In the U.S. District Court for the District of Columbia

CASE NO. 10-857-JDB; (Judge John D. Bates)

DON HAMRICK, pro se (Seaman's Suit)
5860 Wilburn Road
Wilburn, Arkansas 72179

PLAINTIFF

VS.

(1) UNITED STATES
(5 U.S.C. § 702, 704, 706, *et seq*)

(2) JOHN G. ROBERTS, Chief Justice
U.S. Supreme Court
1 First St NE
Washington, DC 20543

(3) JOHN F. CLARK, Director
US Marshals Service
Washington, DC

(4) RAY LAHOOD Secretary
U.S. Department of Transportation
1200 New Jersey Ave, SE
Washington, DC 20590

(5) JANET NEPALITANO, Secretary
Department of Homeland Security
U.S. Depart. of Homeland Security
Washington, DC 20528

(6) ADMIRAL ROBERT PAPP
Commandant (G-00)
U.S. Coast Guard
2100 Second Street, SW
Washington, DC 20593

DEFENDANTS

COMPLEX LITIGATION - Rule 16(c)(2)(L)

33 C.F.R. § 1.05-60 Negotiated Rulemaking
05 U.S.C. § 702 Right of Review of Final Agency Action
05 U.S.C. § 704 Final Agency Actions are Reviewable
05 U.S.C. § 706 Scope of Review of Final Agency Action
05 U.S.C. Appendix § 8 Federal Advisory Committee Act
18 U.S.C. § 1964(a) Civil Remedies (RICO Act)
18 U.S.C. § 1964(b) Atty. General Intervention
18 U.S.C. § 1964(c) RICO Act Triple Damages
28 U.S.C. § 1331 Federal Questions & Treaties
28 U.S.C. § 1333 Admiralty/Maritime: Rule 9(h).
28 U.S.C. § 1343(a) Civil Rights/Elect. Franchise
28 U.S.C. § 1357 Injuries Under Federal Laws
28 U.S.C. § 1361 ACTION TO COMPEL
28 U.S.C. § 1651 WRIT OF PEREMPTORY MANDAMUS
28 U.S.C. § 1916 Seaman's Suit
28 U.S.C. § 2201. Creation of Remedy
28 U.S.C. § 2202. Further Relief
42 U.S.C. § 1985 Conspiracy to Interfere with Civil Rights
42 U.S.C. § 1985(2)Obstructing Justice, Intimidating Party
42 U.S.C. § 1985(3)Depriving Person of Rights or Privileges
42 U.S.C. § 1986 Action for Neglect to Prevent
42 U.S.C. § 1988 Proceedings in Vindication of Civil Rights
44 U.S.C. § 3501 et seq. Paperwork Reduction Act
46 U.S.C. § 2114(a)(1) Whistle Blower Law for Seamen
46 U.S.C. § 2114(a)(3) Whistle Blower Law for Seamen
46 U.S.C. § 2114(b)(1)&(2) Whistle Blower Law / Seamen
46 U.S.C. § 30101 Admiralty Jurisdiction
46 U.S.C. § 30104 Recovery for Injury to Seaman
46 U.S.C. § 30903(a) Suit in Admiralty Act
And For the Rights of Third Parties (*Jus Tertii* Doctrine)

Damages Sought: $19.8 Million (Rico Act)

JURY TRIAL DEMANDED

RICO ACT COMPLAINT

AMENDED COMPLAINT UNDER PROTEST

VERIFIED ADMIRALTY & MARITIME COMPLAINT

● PETITORY ACTION QUASI IN REM SUAM ET JUS TERTII (RULE 9(h))

On COMPLAINT *Ex Dolo Malo* (Out of Fraud), deprivation of rights, extortion, obstructions of justice, and racketeering activities against the Second Amendment rights of seamen and against the Common Defence Clause of the Preamble to the Constitution as Intangible Property under RULE E(4)(c) as an Analogous Proceeding to an *Action in Rem* under RULE C(1)(b) of the SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS.

RULE 9(b) PLEADING SPECIAL MATTERS: ***Fraud*** (In alleging fraud ... a party must state with ***particularity*** the circumstances constituting fraud. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

COMPARE RULE E(2)(a) ACTIONS QUASI IN REM: *Complaint.* In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such ***particularity*** that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading. **RULE 8(d)(2) Alternative & Hypothetical Statements of Claims Apply to this Case. RULE 8(a)(2) DOES NOT APPLY!**

Fiat justitia ruat coelum

"Let justice be done though the heavens fall asunder."

- **PLAINTIFF'S DEMAND FOR DE NOVO REVIEW OF THE U.S. COAST GUARD'S FINAL AGENCY ACTION**
- **PLAINTIFF'S DEMAND FOR DE NOVO REVIEW OF *HAMRICK* V. *PRESIDENT GEORGE W. BUSH*, NOS. 02-1435**
- **PLAINTIFF'S DEMAND FOR DE NOVO REVIEW OF *HAMRICK* V. *ADM. THOMAS H. COLLINS, COMMANDANT, US COAST GUARD*, U.S. DISTRICT COURT FOR DC, NO. 02-1434**
- **PLAINTIFF'S DEMAND FOR DE NOVO REVIEW OF ALL SUBSEQUENT CASES OR THE PLAINTIFF AS OVERRULED BY U.S. SUPREME COURT IN *DISTRICT OF COLUMBIA* V. *HELLER*, NO. 07-290, 554 U.S. 290; 478 F. 3D 370 (2008); AND MCDONALD V. CHICAGO, U.S. SUPREME COURT, NO. 08-1521, (JUNE 28, 2010)**
- **PETITION FOR WRIT OF REPLEVIN OF EXTORTED FILING FEES OF THE U.S. DISTRICT COURT FOR DC AND THE U.S. SUPREME COURT IN VIOLATION OF 28 U.S.C. § 1916 AND 18 U.S.C. § 872**
- **AND PETITION FOR WRIT OF PEREMPTORY MANDAMUS, INJUNCTIVE AND DECLARATORY RELIEF AGAINST THE U.S. DEPARTMENT OF TRANSPORTATION, U.S. DEPARTMENT OF HOMELAND SECURITY, U.S. COAST GUARD AND THE U.S. MARSHALS SERVICE**

***Where plaintiffs elect to invoke court's admiralty jurisdiction pursuant to Rule 9(h) they have right to have claims tried by jury under Rule 38(e*).** 2 Am Jur 2d, Admiralty 107, 139, 140, 142, 218, 220.

> ***By bringing an admiralty case under Rule 9(h) the plaintiff will be able to seek special remedies that would not otherwise be available. These remedies include: Rule B, attachment, and Rule C, arrest. These remedies can be used to enforce a variety of claims*,** … Thomas J. Schoenbaum, *ADMIRALTY AND MARITIME LAW: PRACTITIONER TREATISE SERIES* Volume 1 at 389 (4th ed. 2003) in J. Ralph White, *A SYNOPSIS OF SUPPLEMENTAL RULES B, C AND D FOR ADMIRALTY OR MARITIME CLAIMS*, Mississippi-Alabama Sea Grant Legal Program, *WATER LOG 27*.3, November, 2007.[1]

- **JOINDER OF ADMIRALTY AND NONADMIRALTY CLAIMS**

46 U.S.C. § 30903(b) Non-jury. (*A claim against the United States … shall be tried without a jury*) does not apply to this Complaint because Joinder of Non-Admiralty claims are included in this Complaint. There is nothing in the present rules of Civil Procedure which grants a trial by jury in an admiralty or maritime claim. Rule 38(e) F.R.Civ.P., expressly so provides. **But there is nothing in the Rules which prohibits a trial by jury on joined civil and admiralty claims**. Rule 9(h), F.R.Civ.P., which pertains to identifying claims, does not modify this result. *See Haskins* v. *Point Towing Co*., (3 Cir. 1968) 395 F.2d 737, 743. *Rosalie Laura Peace, Administratrix of the Estate of Thomas Malcolm Peace, deceased,* v. *Fidalgo Island Packing Company, et al*.., C.A.9 (Washington) 1969, 419 F.2d 371.

The United States Supreme Court in *Fitzgerald* v. *United States Lines Co*., 374 U.S. 16, 20, 10 L. Ed. 2d 720, 83 S. Ct. 1646 (1962), held that the Seventh Amendment does not require jury trials in admiralty cases. *See also*, Fed. R. Civ. P. 38(e). The Court further stated, however, that no statute, rule of procedure, civil or admiralty law forbids jury trials in maritime cases. *Id.* Since Article III of the Constitution vests the federal courts with admiralty jurisdiction, Congress has left the Court with "the responsibility for fashioning the controlling rules of admiralty law." *Id.* Once a plaintiff invokes admiralty procedures in this district, a jury trial will not be granted without a showing of some alternative source of federal jurisdiction. *Rose* v. *Dredge Enterprise*, 120 F.R.D. 39, 40 (E.D.N.C. 1988).

