whole or in part, or upon a declaration of war by Executive Order only after the Declaration of War. Since 2003 when the Coast Guard was moved into ñHomeland Securityò administrative changes were made outside of the purview and oversight of Congress to where rather then continuing to be a ñCivil Serviceò as before, the Coast Guard was converted somehow into a self-declared Special Branch of Military that can somehow carry on a plethora of civilian affairs. Including but not limited to adjudicating civilian affairs within military tribunals carried on by the Coast Guard in its own self-made Court System where Judge Advocate General [JAG] Officer Corps Officers are prosecuting civilians, or alleged civilians within these proceedings. To be clear, as it stands now, serious jurisdictional bright lines are being overrun as military assets are being used not just to ñPoliceò civilians, but far worse to adjudicate, even regulate civilian affairs. Beyond this a ñSpecial Branch of Militaryò is documenting private and commercial vessels, levying and collecting taxes from civilians, fining civilians, inspecting civilian vessels, stating it can function as a ñRegulatorò over civilian affairs and a great deal more disturbing activities.

Much of this is outlined as to the legal and factual history in one of the focal cases that we would like to bring your attention to in the Homeland Security/ Coast Guardôs case of ñ*United States of America/ Department of Transportation/ Department of Homeland Security vs. Eric Norman Shine - CG Docket # 03-0166 and S/R #_____.*ò This case needs to receive the same level of a thorough and complete review and from top to bottom as did the recent case of Senator Ted Stevens from Alaska, due to the identical issues of prosecutorial and judicial and other forms of misconduct by the Coast Guard, even political motivations apparent in the background of this case. There is a great deal more going on within this case that affects both civil defense of our Nation which is of course inseparable from National Security.

By this letter, we seek your support and request your immediate action and that of the Department of Justice to protect the rights of Maritime Officers, Crew and other merchant mariners and those who work ñ*On the Waterfront*ò from ideological motivated abuses by high-ranking Coast Guard officials that have been going on for decades now, all

of which is evident in the enclosures and documents posted on our internet website under ñResearch Reportsò, and other documents cited herein. We would also request that you personally and in your official capacity approach President Obama with these issues and brief him on the same and launch a broad swath of investigations into these matters. That you also contact and bring into these matters the Solicitor General to protect the Constitutional issues and violations that are raised in all that is going on.

While we challenge and complain about and of course seek redress, and hereby request a serious investigation of the professional behavior, conduct, ethics, and integrity of the senior management of the Coast Guard and specifically its Administrative Law system, we do not seek to paint with such a broad brush anything beyond the Coast Guardôs ñMarine Safetyò mission - or its Admiralty Law Court System ï as these are but a few of the Coast Guardôs currently claimed, minimally five primary non-homeland security missions that are both in melt-down. The life-saving and other commitments of the Coast Guard and its personnel remain to be a proud heritage for the efforts of these Divisions within the Coast Guard, but this should not be used as an excuse nor cover to allow for the continuing abuses to occur under other sections of this Military Command.

On July 31, 2007, Congressman Elijah Cummings of the House Transportation and Infrastructure Committee convened a hearing to look into reported improprieties in the operation of the Coast Guardôs Administrative Law System following complaints and revelations of irregularities published in the Baltimore Sun **[Enclosure #1].** I attended that hearing and reported back to our Association in our Newsletter and in several reports[(1)] that included transcripts of testimony. We continue to follow at least four active cases of abuse. Those four case will be cited and explained a little more in detail in a moment. *[(1)Refer to our Report #R-429-K, Aug. 8, 2007. Congressional Subcommittee Hears About Coast Guard Abuse of the Administrative Law System.]*