[1] www.olemiss.edu/orgs/SGLC/MS-AL/Water%20Log/27.3admiralty.htm

● THIS IS ALSO A COMPLAINT ON OTHER SUBJECT MATTER FOR DAMAGES AND OTHER RELIEF

PETITION FOR WRIT OF PEREMPTORY MANDAMUS, WRIT OF PROHIBITION, DECLARATORY JUDGMENT, INJUNCTIVE RELIEF, AND DAMAGES.

This Complaint is also a **Civil Rights action** to determine my rights as a U.S. citizen to the **full scope of the Second Amendment**, i.e., *NATIONAL OPEN CARRY HANDGUN* as an integral part of homeland security and to the common defence clause of the Preamble to the Constitution of the United States under the federal common law and the laws of the United States. (42 U.S.C. § 1982; 1983; 1985; 1986; 1988, Civil Rights Claims).

This Complaint is also a **Civil Rights action** to determine the rights of other U.S. citizens as unnamed third parties similarly situated under the *Jus Tertii* Doctrine, (i.e., truck drivers with *TRANSPORTATION WORKER'S IDENTIFICATION CARD* (TWIC)), transporting intermodal containers to and from ports of the United States and other citizens whose occupations require interstate travel in commerce and perhaps even those U.S. citizens who are simply traveling interstate for vacation, tourism, or any other lawful purpose (i.e., any U.S. Citizen who are licensed drivers under the National Drivers Register,[2] and the Drivers License Compact.[3] (Civil Rights Claims 42 U.S.C. § 1982; 1983; 1985; 1986; 1988 under the *Jus Tertii* Doctrine).

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[2] U.S. Code, Title 49—Transportation; Subtitle VI—Motor Vehicle And Driver Programs; Part A—General; Chapter 303—National Driver Register; 49 U.S.C. § 30301 *et seq.*

[3] The *INTERSTATE DRIVER'S LICENSE COMPACT* is an agreement between the 45 participating states to share information regarding certain types of convictions, including Drunk Driving (DUI and DWI) convictions. The Drivers License Compact is an agreement between states to consider only one driving record per driver, and that record will follow the licensee from state to state, rather than a new record being created if an out of state license s issued. Both the Nonresident Violator Compact and the Drivers License Compact Member states communicate with each other if a licensee of one state receives a ticket in another state. Both the Drivers License Compact and the Non-Resident Violator Compact are in the process of being merged into the National Driver Register.

This is an Admiralty/Maritime Complaint under:

SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS

RULE E. ACTIONS IN REM AND QUASI IN REM: GENERAL PROVISIONS

(2) COMPLAINT

(a) Complaint.

See page 5 for Recusal for Judge from another District implying that *NO* judge in this Court can preside over my case with impartiality as proven in Memorandum Opinions dismissing my case with and without prejudice from 2002 to the present. Nearly all My Motions denied while ALL GOVT MOTIONS GRANTED!

In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with such ***particularity*** that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

In Addition to:

FEDERAL RULES OF CIVIL PROCEDURE

RULE 9. PLEADING SPECIAL MATTERS

IN DEFENSE OF RULES 8(d)(2), 9(b), (d), & (h); RULE E(2)(A), AGAINST CONTEMPTUOUS JUDICIAL BIAS AND PREJUDICE FAVORING EXCLUSIVE RELIANCE ON RULE 8(a)(2)

(h) ADMIRALTY OR MARITIME CLAIM.

(1) How Designated.

If a claim for relief is within the admiralty or maritime jurisdiction and also within the court's subject matter jurisdiction on some other ground, the pleading may designate the claim as an admiralty or maritime claim for purposes of Rules 14(c), 38(e), and 82 and the SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS. A claim cognizable only in the admiralty or maritime jurisdiction is an admiralty or maritime claim for those purposes, whether or not so designated.

(b) FRAUD. [i.e., *Ex Dolo Malo* (Out of Fraud)]

In alleging fraud or mistake, a party must state with ***particularity*** the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

RULE 8. GENERAL RULES OF PLEADING

(d) ALTERNATIVE STATEMENTS

(2) Alternative Statements of a Claim

A party may set out 2 or more statements of a claim … ***alternatively* or *hypothetically***, either in a single count … or in separate ones. If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient.

That Means Rule 8(a)(2)'s Short and Plain Statements of the Claims is NOT the Only Method to State Claims. I am INVOKING Rule E(2)(a), Rule 9(h), and Rule 8(d)(2).

This Complaint Cannot be Dismissed for Failure to State a Claim Based on Rule 8(a)(2) Because this Complaint uses Rule 8(d)(2) Alternative and/or Hypothetical Statements made with *Particularity* (i.e. Expanded Details Beyond Rule 8(a)(2)).

DISMISSING THE ORIGINAL ADMIRALTY COMPLAINT ON RULE 8(a)(2) GROUNDS IS AN ABUSE OF THE FEDERAL RULES OF CIVIL PROCEDURE CONSTITUTING JUDICIAL BIAS AND A CHARGE OF OBSTRUCTION OF JUSTICE BY THE COURT FROM 2002–PRESENT AS RACKETEERING ACTIVITIES UNDER RICO ACT.

RECUSAL FOR A JUDGE FROM ANOTHER DISTRICT IS HEREBY DEMANDED!

RULE 4(c)(2) DEMAND

IMMEDIATE SERVICE TO BE PERFORMED BY U.S. MARSHALS SERVICE FOR DUE CAUSE OF JUDICIAL OBSTRUCTION OF JUSTICE

THE PLAINTIFF IS A SEAMAN UNDER RULE 4(c)(2) FOR THE PURPOSE OF LITIGATION

DELIVERY TO THE U.S. MARSHALS SERVICE OF THE ORIGINAL ADMIRALTY COMPLAINT WAS WRONGFULLY WITHHELD BY THE COURT FOR 3 MONTHS BEFORE DISMISSING MY COMPLAINT BUT ONLY AFTER NOTICE OF MY COMPLAINT TO THE U.S. HOUSE JUDICIARY COMMITTEE!

EVIDENCE OF DILLIBERATE INDIFFERENCE TO MY RIGHTS TO PROCEDURAL & SUBSTANTIVE DUE PROCESS, JUDICIAL BIAS, AND OBSTRUCTION OF JUSTICE AS A PREDICATE ACT OF RACKETEERING ACTIVITY UNDER THE RICO ACT.

I, Don Hamrick, Appellant, as a seaman, *a ward of the Admiralty*, (even though my seaman's papers are up for renewal on the basis that the U.S. Supreme Court in *Heller* (2008), overruled the dismissal of my original case in 2002), hereby certify that on or about ______________________, 2010, in accordance with RULE 4(c)(2) of the *FEDERAL RULES OF CIVIL PROCEDURE* and *28 U.S.C. § 1916, SEAMAN'S SUIT*, I have delivered by U.S. Postal Service Priority Mail to the U.S. District Court for DC the required number of copies of the Complaint with their accompanying Summonses, Motions and other papers in order that service can be performed by a United States Marshal, a Deputy United States Marshal, or other person or officer specially appointed by the court for that purpose upon the Defendants.

[signature]

Don Hamrick
5860 Wilburn Road
Wilburn, Arkansas 72179
Email: ki5ss@yahoo.com

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Amendment rights of U.S. merchant seamen to ready access to defensive *SMALL ARMS AND LIGHT WEAPONS* to defend against pirate attacks on the high seas under maritime law in regard to the *MERCHANT MARINER CREDENTIAL* (MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.) and Exhibit 3 (page Error! Bookmark not defined.). 167

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CLAIM 3. Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY*, having General Superintendence over the U.S. merchant marine and merchant marine personnel (46 U.S.C. § 2103), is charged with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* and Admiral Rebort Papp, *COMMANDANT OF THE U.S. COAST GUARD* for failure or refusal to regulate or submit proposed legislation to Congress on proper manning levels, equipment, amount and type of Small Arms and Light Weapons suitable for defensive against pirate attacks on the high seas as element of *SEAWORTHINESS* under Title 46 Appendix, Chapter 28—Carriage of Goods by Sea: 46 U.S.C. Appendix § 1303 *RESPONSIBILITIES AND LIABILITIES OF CARRIER AND SHIP* that prompted the U.S. Coast Guard to issue their *FINAL AGENCY ACTION* denying my Second Amendment right to the National Open Carry Handgun and/or the National Open Carry Small Arms and Light Weapons endorsement on the MMD (now MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.) and Exhibit 3 (page Error! Bookmark not defined.). 167

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defend against pirate attacks on the high seas under maritime law in regard to the *MERCHANT MARINER CREDENTIAL* (MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.) and Exhibit 3 (page Error! Bookmark not defined.)................. 169

CLAIM 3. U.S. COAST GUARD VIOLATED THE SEAMEN'S WHISTLE BLOWER LAW: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged with imputed negligence for the actions of Capt. J. P. Brusseau USCG (Retired July 1, 2004) and other Coast Guard officers in regard to libel as a matter of private concern, injury to reputation, harassment, emotional distress, Obstruction of Justice, Conspiracy to Obstruction Justice with the *U.S. DEPARTMENT OF TRANSPORTATION'S OFFICE OF SECURITY* in regard to DOT Bar Notices of 2004 and 2006 in wrongful retaliation for Plaintiff naming Officers of the U.S. Coast Guard as Defendants in civil litigation extending from petitioner's exercise of First Amendment rights to free speech and to petition the government for redress of grievances pursuing Second Amendment rights under the Seventh Amendment right to a jury trial and by such actions the U.S. Coast Guard wrongfully violated the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1)(A), (b)(1) & (b)(3) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*) culminating in Racketeering Activities (18 U.S.C. § 1503) against the Second Amendment rights of seamen. 169

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CLAIM 2. DAMAGES: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged with imputed negligence for the actions of Capt. J. P. Brusseau USCG (Retired) in regard to libel as a matter of private concern, injury to reputation, unlawful interference with the lawful operation of a merchant vessel, unlawful interference with a seaman's employment aboard a merchant vessel, wrongful detention/false imprisonment of a U.S. merchant seaman in a foreign country (initiated by Capt. Brusseau in Washington, DC), harassment, emotional distress, and subjection to a malicious NCIS criminal investigation extending from petitioner's exercise of First Amendment rights to

free speech and to petition the government for redress of grievances pursuing Second Amendment rights in 2002 and by such actions the U.S. Coast Guard wrongfully violated the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1)(A), (b)(1) & (b)(3) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*). 170

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IN PROTEST FOR BIASED DISMISSAL

1. <u>GOOD CAUSE EXISTS FOR RECUSAL FOR JUDICIAL BIAS UNDER CANONS 1, 3(B)(1, 2, 5), AND 3(E)</u>: BECAUSE THIS ADMIRALTY MARITIME CASE PRESENTS RULE 16(c)(2)(L) COMPLEX ISSUES RELATING TO FRAUD UNDER RULE 9(b) FRAUD I AM *DEMANDING* MY RIGHT AS A U.S. CITIZEN UNDER THE SEVENTH, NINTH, AND FOURTEENTH AMENDMENTS AND AS A U.S. SEAMAN TO MAKE ALTERNATIVE AND HYPOTHETICAL STATEMENTS OF CLAIMS AGAINST THE U.S. COAST GUARD'S FINAL AGENCY ACTION IN ACCORDANCE WITH RULE 8(d)(2) ALTERNATIVE AND/OR HYPOTHETICAL STATEMENTS OF CLAIMS, RULE 9(h) ADMIRALTY/MARITIME CLAIMS AND THE RIGHT TO MAKE STATEMENTS OF CLAIMS WITH PARTICULARITY UNDER RULE 9(b) FRAUD AND RULE E(2)(a) ACTIONS IN REM AND QUASI IN REM OF THE SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS, AND 5 U.S.C. § 702 RIGHT OF REVIEW (<u>WHICH CANNOT BE DISMISSED</u>) IN LIEU OF SHORT AND PLAIN STATEMENTS UNDER RULE 8(a)(2) IN PROTEST AGAINST JUDGE JOHN D. BATES' APPARENT BIAS AGAINST THESE RIGHTS OF A SEAMAN AND PRO SE CIVIL PLAINTIFF AND AGAINST THE SUBJECT MATTER OF THE COMPLAINT IN VIOLATION OF OF *COHENS* v. *VIRGINIA*, 19 U.S. (6 WHEAT) 264, 404, 5 L.ED 257 (1821), THE JUDICIAL TREASON DOCTRINE

A. Motion for Recusal for Good Cause of Bias and to Have a Judge from another District Assigned to this Cause as Previously Recommended by Judge Richard W. Roberts' Court Order in Case No. 03-2160 (DENIAL OF THIS RECOMMENDATION CONSTITUTES JUDICIAL CORRUPTION & OBSTRUCTION OF JUSTICE)

Judge Richard W. Roberts' Court Order granted my Motion for Recusal, but one week later denied my Motion for Recusal but recused himself *sua sponte* (why?) but still recommended that a judge <u>**from another district**</u> be assigned to my case:

> *"The Clerk of the Court is directed to reassign this matter to the Calendar Committee. Because United States District Judge Ellen Segal Huvelle of this Court is also a named defendant in this suit, <u>**I recommend to the Calendar Committee that it seek to have a judge from another district assigned to this matter**</u>."*

B. This Complex Admiralty Case Requires Rule 8(d)(2) Alternate and Hypothetical Statements of Claims and Rule E(2)(a) claim arises with such particularity that the defendant or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading under the *SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS*

Because this case presents very complex issues under Rule 16(c)(2)(L) COMPLEX LITIGATION, I am invoking my right to make *ALTERNATIVE AND HYPOTHETICAL STATEMENTS OF CLAIMS* under RULE 8(d)(2) in addition to *SHORT AND PLAIN STATEMENTS OF CLAIMS* under RULE 8(a)(2) to which all three types of Claims are applied to my 5 U.S.C. § 702 *DEMAND FOR JUDICIAL REVIEW* under which *CANNOT BE DISMISSED* as Judge John D. Bates clearly did with my original Complaint *sua sponte* under Rule 8(a)(2) on the obviously bigotedly false statement (18 U.S.C. § 1001(a)(1), (2), and (3) Fraud and False Statements) that my previous complaint was a " '*<u>a meandering, disorganized, prolix narrative' or is 'so verbose, confused and redundant that its true substance, if any, is well disguised</u>*.'" *Hamrick* v. *United Nations*, 2007 WL 3054817, at *1 (D.D.C. 2007) (quoting Brown, 75 F.R.D. at 499) [A complex case involving the United Nations attack on our Second Amendment and its impact on the

impact of national security and national defense from the U.S. flag vessels and crew of the merchant marine to defend themselves against pirate attacks on the high seas]. And adding insult to injury, Judge Bates continues contempt for the Second Amendment right of U.S. seamen to defend themselves against pirate attacks on the high seas and the Seventh Amendment right to a jury trial by falsely stating "*Hamrick's exceedingly lengthy complaint — utterly confusing, and at times indecipherable — easily meets these standards*" [for dismissal] in violation of RULE 8(d)(2) from an apparent bias against an unrepresented civil plaintiff for lack of a logical explanation other than hypocritical lip service about pro se litigants being held to less stringent standards than those applied to formal pleadings drafted by lawyers in total disregard to the special protections alleged to be afforded to seamen as wards of the Admiralty Court in admiralty/maritime complaints.

Because there is a bias factor in using my previously dismissed case from the U.S. District Court in Little Rock, Arkansas from 2006, where my case was dismissed because of the increase in the distributed case load resulting from the death of the judge that was assigned to my case and the Memorandum Opinion of the reassigned judge dismissing my case was just to clear the docket of unwanted case regardless of the merits of the case had to cover up the real reason by slamming my right to present a complex case under Rule 8(d)(2)'s *ALTERNATIVE AND HYPOTHETICAL STATEMENTS OF CLAIMS* in addition to the *SHORT AND PLAIN STATEMENTS OF CLAIMS* of RULE 8(a)(2). Judge John D. Bates had to have a biased, pre-determined motive to use my case in that Arkansas federal court to dismiss my case in this federal court. This particular type to bias through selective case citation gave me the suspicion that is type of bias had to be prevalent enough to have law review articles on that subject. Bingo! I found a lengthy list.

Citing the Conclusion in Stephen J. Choi (NYU) and G. Mitu Gulati (Georgetown), *BIAS IN JUDICIAL CITATIONS: A NEW WINDOW INTO THE BEHAVIOR OF JUDGES?* NYU Law School, Public Law Research Paper 06-21 (2006):

> Using data on judicial citation practices, we cast doubt on the view of judges as independent decisionmakers along three dimensions. **First, judges do not ignore politics.** Instead, judges tend to cite judges of the opposite political party significantly less compared with the fraction of the total pool of opinions attributable to the opposite political party judges. **Second, judges engaged in biased citation practices are more likely to do so in certain high stakes situations**. **Judges are more likely to avoid citing judges of the opposite political party in two circumstances: opinions dealing with certain subject matters** (including capital punishment, **individual rights**, labor/ERISA-related issues, among others) as well as opinions in which another judge is in active opposition. Third, judges tend to cite disproportionately those judges that cite them the most.

Imagine that! Empirical evidence that judges do not ignore politics! That supports my suspicion that Judge John D. Bates dismissed my case to coerce me into filing an Amended Complaint because I had named President Obama as a defendant, the double whammy because my case defends the Second Amendment right to *openly* keep and be and bear arms in intrastate and interstate travel. Hence the *high stakes* nature of this case for *individual rights*.