At the time of the Baltimore Sun article, Admiral Thad Allen, was and still remains to be the current Commandant of the Coast Guard, and Coast Guard Chief Administrative Law Judge Joseph Ingolia were both accused along with others of serious irregularities by former Coast Guard ALJ Jeffie J. Massey. Both the Commandant and the Chief ALJ Ingolia were named in several civil suits in New Orleans (DRESSER v. INGOLIA, #07-1497/ ROGERS/ ELSIK). Consequently, neither Admiral Allen nor Chief ALJ Ingolia appeared at the Congressional hearing on advice of [Government] counsel. While Congressman Cummings, Chairman of the Coast Guard and Maritime Transportation Subcommittee and Ranking Member Rep. Steven Latourette (both attorneys) and all present well ñunderstoodò the defensive legal reasons for their absence, ***we have yet to see any credible investigation of the Coast Guard's Administrative Law system undertaken by the Department of Homeland Security (DHS)***. The Government Accountability Office was supposed to carry out an investigation by request and direction of Congress, but for some reason this was also killed before it ever got off the ground.

Our association believes that in not only the series of cases involving CHRISTOPHER DRESSER, but also in a number of other cases, or series of cases as in LT. ERIC SHINE, which most came to our attention during the previous administration. It is clear that the Coast Guard, as an Executive Branch agency, let alone self-declared ñSpecial Branch of Militaryò has operated in an overly aggressive, abusive and discriminatory manner

against a number of merchant mariners, or Federal Maritime Officers and crew, who have approached our Association in order to tell their stories regarding violations of due process, prosecution within military tribunals, deprivation of civil rights and basic human rights, and a myriad of very serious violations that transcend anything allowed by or under our Constitution and some verging on if not entering into the realm of what most Americans would consider or define as torture.

After the investigative reporter Robert Little came out with his article and exposed some of this in the Baltimore Sun, the Department of Justice, rather then investigating, stepped in to defend Admiral Allen and Chief ALJ Ingolia who were both accused of grievous improprieties, minimally as laid out in the lawsuits in Federal District Courts in New Orleans. Lawsuits have also been filed in U.S. Federal District Court pertaining to the same or similar complaints in San Diego, Ca. by Lt. Shine, USNR - USMMR who is a graduate of the United States Merchant Marine Academy at Kings Point. We can only ***assume*** that the ***former*** Attorney General did not thoroughly or more properly investigate the allegations against both men before undertaking to defend them with all that is being disclosed in the news and media on an almost daily basis now. Unfortunately, I am not at all comfortable in making such a sweeping assumption that the former AG did in fact do his job, since, with much that has come to light in the absence of the past administration it is clear that a great deal of improprieties were afoot in many other arenas. The lack of proper oversight being one. The recent release of further torture memos goes to the mind set of the individuals who were also involved in these Coast Guard Military Tribunals.

Although the Department of Homeland Security, or Department of Justice, or Department of Defense, or Department of Transportation and the respective Inspector Generalôs, or other involved entities never stepped in to investigate the Baltimore Sunôs allegations or reporting, upon an ***earlier*** request from Congress, they did investigate the area of Coast Guard ñinvestigations.ò ñInvestigationsò is part of the Coast Guardôs ñMarine Safetyò mission and is ***closely tied*** to the functions carried out by the Coast Guardôs Administrative Law Judges (ALJ) if not inseparable from, in that serious mariner offenses are brought before an ALJ which at least has been the practice in Suspension and Revocation (S&R) proceedings off on and over the years, that often lead to sanctions that deprive a mariner of ability to pursue his career at sea. This includes actions against individuals like Lt. Eric Shine who as a graduate of Kings Point serves as a Commissioned Naval Officer on Special Duty in the U.S. Merchant Marine whom the Coast Guard sought out to have discharged from the Navy, only after bringing charges against him and before being found ñguiltyòof any violation of law, rule or regulations.