Since Judge John D. Bates likes to do things *sua sponte* I expect and demand that he recuse himself for political bias and order the Calendar Committee to assign this case to a judge from another district as was recommended by Judge Richard W. Roberts' of this Court in my previous case, No. 03-2160, January 13, and 20th of 2004, when he issued his Order granting recusal recommending that a judge from another district be assigned to my case:

*"The Clerk of the Court is directed to reassign this matter to the Calendar Committee. Because United States District Judge Ellen Segal Huvelle of this Court is also a named defendant in this suit, **I recommend to the Calendar Committee that it seek to have a judge from another district assigned to this matter**."*

Judge Richard W. Roberts' Order of Recusal, first granting my Motion for Recusal (January 13, 2004) the one week later denying my Motion for Recusal but recused himself *sua sponte* so as not to appear to have been outwitted by a *pro se* civil plaintiff. (My suspicion.) The very act of Judge Richard W. Robert first granting my motion for recusal then denying my motion but recusing himself *sua sponte* may have been procedurally bizarre it was, nevertheless, a brief shining moment of hope of getting a judge from another district that would not be tarnished by the corruption of Washington, DC politics and power plays until my case was corruptly commandeered by Judge Reggie B. Walton.

> [**January 14, 2004**], U.S. District Judge Reggie B. Walton dismissed on standing grounds the claims of all but one plaintiff in *Seegars* v. *Ashcroft*, a Second Amendment challenge to the D.C. gun ban. With respect to one plaintiff deemed to have standing, Judge Walton held that she was "unable to maintain a Second Amendment challenge … and, in any event, the Second Amendment does not apply to the District of Columbia." *Seegars* v. *Ashcroft*, 297 F. Supp. 2d 201, 204 (D.D.C. 2004).[1]

January 15, 2004, Judge Reggie B. Walton was assigned to my Second Amendment case in defiance of Judge Richard W. Roberts' recusal recommendation to assign my case to a judge from another district. Judge Walton was and still is a judge from the same district court as Judge Roberts. How in the *Hell* did Judge Walton get assigned to my case ONE day after his ruling in the *Seegars* case that the Second Amendment does not apply to the District of Columbia and just TWO days after Judge Richard W. Roberts' Order Granting Recusal? Judge Walton had a clear preconceived bias against my Second Amendment case. Something stinks in this particular "due process!"

2. RECUSAL DEMANDED ON SUSPICION OF JUDICIAL CORRUPTION IN THIS COURT & CASE REASSIGNED TO A JUDGE FROM ANOTHER DISTRICT AS PREVIOUSLY RECOMMENDED BY JUDGE RICHARD W. ROBERTS IN NO. 03-2160 (DENIAL OF THIS RECOMMENDATION CONSTITUTES JUDICIAL CORRUPTION & OBSTRUCTION OF JUSTICE)

A. Direct Evidence of Bias Against the Pro Se Plaintiff

1. Judge John D. Bates committed OBSTRUCTION OF JUSTICE by Dismissing my Complaint on Rule 8(a)(2) Grounds through Judicial Bias Against Rule 8(d)(2), Rule 9(h) of the F.R.Cv.P. and Rule E(2)(a) of the SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS

I file this *AMENDED COMPLAINT* under protest! The original Complaint was a *VERIFIED ADMIRALTY & MARITIME COMPLAINT* for a *PETITORY ACTION QUASI IN REM SUAM ET JUS TERTII* invoking RULE E(2)(a) of the *SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET FORFEITURE ACTIONS*. RULE E(2)(a) states:

> *Complaint*. In actions to which this rule is applicable the complaint shall state the circumstances from which the claim arises with ***such particularity*** that the defendant

[1] Robert A. Levy, *OVERSIGHT HEARING ON THE DISTRICT OF COLUMBIA'S GUN CONTROL LAWS*, Testimony before the Committee on Government Reform United States House of Representatives, June 28, 2005. Available online at http://www.cato.org/pub_display.php?pub_id=12279#a15

> or claimant will be able, without moving for a more definite statement, to commence an investigation of the facts and to frame a responsive pleading.

RULE E(2)(a) of the *SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS* and RULE 8(d)(2)'S ALTERNATIVE AND HYPOTHETICAL STATEMENT OF CLAIMS of the *FEDERAL RULES OF CIVIL PROCEDURE* directly contradicts RULE 8(a)(2)'s "SHORT AND PLACE STATEMENT OF THE CLAIM SHOWING THAT THE PLEADER IS ENTITLED TO RELIEF provides alternative methods of stating claims.

However, federal judges treat Rule 8(a)(2) as if it is the only method to state claims for relief. Rule 8(d)(2) and Rule E(2)(a) are ignored as if they do not even exist, especially in a Complaint formatted and presented as an Admiralty/Maritime complaint under Rule 9(h) as was done in my Complaint's dismissal. Judge John D. Bates' dismissal therefore is an act of judicial bias without justification other than other judges dismissing my cases on the same blind devotion to Rule 8(a)(2) regardless of the merits of the Complaint but giving only lip service to the rights of the *pro se* plaintiff as a device to cover up judicial bias against the *pro se* plaintiff.

Noting Judge John D. Bates' Memorandum Opinion, page 1, Footnote 1., states:

> Hamrick, purporting to proceed under 28 U.S.C. § 1916 SEAMEN'S SUIT, has not paid fees or costs in this action. Section 1916 permits seamen to "*institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or* ***safety*** *without prepaying fees or costs or furnishing security therefor*." The Court need not determine whether this statute applies to Hamrick's complaint, as the Court concludes that the action should be dismissed *sua sponte*. *See Hamrick* v. *United States*, Civ. A. No. 08-1698 (D.D.C. Jan. 30, 2009) (Memorandum Opinion) (declining to evaluate the applicability of 28 U.S.C. § 1916 to another suit filed by Hamrick).[2]

Judge John D. Bates treated the original Complaint as a Civil Rights case under 42 U.S.C. § 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS instead of as a true Admiralty/Maritime case under Rule 9(h) of the *FEDERAL RULES OF CIVIL PROCEDURE* and the *SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS*. I therefore construe the dismissal as *prima faciae* evidence of judicial bias and an abuse of the *FEDERAL RULES OF CIVIL PROCEDURE* and in violation of CANONS 1, 3(B)(1, 2, 5), and 3(E).

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[2] Plaintiff's emphasis.

2. History of Abuse of Procedure, Denial of Due Process, and Obstruction of Justice in this Court against the Pro Se Plainitff

<table>
<tr><td colspan="2">Hamrick v. President George W. Bush
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Judge Richard W. Roberts</td></tr>
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JANUARY 13, 2004</td><td>REVISED ORDER OF RECUSAL
JANUARY 20, 2004</td></tr>
<tr><td>Plaintiff Don Hamrick has filed an action against United States Attorney General John Ashcroft and others, and the action was randomly assigned to me. Plaintiff has filed a motion for recusal, alleging that an appearance of impropriety exists because I was appointed by former President Clinton. Plaintiff offers no evidence that could reasonably call into question my impartiality in these proceedings on the basis of my status as a Clinton appointee.</td><td>Plaintiff Don Hamrick has filed an action against United States Attorney General John Ashcroft and others, and the action was randomly assigned to me. Plaintiff has filed a motion for recusal, alleging that an appearance of impropriety exists because I was appointed by former President Clinton. Plaintiff offers no evidence that could reasonably call into question my impartiality in these proceedings on the basis of my status as a Clinton appointee. Accordingly, his motion will be denied.</td></tr>
<tr><td colspan="2">However, there is now pending in the United States Court of Federal Claims a class action lawsuit filed by a class of present and former Department of Justice attorneys seeking damages against the United States for alleged violations of the Federal Employees Pay Act, 5 U.S.C. §§ 5541-97 (1994). See John Doe, et al., on behalf of themselves and all other similarly situated v. United States, Civil Action No. 98-896C. I am currently a member of that class. Since Canon 3C(1) of the Code of Conduct for United States Judges requires a judge to “disqualify himself . . . in a proceeding in which the judge’s impartiality might reasonably be questioned,” the Committee on Codes of Conduct of the Judicial Conference of the United States has opined that recusal is required from any proceeding in which the Attorney General appears as a real party in interest, unless a waiver of such disqualification pursuant to Canon 3D[1]is submitted by all parties involved in the suit.</td></tr>
<tr><td colspan="2">Plaintiff’s motion for recusal makes plain that he would not waive my disqualification under Canon 3C(1). Thus, my recusal from this case is now appropriate. For the reasons stated above, it is therefore</td></tr>
<tr><td>ORDERED that plaintiff’s motion for recusal [4] be, and hereby is, GRANTED. The Clerk of the Court is directed to reassign this matter to the Calendar Committee. Because United States District Judge Ellen Segal Huvelle of this Court is also a named defendant in this suit, I recommend to the Calendar Committee that it seek to have a judge from another district assigned to this matter.</td><td>ORDERED that plaintiff’s motion for recusal [4] be, and hereby is, DENIED. However, I am recusing myself sua sponte. The Clerk of the Court is directed to reassign this matter to the Calendar Committee. Because United States District Judge Ellen Segal Huvelle of this Court is also a named defendant in this suit, I recommend to the Calendar Committee that it seek to have a judge from another district assigned to this matter.</td></tr>
<tr><td colspan="2">[1] When the general provisions of Canon 3C(1) serve as the basis for disqualification, Canon 3D permits a judge to continue to participate in a proceeding if all of the parties and lawyers, after notice of the basis for the disqualification, agree in writing to waive the disqualification under a procedure independent of the judge’s participation.</td></tr>
</table>

3.. The U.S. Supreme Court Dockets of *Silveira et al* v. *Lockyer*, No. 03-51 and *Hamrick* v. *President Bush*, et al, No. 03-145 and Bach v. Pataki, et al, No. 05-786 Compared to Show Judicial Bias Against *Hamrick*, an Unrepresented Civil Plaintiff/Seaman as a Ward of the Admiralty

Evidence of Bias at U.S. Supreme Court Against a Pro Se With Similar Second Amendment Cases to those Represented		
Represented Silveira, et al v. Lockyer, No. 03-51	**Pro Se** Hamrick v. President Bush, et al, No. 03-145	**Represented** Bach v. Pataki, et al, No. 05-786
AUGUST 7, 2003 Waiver of right of respondent Bill Lockyer, Attorney General of California to respond filed. AUGUST 20, 2003 DISTRIBUTED for Conference of September 29, 2003. SEPTEMBER 22, 2003 Response Requested. (Due October 22, 2003) OCTOBER 22, 2003 Brief of respondents Bill Lockyer, Attorney General of California, and Gray Davis, Governor in opposition filed. OCTOBER 27, 2003 Reply of petitioners Sean Silveira, et al. filed. NOVEMBER 5, 2003 DISTRIBUTED for Conference of November 26, 2003. **DECEMBER 1, 2003 Petition DENIED.**	AUGUST 19, 2003 Waiver of right of respondent George W. Bush, President of the United States, et al. to respond filed. AUGUST 20, 2003 DISTRIBUTED for Conference of September 29, 2003. **OCTOBER 6, 2003 Petition - DENIED.**	Oct 7 2005 Application (05A313) to extend the time to file a petition for a writ of certiorari from October 19, 2005 to December 18, 2005, submitted to Justice Ginsburg. Oct 11 2005 Application (05A313) granted by Justice Ginsburg extending the time to file until December 19, 2005. Dec 19 2005 Petition for a writ of certiorari filed. (Response due January 19, 2006) Jan 19 2006 Waiver of right of respondents George Pataki, Governor of New York, et al. to respond filed. Jan 24 2006 Waiver of right of respondent Ulster County, NY to respond filed. Feb 1 2006 DISTRIBUTED for Conference of February 17, 2006. **Feb 21 2006 Petition DENIED.**
Waiver of Right to File a Response Signals the U.S. Supreme Court to deny Certiorari.		
Pro Se's Right to Equal Treatment is Ignored as Having Less Value as Pro Se.		

B. Circumstantial Evidence of Bias Qualifying as Loss of the Public Trust of Any Judge at the U.S. District Court for the District of Columbia Demanding Case be Assigned to a Judge from Another District (The Lesser of Two Evils)

1. Excerpt from Elena Ruth Sassower, *WITHOUT MERIT: THE EMPTY PROMISE OF JUDICIAL DISCIPLINE*, 4 Massachusetts School of Law 90 (Summer 1997)

> "Judicial independence is predicated on 'good faith' decision-making. It was never intended to include 'bad-faith' decision-making, where a judge knowingly and deliberately disregards the facts and law of a case. This is properly the subject of disciplinary review, irrespective of whether it is correctable on appeal. And egregious error is also misconduct, since its nature and/or magnitude presuppose that a judge acted willfully, or that he is incompetent.
>
> How can you make any assessment of how judicial misconduct mechanisms are working unless you reach out to the victims of judicial misconduct who have used them?" — Elena Ruth Sassower

The most serious misconduct by judges is that which is the least likely to subject them to discipline. It is not what they do in their private lives, off the bench, but what they do on the bench in the course of litigation. The obvious image is the judge who runs his courtroom as if he owns it, who looks down from his elevated bench and treats litigants and their attorneys in an imperious and abusive fashion. But even where a judge is, as he is supposed to be, patient and dignified in his demeanor, every court appearance, just like every written motion, involves a judge ruling on a procedural or substantive aspect of a case. And there are judges who, while presenting a veneer of fairness, are intellectually dishonest. They make rulings and decisions which are not only a gross abuse of discretion, but which knowingly and deliberately disregard "*clear and controlling law*" and obliterate, distort, or fabricate the facts in the record to do so.

Why would a judge be intellectually dishonest? He may be motivated by undisclosed bias due to personal or political interest. Judicial selection processes are politically controlled and closed, frequently giving us judges who are better connected than they are qualified. And once on the bench, these judges reward their friends and punish their enemies. Although ethical codes require judges to disclose facts bearing upon their impartiality, they don't always do so. They sit on cases in which they have undisclosed relationships with parties, their attorneys, or have interests in the outcome, and do so deliberately because they wish to advantage either one side over another or sometimes themselves.

They exercise their wide discretion in that side's favor. That's the side for whom deadlines are flexible and for whom procedural standards and evidentiary rules don't apply. A common thread running through judicial misconduct cases is litigation misconduct by the favored side. Meanwhile, the other side struggles to meet inflexible deadlines and has its worthy motions denied. In extreme cases, a judicial process predicated on standards of conduct, elementary legal principles, rules of evidence, simply ceases to exist.

Intellectual Dishonesty

Every case has many facts, any of which may be inadvertently "misstated" in judicial decisions. But judicial misconduct is not about innocent "misstatement" of facts, and certainly not about peripheral facts. It involves a judge's knowing and deliberate misrepresentation of the material facts on which the case pivots. These facts determine the applicable law. If the applicable law doesn't allow the judge to do what he wants to do, he's going to have to change the material facts so that the law doesn't apply. When judges don't want to put themselves on record as dishonestly reciting facts, they just render decisions without reasons or factual findings.

The prevalence of intellectually dishonest decisions is described by Northwestern Law Professor Anthony D'Amato, *THE ULTIMATE INJUSTICE: WHEN THE COURT MISSTATES THE FACTS* 11 Cardozo Law Review 1313 (1989). He shows how judges at different levels of the state and federal systems manipulate the facts and the law to make a case turn out the way they want it to. It quotes from a speech by Hofstra Law Professor Monroe Freedman to a conference of federal judges:

Frankly, I have had more than enough of judicial opinions that bear no relationship whatsoever to the cases that have been filed and argued before the judges. I am talking about judicial opinions that falsify the facts of the cases that have been argued, judicial opinions that make disingenuous use or omission of material authorities, judicial opinions that cover up these things with no-publication and no-citation rules.

Afterward, when Professor Freedman sat down, a judge sitting next to him turned to him and said, "You don't know the half of it."

The Myth of Recusal

There's next to nothing you can do when you're before a dishonest judge. He's not going to respond to a recusal motion with "Hallelujah, you've shown me the light. I'll step down." His dishonesty will carry through to the recusal motion, which, while asserting his complete fairness and impartiality, he will deny from the bench with no written decision or, if by a written decision, then one stating no reasons or misstating the basis for recusal. And just as making a formal recusal motion entails expense, as any motion does, so does taking an interim appeal, which may not be feasible.

Of course, there's a problem even before making a recusal motion. Your lawyer may not want to make one because it means taking on the judge by accusing him of biased conduct. A lawyer's ethical duty is to zealously represent each client, but lawyers have other clients whose cases may come before that judge. And it is not just their relationship with that judge that they want to protect, but with his judicial brethren, who are part of the judge's circle of friends and may be quite defensive of his honor, which they see as an extension of their own.

Congress has passed two specific recusal statutes proscribing judicial bias and conflict of interest by federal judges. These have been gutted by the federal judiciary. One statute explicitly states that whenever a party files a "timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of an adverse party, such judge shall proceed no further therein, but another judge shall be assigned to hear such proceeding...." It seems pretty clear on its face. Yet the federal courts have interpreted this to mean that the judge who is the subject of the recusal affidavit determines its timeliness and

sufficiency. The result is predictable. The complained-of judge acts as a censor, ruling that a timely and sufficient affidavit is untimely and/or insufficient so as to prevent its being heard on the merits by another judge.

On top of that, the federal courts have interpreted the recusal statutes to require that the basis for recusal be "extrajudicial." This means that the facts giving rise to recusal can't come from the case itself, but from something outside the case. Thus, if the basis of the recusal motion is that the judge has been oppressive, bullying, and insulting, has wilfully disregarded black-letter law and falsified the factual record -- in other words, that he has engaged in all the misconduct popularly believed to be biased -- that judge need not step down when a recusal motion is made. The litigant or his lawyer has the impossible burden of trying to ferret out information about the judge's personal, professional, and political life so as to figure out the "why" behind the egregious misconduct. Parenthetically, the U.S. Supreme Court, having long ago generated the "extrajudicial" source doctrine out of thin air, has implicitly approved a "pervasive bias" exception to it. This, of course, means nothing to a biased judge, who will pretend he is unable to discern any bias, let alone "pervasive bias."