DHS report on ñinvestigationsò uncovered a great many irregularities in this area directly related to the Administrative Law system. Some of these problems were clearly identified in Federal studies dating back to 1994[(1)] and 1996[(2)], if not well before this, but were never corrected. In addition, another Congressional hearing revealed that the DHS Inspector Generalôs investigation into the high-profile COSCO BUSAN accident in San Francisco Bay in November 2007 was conducted by a number of Coast Guard ñinvestigatorsò who were unqualified according to the Coast Guardôs own standards[(3).] Shortly after a Congressional hearing in which the COSCO BUSAN investigations shortcomings were revealed, DHS quickly dismantled its team of auditors that produced the report, and even apparently retaliated against several individuals for not better protecting the

Coast Guard. We opine that this was motivated by senior Coast Guard officials embarrassed by the revelations and seeking to send a strong message to anyone else who might simply be doing their job. Our subsequent correspondence with DHS was finally answered with extremely evasive whitewash. *[(1) Refer to our Report #R-429-A. (2) Refer to our Report #R-429-B. (3) Refer to DHS OIG Report #08-38, pgs. 10-15.]*

To be very clear, I am not a lawyer and will not presume to argue the merit of the allegations in the matter that kept Admiral Allen or CALJ Ingolia from testifying before Congress that July morning, or have kept them "immune" from answering to the matters in U.S. Federal District Courts, but to any average Citizen it remains to be highly suspect. However, results of that hearing did at least lead to the introduction of legislation that proposed to significantly change the way the Coast Guard conducts its Administrative Law system if not simply dismantle it entirely. The proposed changes appeared in HR-2830 under Title X, sections 1001 thru 1005 as part of a much larger bill that passed the House almost unanimously by a vote of 395 to 7. The overwhelming affirmation of that vote speaks to its bi-partisan and well-considered nature, and the understanding by Congress that something is not right in the Coast Guard's Administrative Law System.

Although HR-2830 subsequently died in the closing days of the 110th Congress, I urge you, as the Attorney General, to have the Department of Justice and Solicitor General look into the deep-rooted abuses of power aimed at our American flag Officers and, crew, and mariners by senior Coast Guard officials.

The proposal in HR-2830 sought to move parts of the ALJ proceedings from the Coast Guard to the National Transportation Safety Board, which when more closely studied was not going far enough when one considers what is and has been going on. In that vein, moving these proceedings will not cure the problems as the authority to deprive a mariner of his credentials that may be his sole means of making a living, let alone due process of law and other injuries and deprivations must be returned to Federal District Court where ***serious*** infractions of violations of Federal law should be prosecuted and by civilians and not Military Personnel in uniform or as part of the Coast Guard's JAG Corps.. Our mariners are overwhelmed by such a system that can impose draconian punishments and still somehow call it "remedial" in nature. In the present ALJ system, these proceedings are used to forcibly ***compel testimony*** and gather evidence from an individual by uniformed military officers in serious violation of due process, the Constitution, the Separation of Powers Doctrine and other core principles. These practices are being used to "defend" against related and even often pre-existing civil complaints in U.S. Federal District Court is can be seen in the SHINE series of cases.

Apparently, at this time 46 U.S. Code Chapter 77 allegedly empowers the Coast Guard to proceed against mariners and suspend or revoke their credentials, yet when studied or investigated more closely these regulations were clearly not enacted or created by Congress. but were instead created by the Agency through its supposed "internal" adjudications. This is reflected in 46 CFR §5.5 stating the purpose of administrative actions against a mariner's credentials are ***remedial and not penal*** in nature and are intended to help maintain standards for competence and conduct essential to the promotion of safety at sea. Problem is these proceedings were intended for the Coast Guard to use for its own Civilian Personnel when it was a Civil Service Agency from 1915 to 2003 and its personnel

then came under the APA. Now the Coast Guard, while operating under the UCMJ or Title 10 as Military Law is administering the APA for ñCiviliansò who have no ties to the Coast Guard, and others like Lt. Eric Shine, USNR who are serving on Special Duty in the U.S. Merchant Marine as a Naval Officer. This is prohibited from underneath the APA and the UCMJ and other laws with strict penalties including but not limited to fines and imprisonment.

Unfortunately, a number of ñremedialò Coast Guard actions have absolutely destroyed our Officers and seamen, or marinersôcareers by using the power of the Coast Guard as a newfound Special Branch of Military and its military assets to carry on litigation lasting up to ten years, draining finances and destroying lives and trapping individuals within un-Constitutional Executive Branch administrative virtual dungeons.