2. Charles W. Heckman, Dr. Sci., *COMMENTS ON THE NINTH CIRCUIT PRO SE TASK FORCE REPORT*, A Matter of Justice Coalition (AMOJ), Committee for the Ninth Circuit (January 5, 2005)

Problems not addressed in the report[3]

The role of bias

One of the many serious complaints often voiced by litigants but not seriously addressed in the report of the Task Force is bias by the judge. However, the report clearly expresses a common attitude toward pro se litigants, starting of p. 6 of the report:

> "Some judges and lawyers are convinced, for example, that pro se litigants as a class generally bring meritless claims, and that any program designed to educate or assist them would only increase the number of meritless claims in the court system. This point of view is doubtless influenced by those pro se cases that are brought by individuals suffering from a mental disability or for purposes of harassment. Closely related to that thought is the belief that appointing attorneys for pro se clients is a waste of resources and in the long run simply complicates efforts to keep the system clear of meritless cases."

The Task Force fails to identify who holds this opinion, but both lawyers and judges have frequently expressed it or opinions very much like it. The main focus of this task force should not be with methods by which unbiased judges can make the submissions of pro se litigants easier for the court to deal with but rather with developing methods to assist a pro se litigant who has been the victim of a judge with the preconception that whatever he submits to the court is without merit, and his lawsuit must be dismissed before any unnecessary time of the court is wasted.

If all judges were perfect human beings, we could assume that the private opinion of a lawyer or a judge would not be reflected the judge's rulings. However, we know that

[3] http://victimsoflaw.net/9thcircuit1.htm

few people approach perfection, and prejudice by decision-makers against members of certain groups has been the cause of continuous, bitter conflict since the civil rights movement first brought the effects of biases of many kinds to public view.

Prejudices often have a greater impact on the outcome of administrative hearings and lawsuits than parties with an obligation to be impartial like to admit. Whether the prejudice is deliberate and malicious or entirely unintended, decisions colored by personal biases can be just as devastating to the victims of the resulting injustice.

An even more enlightening articulation of the prejudice litigants often face appeared in numerous discussions on the decision of a Washington State appeals court in *Hill v. BCTI Income Fund,* 97 Wn. App. 657 (1999), later upheld by the Washington State Supreme Court. Although it is the decision of a state court, it draws on the en banc opinion of the U. S. Court of Appeals for the Second Circuit in *Fisher v. Vassar College,* 70 F.3d 1420, 1437 (2d Cir.). The opinion in *Hill v. BCTI* defends a school of thought within the legal profession, which has been having a revolutionary effect on American jurisprudence. It parallels the controversial theory of a "living constitution," which condones the "updating" of the United States Constitution by the courts to conform to the personal opinion of judges concerning what the public wants and will accept. On a more mundane level, this revolution in judicial theory is interpreted by many judges as a mandate to quickly dismiss any lawsuit that can be dismissed without causing a public outcry, regardless of the merits of the case.

…

While there is a tradition from the Old West that a man settles his disputes by shooting it out with his adversary or settles lesser disputes with his fists, it was long thought that this was a less desirable alternative to letting a jury decide which party should prevail. Apparently, some members of the legal profession think otherwise and wish to close off the courts to ordinary citizens, returning dispute resolution to the means available in the "Wild West." It would be well to determine how closely the decrease in justice provided in civil suits has paralleled the increase in crimes of violence between people with no civilized means available to settle their dispute. How many of the civil disputes wrongfully dismissed or inequitably settled come back to the court as a criminal case?

The treatment of pro se litigants reflects the desire expressed by many politicians and judges that the number of lawsuits be reduced. Showing litigants who lack strong financial resources, the services of a first-class law firm, backing by an influential organization, or attention in the press that they have no chance of prevailing in a lawsuit or even of presenting their cases to a jury might well discourage other litigants from seeking redress in the courts but it also encourages persons in positions of authority to deliberately break the law, knowing that there is almost no chance that the victim would be able to obtain redress in a court of law.

It seems obvious to me that the flood of lawsuits is the result of a massive increase in white collar crime in the United States, most of which is ignored by law enforcement authorities on the excuse that their time is needed to combat crimes of violence. The victims are therefore forced to attempt to obtain redress in a civil lawsuit, and most are unable to obtain legal counsel. A recent estimate made by a group in Iowa suggested that 70% of the population of that state did not have enough money to retain the services of an attorney. Because most white collar criminals have learned the applicable law very well before embarking on their criminal careers and many seem to have the

active assistance of local civil servants or even judges, attorneys do not see much chance of immediate success before a court and will therefore refuse to represent an indigent litigant on a contingency basis. Furthermore, many attorneys working out of small offices without a major law firm behind them hardly do better in court than pro se litigants. Therefore, as the white collar criminals, deliberate abusers of civil rights, unscrupulous business firms, and corrupt public officials become bolder, the victims have no way of protecting their property and livelihoods other than by representing themselves in a lawsuit. Even though an increasing number of pro se litigants see the courts as hostile to them and their needs for redress under the law, the flood of lawsuits grows because of the massive increase in the crimes that the current attitude of the courts has engendered.

Missing from the report by the Task Force is any adequate remedy for the actions of judges who adhere to the belief that pro se litigants do not deserve full consideration by the court. This can be justified by the self-fulfilling prophesy that pro se litigants never win. As a result, many judges believe that any time given to a lawsuit in which a litigant represents himself is wasted. Therefore, pro se litigants really do not win simply because the prophesy that they will lose is self-fulfilling.

Remedies that fail

If a district judge summarily dismisses the civil lawsuit of a pro se plaintiff without reviewing any of the facts and writes a short opinion that fails to address the fundamental complaint, indicating that the judge barely knew what issues the complaint addressed, the plaintiff can appeal the dismissal to the court of appeals. In a great many cases, the plaintiff receives a brief affirmation of the district judge's opinion, which also fails to address the issues in the complaint and almost always contains the notation that the opinion cannot be cited as a precedent and should not be published.

The plaintiff can then file an appeal with the United States Supreme Court with near certainty that certiorari will not be denied. Many litigants lack the money to have their petitions for certiorari correctly printed and bound to the satisfaction of the clerk, and others fail to present the legal issues in an understandable manner. Even if all submissions are perfect, however, the petition will almost certainly be denied in favor of appeals that are given considerable publicity in the press, are promoted by major organizations, or are otherwise likely to bring fame and praise to the justices. The problems of ordinary citizens, no matter how devastating to them and their families, are ignored, and they find that they would have little more chance of success in getting a justified complaint before a jury than they would have of winning a lottery.

For example, after the courts in several circuits had summarily dismissed hundreds and perhaps thousands of lawsuits alleging employment discrimination at the complaint stage because the plaintiff had failed to provide enough hard evidence to establish a prima facie case when the complaint was submitted, the United States Supreme Court agreed to hear one of the appeals from the Second Circuit. In *Swierkiewicz* v. *Sorema N.A.*, 534 U.S. (2002), it decided unanimously that it is a gross violation of procedures to dismiss a lawsuit at this stage of the proceedings. Among the points the justices made were that a plaintiff can prevail without establishing a prima facie case at all, that a judge's opinion of whether or not a litigant will prevail before a jury is irrelevant to decision to dismiss a lawsuit, and that it is fundamentally unfair to dismiss a lawsuit before the whole body of facts can be revealed through discovery. While this decision provided the plaintiff with a chance to have his lawsuit heard by a jury on the merits, it

affirmed that thousands of litigants whose lawsuits had been improperly dismissed over the many years during which the appeals courts had been violating procedures had been left without any access to justice.

Still more perverse was the continued dismissal of lawsuits at the complaint stage, even after the Supreme Court had denounced this practice. It was well known to the judges guilty of this practice that any subsequent petitions for certiorari citing this issue would be denied on the grounds that the Supreme Court had already decided the issue and would not agree to decide it again. This would leave a litigant no way of redressing violations of his civil rights just because he had the bad luck of coming before a judge who is trying to discourage lawsuits by issuing non-precedential dismissals at the complaint stage and appeals court judges who affirm decisions of the lower court with a rubber stamp. Citing the clear opinion of the U.S. Supreme Court in *Swiercewicz* v. *Sorema N.A.* would have no effect on the outcome before a judge who assumes that anything filed pro se is without merit.

In cases of particularly severe violations of the law, procedures, or ethics by a judge, a litigant is limited to filing a complaint with a judicial board established for hearing such complaints. Other avenues of redress are closed off because judicial immunity from civil liability was made absolute during the 1990s, even if corruption or malice motivated the judge's actions. Experience shows that the boards investigating misconduct by judges move extremely slowly, and a litigant has roughly one chance in a thousand of having a rogue judge censured, even mildly.