The Coast Guard is claiming itself to be a ***military*** organization and, as such, exercises unhealthy, if not clearly un-Constitutional control over civilian merchant mariners by abusing if not clearly overreaching any more proper authority that Congress may have actually intended or granted to it at some point in time. According to and in-keeping with the U.S. Government Manual, our Association in seeking to protect the rights and interests of our Country, our waterborne borders and rights of way and most importantly our mariners as American Citizens, who can look to your Civil Division to investigate this level and scope of wrongdoing inside the Federal government. While we respect and support any Congressional initiative to change the system there are several problems if any of these changes go forward as have been proposed, but if there has not been a more formal request already, we respectfully request that you undertake a broad inquiry into the allegations or wrongdoing made in the Baltimore Sun article and outlined in many of the ongoing or involved cases as well. We ask you to closely examine the background of the DRESSER, and the ROGERS case that was appended to it by a Federal District Court in New Orleans, and the SHINE series of cases in numerous Federal District Courts in Los Angeles and San Diego, Ninth Circuit, New York State Supreme Court and now Homeland Security where Lt. Shine is still being detained.

Captain Murray ROGERS is one of our mariners, and we have followed his case from the outset. It is more about retaliation and retribution by the **military** against a former enlisted man, who at the time of his charges was a civilian. The case is a travesty, especially in the length to which the Coast Guard as a Branch of Military was willing to go to pursue a conviction upon a civilian within a military tribunal, and use military assets and resources and its own self-made court to do so. This even went as far as and included discrediting its own Administrative Law Judge presiding over the case (and, at the same time, its own administrative law system) to squeeze out a conviction by using every conceivable asset it could muster and all at tremendous expense to the taxpayer. All of this effort was expended to punish a minor offense that may have been more the fault of the commercial employer than the civilian mariner. This so-called ñremedialò action was allowed to extend over a 4½ year period, all as carried out within a Special Military Tribunal that did not accord Mr. Rogers with JAG Counsel or any other rights or protection, especially the presumption of innocence that any Coast Guard Officer or Crew might expect if they were ever found within the same or similar proceedings..[1] *[(1)Refer to our Report #R-429-S Mariners Drown When "Justice Capsizes."]*

Both of the ñretiredò Administrative Law Judges that appeared at the July 31, 2007 Congressional hearing, in retired ALJ Rosemary Denson and retired ALJ Jeffie J. Massey, were both driven from their jobs aggressively for reasons that cast great discredit upon the Coast Guard. I had a long conversation with Judge Denson in May 1996 and have been in Judge Masseyôs courtroom on a number of occasions. In fact, my wife and I were present in her courtroom in Lafayette, LA, where she was faced by Uniformed Military Coast Guard Officers acting as JAG prosecutors who admitted they had refused to follow her instructions and even went as far as to challenge her to sanction them. Nevertheless, the Coast Guard succeeded in running her out of office since she would not function as a ñRepresentativeñ of the Coast Guard from within the proceedings. Right now the Coast Guard resides in all roles within these military tribunals.

In spite of the fact that we speak for well over 126,000 mariners, we are a small, yet very active organization. One of my tasks is to sit in as an observer on ALJ hearings to see and attempt to verify that all mariners, or as many proceedings as we can attend, are treated fairly. In many cases they are treated with the respect that they have earned through service in the industry, but the jurisdiction still remains in stark contrast to and in fact clear opposition to our system of law. However, although some mariners may have been treated better than others, in a number of cases I have been left with very serious concerns about how these proceedings were ever even allowed to be initiated due to the involvement of a Special Branch of Military so deeply involved in civilian affairs.

From newspaper reports, and as referenced to the earlier Department of Justiceôs case against Senator Ted Stevens that backfired apparently and reportedly because of ***prosecutorial misconduct***, which must stand as a profound embarrassment to the Department you have not taken on the responsibilities for, although not something you were directly responsible for as it was initiated by the former AG. Still, this cannot be left uncorrected only because you inherited it.

An important point to note coming from Todd Foster, as a former federal prosecutor in Tampa and Houston and former Federal Bureau of Investigation agent, questioned whether the case would have been re-examined so closely if it hadn't involved a U.S. Senator, with some fairly heavy backing to continue to fight the prosecution. Foster was outspoken in asking: "*My question is what happens to the rest of us*? *What happens when the person doesn't have the resources Senator Stevens had*? ***What happens to those cases that don't reach the Attorney General?***" We also ask echoing in the mindset of Todd Foster: *Why has oversight of the system been so lax that the Coast Guard was allowed to build an administrative law system where it prosecutes civilians and others within specially constructed military tribunals and is so deeply entrenched within and involved in a number of civilian affairs…?:*

ŏThe Coast Guard promulgates the regulations itself that it writes without adequately addressing complaints by citizens or even by Members of Congress, and in fact uses this system to alter the Law by publishing final adjudications in the Federal Register. Often times the results of these Article II Military Tribunals are contrary to the black letter laws.

ŏThe Coast Guard hires, fires, employs, and pays the Judges salary, benefits and pension and (as alleged by affidavit of former ALJ Massey) then attempts to influence that judge not

to rule against the Coast Guard. **[Enclosure #2] Often times many of the "ALJ"S are former employees of the Coast Guard, if not even former Commissioned Officers of the Coast Guard which is a direct conflict of interest [see enclosure of October 23, 2007 proceedings from "SHINE"].** There is no independence whatsoever, and worse this is a ñBranch of Militaryò operating in DHS, not in DOD.

ðThe Coast Guard, although promised by the former U.S. Coast Guard Commandant A.C. Richmond, **[Enclosure #3**], has never made any provisions for legal representation or JAG Counsel of any accused mariner even though an ALJ can suspend or revoke a marinerôs means of making a living for an extended period for example for DRESSER - 10 years; and for LT. SHINE [an alleged civilian in these proceedings - even though the Coast Guard moved to strip him of his Naval Commission after bringing the charges and only to ensure he would not have JAG counsel or other means of defending himself against a Branch of Military he is not in - nor ever served in - over 9 years]. For indigent mariners, legal expenses are generally ***no less than a minimum of $5,000 if not far more***. And as reported at the hearing, the system has become so discredited that most lawyers will no longer accept cases tried before a Coast Guard ALJ for fear of somehow being held responsible for the outcome of an entirely rigged system.

ðThe Coast Guard has virtually unlimited access to Federal Military funds to protract litigation for many years while the mariner must pay ñout of pocket.ò The Military is being used to create if not even alter civilian laws and legal codes. Plus this ñBranch of Militaryò can track and use less than honorable or acceptable means to make sure that ñDefendantsò or Respondents never have there day in these military tribunals or ñcourts.ò

ðThe Coast Guard pays the salary and expenses of the prosecutor. The prosecutor, who is also the investigator in many cases, and the citing or summoning officer as well, or complainant, is a Uniformed Coast Guard Military Officer whose performance (i.e., success) is rated by superiors who receive full pay while attending ALJ sessions as observers. I have witnessed as many as eight (8) Coast Guard officers attending a hearing where only one was a witness, and everything is skewed in favor of the Coast Guard.

ðThe Coast Guard sets and imposes the punishment. For example, one towing vessel officer mariner who received the minimal license suspension sentence of one month after an accident that resulted in $5,000 damages took a financial hit of $13,000 in lost wages. Some of these types of proceedings may have been understandable when the Coast Guard as a ñCivil Serviceò but this is still like allowing the ñPoliceò, even now ñMilitary Policeòto be the ñProsecutionòand fill all roles in its own self-made courts.

ð The Coast Guard often imposes a punishment as part of a ñsettlement agreementò negotiated or ***coerced*** by ***threat*** of a hearing before an ALJ where the Coast Guard openly declares it will seek stiffer sanctions although the ALJ ultimately must sign off on any settlement proposal or agreement.