It can be concluded that a litigant whose lawsuit has been dismissed because of the bias of a judge against him, a class to which he belongs, pro se litigants in general, **or the kind of lawsuit he has filed** has almost no chance of redress, either on appeal or in complaint proceedings against a judge. Human nature clearly dictates that when members of any group are permitted to perform illegal, immoral, and unjust actions against other persons with complete impunity, many of them will do so, some because of laziness, others because of malice, and still others in anticipation of gratuities from a favored party. A pro se litigant has no recourse against a judge who does not want his complaint heard due to bias of any kind, and the fact that a judge has the power to deny him access to a jury effectively eliminates an important civil right supposedly guaranteed by Amendment VII of the United States Constitution.

Common experiences of pro se litigants

The solutions proposed by the Task Force presume good will by the judges and conformity with the standards of ethics and behavior traditionally held by our society. Unfortunately, in speaking and corresponding with many pro se litigants, I have learned that there are common problems that reflect an erosion of human values and are often accompanied by abusive behavior by judges. These problems are less likely to arise when a litigant is represented by a lawyer, whose status as an "insider" in the legal profession might tend to restrain the opposing attorney and presiding judge from improper conduct. Such conduct is difficult for pro se litigants to cope with, but it is readily recognized when it occurs. Eventually, pro se litigants make their opinions of the court public, and the increasing criticism leads to a general loss of faith in courts. The growing dissatisfaction of the public with the judicial system is rooted in the negative opinions developed by many litigants who know they have been improperly or illegally treated. Losing a lawsuit is fundamentally different from being denied due process and

a fair hearing, and even pro se litigants without formal education in a law school can immediately tell the difference.

The most common complaints by litigants of misconduct by the courts include the following:

1. Perjury is tolerated by the judge

This complaint has been made by the great majority of pro se litigants with whom I have spoken. Very often, the false testimony is given by one or more government employees. Even when parts of the testimony are shown to be false, judges continue to give full credence to the witness in the remaining parts of the testimony. The judge then dismisses the lawsuit of a pro se litigant citing the perjured testimony as evidence that the lawsuit has no merit. Usually there are documents in the file clearly showing that the testimony was false, but these are simply disregarded by the judge.

Prosecutions for perjury have become rare to non-existent. Government employees have been given complete immunity for perjury they commit "in the line of duty," even if it is given with malice. Government prosecutors may suborn witnesses to perjury by promising them immunity for crimes they have been accused of. It has even been alleged that government employees can be fired for refusing to give false testimony at the behest of their supervisors. Many cases are known where civil servants have advanced their own careers by deliberately misleading courts, administrative boards, and even Congress to advance a political agenda espoused by the their supervisors.

2. Records submitted to the court disappear from the files

This complaint has frequently been made. Some litigants note that the entries of the documents are still in the court records but the documents themselves have disappeared. Even if copies of the records are retained by the litigant, they usually cannot be added to a record on appeal unless they are still in the file of the lower court.

3. Judges' opinions fail to address the issues of the lawsuit

Many litigants complain that orders for dismissal address issues that were never raised in the lawsuit and fail to address the issues that were. In light of the fact that most judges have earned a law degree, some decisions have convinced the litigants that the legal issues were deliberately misconstrued by the judge. For example, if a plaintiff seeks injunctive relief pursuant to the Administrative Procedures Act and monetary relief citing the Federal Tort Claim Act, a judge may deny the injunctive relief on the grounds that there are no provisions for such relief in the Federal Tort Claim Act and that the Administrative Procedures Act does not authorize monetary relief. Similarly, a lawsuit alleging failure of the Department of Labor to investigate a discrimination complaint against a private university was dismissed on the grounds that the plaintiff was seeking Federal employment through the courts. Even a law professor from Hofstra University complained in a speech that he was tired of reading decisions that did not address the issues of the case. At best, this means that the law professor was able to understand the issues of the lawsuit from the submissions, while the judge allegedly was not. At worst, this indicates that the judge was deliberately falsifying the issues in order to justify an obviously faulty decision. According to the law professor, after he finished his speech, a judge leaned over to him and said, "You don't know the half of it."

4. Certain litigants must always win

One of the most harmful practices of the courts becomes most evident when statistical surveys of the outcomes of litigation are conducted. Some judges have apparently developed strong biases for or against certain kinds of lawsuit or litigant and lose sight of the fact that each case deserves a separate analysis. The outcomes of these lawsuits most frequently favor government agencies as defendants and major special interest groups, such as the American Civil Liberties Union, as representatives of a plaintiff. Decisions are reached without jury trial to assure that the favored litigant wins. The trend to summarily dismiss lawsuits without trials is reflected in surveys showing that more than 11% of all civil lawsuits were decided by juries in the early 1960s, while less than 2% reach a jury now.

It is not only the courts that are guilty of denying due process to protect favored litigants. Congress has also established special means of adjudication to remove the proceedings against certain agencies from the normal judicial channels. Some of the agencies established for administrative adjudication have earned a reputation for extreme bias in favor of the government agencies they are supposed to treat impartially. For example, the Merit System Protection Board (MSPB), which adjudicates complaints filed by veterans because their preference rights in the civil service have been violated, has never decided in favor of a veteran in any appeal. The United States Court of Appeals for the Federal Circuit, which is the only court with jurisdiction over appeals from the MSPB, has never decided in favor of a whistleblower, after hearing 71 appeals citing the Whistleblowers' Protection Act. It is also doubtful whether it has ever decided in favor of a veteran, although I have yet to find records on this point. It is noteworthy that under the law, the burden of proof is on the agency, and in the case of appeals filed by whistleblowers, clear and convincing evidence is required, giving whistleblowers a clear benefit of the doubt. Nevertheless, the agency always wins in such appeals, as well as those brought under veterans' laws.

The Veterans' Employment and Training Service (VETS) accepts employment discrimination complaints from veterans. All complaints it receives are not maintained in the agency files, but of 1029 complaints it did place in its records in 2001, five were brought to the courts, but only one was adjudicated as a civil lawsuit.

Any lawsuits brought by a plaintiff pro per fall into the category of "thousand to one shots," but so do discrimination lawsuits brought against government agencies with the assistance of "B" or "C-class" lawyers. Similarly, civil rights and employment discrimination lawsuits routinely fail, unless a major special interest group supports one of the parties.

Any time lawsuits that depend on an individual interpretation of the facts are decided so preponderantly in favor of one party without the assistance of a jury, suspicion of bias is justified. In conflicts between human beings, rank, job title, or affiliation do not determine which party has followed the law and which party has broken it. If the supervisor prevails one thousand times in whistleblower appeals for every time the whistleblower prevails, it is clear that the adjudication has not been impartial. This conclusion is given great support by the findings of Congress that reprisal against whistleblowers is a problem of massive proportions in the civil service, requiring several amendments to make the Whistleblowers' Protection Act considerably stronger. That the efforts of Congress have been consistently undermined by the judges on the United

States Court of Appeals for the Federal Circuit reflects an imbalance that has been developing between the powers of the legislative and judicial branches in recent years.

5. Different standards are applied to different litigants

Powerful plaintiffs seek to delay litigation until the opponent dies or is forced to end the litigation for financial reasons. Some well-represented litigants do not respond to the summons until a motion for default has been entered, and judges routinely excuse the failure and refuse to enter a default judgment. The same judges are quick to dismiss lawsuits because a pro se plaintiff has missed a deadline by one or two days, even when the cause of the delay was beyond the control of the litigant. The lack of impartiality is plainly evident when one party is permitted unlimited delays, in spite of the fact that the United States Department of Justice or a major law firm with a large staff of lawyers is representing that party, while a pro se litigant forced to act alone is held to the strictest standards stipulated in the FRCP and local rules. Allowing one litigant unlimited delays while the other is facing severe financial difficulties as long as the lawsuit remains unsettled is a tactic that clearly violates judicial fairness and at least the spirit of the United States Constitution, which demands a speedy trial in criminal matters and, by implication, reasonable speed in settling civil disputes, as well.

6. Recent handling of civil lawsuits by the courts have instigated a white collar crime wave

Many successful white collar criminals have obtained the cooperation of local courts to defraud private citizens out of large sums of money, often leaving the victim destitute. A few of the methods frequently used include abuse of bankruptcy procedures to loot estates, illegal foreclosures on real estate, seizure of cash or property without due process, and fraud during divorce proceedings.

Federal courts should have jurisdiction over obvious frauds perpetrated by state courts under the RICO statute and civil rights laws. However, failure of effective action by Federal judges to stop obvious fraud perpetrated by colleagues employed by state and local government encourages larcenous state officials, including judges, to conclude that their positions allow them to illegally enrich themselves at the expense of selected victims with complete impunity.