ðThe Coast Guard seeks and obtains ñcivil penaltiesò as assigned to businesses that are often regarded as little more than the cost of doing business, while those applied to mariners often destroy them or drive them from the marine industry. **[Enclosure #4].** It is important to

note that the Coast Guard via its Medical Officer Captain Arthur French stated on the record that the military proceedings will most likely **kill** Lt. Shine.

ŏThe Coast Guard controls the appeal process which holds the mariner trapped within the system for years and thereby prevent reasonable access to a Federal District Court, and the appeal is sent up to the Admiral in charge of a Special Branch of Military.[1] *[[1]Refer to our Report #R-436, Rev. 3, Mar. 5, 2009. The Coast Guard Appeals Process.*] In similar internal, remedial administrative proceedings as those carried on even under the UCMJ for individuals like Lt. Watada, persons are provided pay, legal aid, medical benefits and more and are not held or stripped of these basic human rights well before the outcome or conclusion of the proceedings, or in most cases at the outset of proceedings.

ŏThe Coast Guard controls access to the Equal Access to Justice Act and spends inordinate amount of resources to ensure that individuals cannot and do not attain any level of recompense. Our recent FOIA request extracted information that, throughout the life of the ALJ program, only 1 mariner has ever been successful in obtaining reimbursement for legal fees after prevailing in an ALJ hearing. That is of course with around a 97% conviction rate as well.

ŏThe Coast Guard imposes penalties upon mariners that deprive them of life, liberty, property and the pursuit of happiness, even the freedom of movement as many proceedings are not calendared and mariners must sit at home waiting for correspondence or lose their case by ñdefaultò with little or no chance of re-opening the case once closed, and yet the Coast Guard maintains that such confiscatory penalties and deprivations are somehow ñremedialòin natureòand also somehow ñinternalòto the Agency.

ŏThe Coast Guard has an organized effort, akin to a conspiracy, to rule against one or more mariners known to be innocent, with the intent of protecting their organization's interests and even certain Corporate interests at the expense of civil liberties such as due process, while they put at risk a marinerôs life, liberty, property, and pursuit of happiness. The intent, which goes beyond the bright line into criminal racketeering when better understood, is also to protect the organization from losing Congressional funding, as well as to prevent the perceived loss of power. Better yet to expand the scope of the power at any and all costs with little regard for our founding principles. The Coast Guard is now functioning improperly as a ñRisk Mangerò for the industry and shipping companies and being used to crush civil litigants or grievants so they cannot make their way into court. The SHINE and DRESSER cases are two prime examples of this.

ŏThe Coast Guard altered and heavily redacted the official hearing transcripts in the case of *USA/ DOT/ DHS/ USCG v. [Lt./ Mr.] Eric Norman SHINE*, as confirmed by the respondent and a witness to exclude, in addition to other things, repeated references throughout the thousand-page document points where the ALJ as a Lcdr. Walter J. Brudzinski, USCG told the respondent repeatedly to ñé shut upò and threatened to expel him from the courtroom and summoned a Federal police officer repeatedly to harass and intimidate him. There is more then one thousand pages from this proceedings alone, close to thirteen hundred, in addition to the transcripts from several previous proceedings that were carried on over the course of 6 years that amount to another 500 pages or so of transcripts alone. Other

mariners (PERIMAN) faced the same tactic used by other ALJ's. A willingness by anyone to tolerate such alterations, or lack of decorum is inexcusable.

We ***reviewed the full 1,000-page transcript*** of ALJ Brudzinski's 4 day military tribunal at the Federal Fusion Center in Long Beach, Ca. or the so-called "hearing" on the SHINE series of cases that have dragged on for over 9 years, or more now. The Coast Guard attempted to as far back as 1984 to a time well before Lt. Shine even entered Kings Point, to obtain personal files and records. The Coast Guard even brought up Lt. Shine's academic record at school? On June 30, 2008 I prepared a formal complaint to Vice Commandant Vivien Crea who had remanded the SHINE case in 2006 for the eventual hearing held over 18 months later in May, 2008. 5 years after charges were proffered on March 06, 2003. A reply that was sent interestingly enough by the Acting Judge Advocate General (on Aug. 1 2008) rather then the Chief Administrative Law Judge, contained a lecture on supposed improvements to the ALJ system as well as opposition to any and all changes proposed by the House of Representatives to the ALJ system contained in HR-2830. I have enclosed this exchange of correspondence as well as an affidavit by a trained legal professional and observer during the four-day hearing carried out upon SHINE which was more of an interrogation, who comments at length to conduct at the hearing. **[Enclosure #5].** Lt. Shine has also filed an affidavit in this regard along with a series of other documents that must be given attention, along with the transcripts and all filings in this case, as Vice Commandant Admiral Crea has stated - this is a case of first impression [or precedent setting case] - and the related series of cases. Lt. Shine was pulled out of Civil Court by the Coast Guard and Homeland Security.

Our Association believes any Suspension and Revocation hearing must be videotaped within audio and video formats to ensure a complete and accurate record is maintained and even provided immediately to any and all participants at the end of each day of any proceedings, minimally. This is critical to maintain integrity of the proceedings, and in this day and age is not an overwhelming burden financially or technologically upon the Agency and should be a "cost of doing business" until all of this can be turned around. Had the SHINE four day trial from May 20-23, 2008 been video-taped the behavior of the Coast Guard in the court room would have been far different, and violations of due process would be very clear, and would be compelling evidence why these proceedings must be halted and those affected made whole immediately. The existing transcripts themselves even with all redactions and alterations are still clear as to retaliatory nature of these proceedings, especially in the SHINE case and several others where the Coast Guard intentionally targeted individuals to improperly expand the scope of its authority. In fact , in the SHINE case the Coast Guard is attempting to have Lt. Shine declared medically/ mentally incompetent so that it might seize upon and create venue and jurisdiction by doing so and disallowing SHINE to challenge jurisdiction or authority.

"The Coast Guard's responses to our Association left us with no clear indication or inclination of the Coast Guard's desire to review major problems or consider any reforms.

We believe, as touched upon already, that a number of cases we reviewed including (but in no way limited to) the DRESSER case that was brought to light in the Baltimore Sun Articles involve broad, unwarranted extensions of the Coast Guard's authority, including misconduct by one or more Administrative Law Judges. We are distressed that the Department of

Justice Attorneys defended Commandant Admiral Thad Allen, and Chief ALJ Ingolia et al, when it appears the DOJ is unaware if not entirely disinterested in the actual behavior they are attempting to and in fact condoning by defending them. While it may be reasonable for a U.S. Attorney to defend a U.S. Government agency such as the Coast Guard except when wrongdoing is so overwhelmingly evident as herein, we believe your predecessors have defended high-ranking officials within the Coast Guard instead of the mariners who seek only access to justice and find instead unrelenting tyranny dished out by appointed government officials.

We urge you to review the DRESSER case, de novo from beginning to end and all other matters tied to it, and also other cases we bring to your attention in this letter ï specifically ROGERS, KINNEARY, ñCAPTAIN KEN ò PERIMAN[1]. and LT. ERIC SHINE[2] who was up for promotion in the U.S. Navy to Lieutenant Commander when the U.S. Coast Guard came after him, and then moved to have him discharged from the Navy so the Coast Guard could get at him in an unfair, lop-sided and biased setting. The internal emails of the Coast Guard are very revealing that the Coast Guard set out to ñframeñ Lt. Shine, even though they could not define just how Lt. Shine may have broken any law, rule, or regulation under 46 or 33 USC. *[[1]Refer to our Report #R-315-C, Rev. 1, May 30, 2007. Mariner Drug Cases; [2]Refer to Report #R-429-Q. March 21, 2009. U.S. Coast Guard versus Lt. Eric N. Shine.]*

All Americans, including our mariners, look to your department within the Federal Governmentôs Executive Branch for ensuring and guaranteeing ñJustice.ò We believe our mariners, in many cases, have been able to obtain some level of ñjusticeò from the Coast Guard, if only one can ignore that this is a Branch of Military delivering it to civilians somehow. Our complaints to its newfound parent Department, in the form of the Department of Homeland Security, have fallen on deaf ears. **[Enclosure #6]** This simply cannot continue for another day.

We also contacted Mr. Stephen Caldwell at the Government Accountability office (June 12, 08ô) and was, in turn, contacted by Messrs. Jeff Jensen and Julian King (Oct. 22, 2008) and furnished considerable data as outlined in **[Enclosure #7].** I understood their agency was investigating these matters, but had instead decided to carry on a more cursory review and simply compare it to other Agencies. However, in spite of the fact that they intended to maintain contact, I never heard from them again, and no Final Report has ever been issued in the past 7 months or more since the GAO was turned on by Congress to investigate the ALJôs, Coast Guard and its Administrative Law Court System.

From our fairly well-informed vantage point as a maritime entity ourselves, it appears that any inquiry into the Coast Guardôs ñinvestigationsò and ñAdministrative Lawò systems has been dismissed, discouraged, or terminated with prejudice before it even can get underway. This is chiefly due to the obvious and gross violations of foundational Constitutional principles and human rights.

Our mariners were heartened by the recent change in our Executive Branch administration, and personnel including yourself. We ask you, Attorney General Eric Holder, to work diligently and quickly in concert with Congress to bring about proper changes in the way our merchant mariners are and have been treated by the Coast Guard and its ñinternalò, ñremedialò Administrative Law system. To do this by having the lawyers in the Department of Justice reach out to the mariners whose lives were ruined by the excesses and abuses of

Coast Guard Uniformed Military JAG Officers acting as Prosecutors and find a cure, and punish those who have abused our mariners, restore confidence in the administration of justice to our mariners, and review these and other cases with an aim to redressing marinerôs grievances and making the individuals whole, and to further restrain the perpetrators from carrying on any more injustice.

Upon greater reflection we must condemn the Coast Guardôs ALJ system in its entirety, and we believe Congress must continue to reconsider and rework the system, and look to pre-existing law and Federal District Court jurisdiction as instead brought by Civilian U.S. Attorneys for infractions of Federal Law, and not by military officers in back room military tribunals upon unsuspecting and ill-prepared civilians. Also that the laws passed to protect all American Flag Officers and Crew of the U.S. Merchant Marine must be given greater consideration within any deliberations upon what is in order, and how the Coast Guard and other Agencies and our courts play into all of this. We regret having to ask you to take on and to address problems that have flourished during previous if not at least several administrations. As Judge Rosemary Denson pointed out to me in correspondence 13 years ago, these problems took root many years ago, and as Lt. Shine has pointed out in his filings date back to the very inception of the Coast Guard, if not at least to last time Congress and the Executive were moved to alter course that the Coast Guard has set itself upon. I believe it is time for a thorough house cleaning in all regards. Moreover, that many of the individuals involved like Christopher Dresser, and Lt. Shine and others who must now be brought before Congress by this Executive Branch Administration to clean house in oral hearings before Congress, in-keeping with and in light of the recent memos that were released pertaining to the ñTorture memos.ò What has been carried out to some of these individuals is clearly various forms of psychological and other forms of torture. ñLt. Shineò has been prosecuted aggressively for 9 years for allegedly ñbeing depressed.ò The disinfecting light of ñsunshineò is the only pathway to better understand and cure what is going on, and prevent it from happening ever again.

The Coast Guard has demonstrated clear disrespect for two of their own former Administrative Law Judges as well as a number of our Officers and Crew that they have mistreated and abused, including Commissioned Naval Officers like Lt. Shine who serve on ñSpecial Duty in the United States Merchant Marineò and by tradition are considered in all regards a ñstep above the Coast Guard.ò Nevertheless, our reports only represent a small number of cases that came to our attention. We know that there are many lawyers and individuals throughout the country that can step forward and add to this list of abuses that demand review, correction and redress of various and numerous grievances.

Very truly yours,