Litigants who have sought protection from state and local criminal gangs in Federal courts have encountered many years of delays, denial of jury trials, and refusals to issue decisions justified by the facts of the case. Many abuses have come to public attention in recent years, but the crime wave has grown so rapidly, many of the practices have not received sufficient publicity to warn potential victims. Crimes like identity theft, fraudulent foreclosure, fraud in stating fees and interest charges, and abuses of eminent domain have become epidemic throughout the United States. They can financially ruin victims, who have not found effective protection through either criminal or civil procedures.

7. Court orders go unheeded

Failure of courts to enforce their own orders granting relief to litigants may eventually result in more difficulties than adjudicating the initial petition for relief. Plaintiffs may prevail but gain no redress from the decision because judges refuse to issue effective orders mandating the remedies demanded by a jury. This is a problem that often arises when the delinquent party is a government agency. Common examples of deliberate

resistance to court orders include ignoring orders to produce documents requested under the Freedom of Information or Privacy Act and failure of public officials to obey orders to return money or property unlawfully taken from citizens by law enforcement agencies.

8. Judges give orders contrary to law and accepted standards of behavior

Opposite the failure to enforce just orders for relief is issuing orders demanding illegal or obviously impractical relief from litigants. Examples of practices that have become common during the past few years include demands for support payments from one party to divorce proceedings that exceed the total earnings of the person ordered to pay, jailing of indigent litigants who cannot pay what the court has demanded of them for other reasons, removal of children from their natural parents without due process, and imposition of medical treatment on minor children without informing their parents.

9. Judges refuse to take actions required by law

Many routine actions required of judges have created barriers to the enforcement of laws as intended by Congress. An excellent example of this is the action usually taken after a litigant complaints that he cannot obtain documents requested pursuant to the Freedom of Information Act. This law was passed by Congress because of the great resistance shown by Federal civil servants to making their unclassified documents available to the general public. Records created through the use of tax money should belong to the public and be made available on request.

Congress obviously intended that documents formally requested be made available immediately. It therefore specified a waiting period of no more than ten working days and permitted a person who requested the records to file a lawsuit to obtain the documents if the agency is not forthcoming. It requires agencies to assist people making requests to identify the documents and to provide the documents after charging only minimal copying fees.

Obviously, to uphold this law as Congress intended, a judge must order immediate release of the records to the court for distribution to the plaintiff after the court has ruled on any objections the agency has made to their release. Because obtaining records as quickly as possible is often necessary for a litigant to obtain some benefit to which he is entitled, complete an article for publication in a newspaper or periodical, or protect himself of a relative from the consequences of false information about him being distributed with official records, the rapid availability of records is vital.

Instead of upholding the high standards demanded by the Freedom of Information Act, judges have consistently permitted lawsuits to obtain public information to drag on for several years, often making the intended use of the documents impossible. Judges seem to attempt to avoid issuing orders to government agencies, even when the law mandates this. They fail to review contested records in camera, as provided for in the law, and simply hope the plaintiff will eventually withdraw his demand for the documents. Although obtaining documents often costs plaintiffs excessive amounts of money for the litigation, judges seldom offer the monetary relief specified in the law. They also fail to impose the requirement of the law that photocopy fees be reasonable. While private shops provide photocopies for 5 cents or less, agencies may charge exorbitant amounts to copy their documents. For example, about two years ago, one agency demanded 31 cents for each copy, or more than 6 times the price on the private market.

The failure of the courts to impose sanctions on civil servants who make it a sport to defy the Freedom of Information Act has led to the development of procedures to keep public documents out of the hands of citizens who want to obtain them.

10. Courts have become inconsistent and arbitrary

Courts have recently begun to establish very confusing precedents, reverse their own decisions, and ignore real issues rather than settling them. In recent years, different Courts of Appeals have issued opposite interpretations of the same law, making one action legal under the jurisdiction of one circuit and illegal under the jurisdiction of another. Because the United States Supreme Court denied certiorari each time a litigant attempted to obtain a definitive decision on some of these matters, Federal law can mean one thing in one circuit and the opposite in another. For example, whether or not Federal law permits factory workers to speak with each other in a language other than English depends upon the area of the country in which the factory is located.

Changing public opinion or even an unusual personal opinion held by the judge to whom the case has been assigned may result in a lawsuit being decided in a manner contrary to other recent decisions in nearly identical cases. When judicial opinions on the interpretation of a law are continually fluctuating because one judge approves of the law while another does not, whichever litigant loses will feel cheated by the court because other litigants in exactly in the same position won their lawsuits. This situation causes more litigants to risk a lawsuit rather than settling the dispute out of court because winning or losing depends only on the whim of the judge hearing the case rather than on a consistent and unambiguous interpretation of the law. An advantage of being represented by counsel is often the knowledge he brings concerning which judges will be sympathetic to the litigant’s case and which will favor the other party. In an impartial system, such considerations would not be a factor. The founding fathers hoped to eliminate this problem by insisting that decisions be rendered by juries, but by increasingly usurping the duties of the jurors, judges have permitted their own beliefs on the wisdom of individual laws to override the stated intentions of Congress. Because all judges do not hold the same opinions, an increasing inconsistency in decisions is becoming an increasing problem for pro se litigants and lawyers, alike.

11. Federalism theory interferes with practical justice

In recent history, Federal courts have intervened in many disputes between citizens and individual states, where the state court system was clearly violating or assisting in the violation of civil rights. Since the first Civil Rights statutes were passed in 1871, Congress has shown a clear intent to place the guarantees in Amendments XIII, XIV, and XV above the limitations on suits against states in Amendment XI. Federal courts belatedly struck down state laws deliberately passed to bar Americans of African descent from voting, attending schools with white children, and using public facilities. These rulings have clearly focused the attention of the nation on the fact that states are prone to commit actions against their citizens that violate Federal guarantees defined as civil and human rights by our Constitution.

Recently, the theory of federalism has been revived, and Federal courts have become less willing to interfere with the actions of state courts, no matter how unjust and reprehensible. One of the most important reasons for Federal courts to exist is to provide citizens with a final recourse against clearly illegal actions committed by state and local government, which are much more likely to fall under the influence of

criminal conspirators than the much more diverse Federal system. If the Federal courts disqualify themselves from settling disputes between citizens and state governments, they have clearly left the citizens vulnerable to losing their civil rights through clearly illegal actions by small, corrupt political machines.

Remedies

What is the court supposed to do?

The basic reason for establishing a judicial system is to settle disputes that are addressed by existing laws. It has been repeatedly stated by experts on matters judicial in the United States that the ultimate goal is to decide all matters on the merits. That means to most reasonable persons that the court should concern itself with two factors and only two factors: the law and the material facts. The blindfold on the statue of Justice is there to keep attention on the scales and not on the race, color, national origin, age, gender, appearance, financial condition, social position, or friends of the litigants.

It stands to reason that a pro se litigant has as much chance of being entitled to relief according to the law and the facts as the litigant with enough money to afford the services of the best law firm in the country. The reason everyone who can afford it will seek the services of a class A law firm is that the presentation of the law and facts of the case in the arguments is reputed to sway judges and juries toward the side of one client where the issues are not entirely clear. However, if skill in arguing becomes the sole criterion for determining who prevails in a lawsuit, then the courts have failed in their duty to provide a fully impartial forum for presenting the facts.

The Task Force must address one primary problem: a failure of the court to be impartial. This failure is usually apparent from the outcome of lawsuits. If pro se litigants always or almost always lose, then the courts have failed. No class of litigants is right or wrong 100% of the time. If one person comes to the court for revenge after being fired for poor performance, the court cannot conclude that the next person raising the same claim was not fired for failing to become an accomplice to illegal actions his boss is engaged in, for belonging to a race that the boss does not like, or for being too old when the boss wants only youthful employees. If a father must be kept away from children he is abusing, that does not mean that the next father who seeks custody of his children is abusing them as well. If personal property was seized from one person because of his refusal to pay taxes, it cannot be concluded that there is no merit in the lawsuit of the next person who complains that his property was illegally confiscated by corrupt public officials.

As already discussed, pro se lawsuits are increasing for several reasons, which have nothing to do with the law or the facts in each individual case. These include 1) a white collar crime wave encouraged by the failure of prosecutors and judges to focus on anything but violent crime; 2) a breakdown in government accountability resulting in civil servants wasting funds on a massive scale and abusing the rights of citizens; 3) an increasing resistance by large corporations to being held accountable for the harm they do to ordinary citizens; 4) the continual erosion of traditional values, which formerly placed limits on the excesses society would tolerate; and 5) the combination of lower earnings by the average American and the increasing fees demanded by competent lawyers. A strict enforcement of the law and increasing penalties for wrongdoing would do much to eliminate all of these reasons. Misconduct will increase as long as most perpetrators escape all consequences for their actions and penalties remain

inconsequential. Supply and demand regulate what lawyers charge and will result in lower fees when the causes for the increasing number of lawsuits are eliminated.

If the courts were functioning fairly and efficiently, the outcome of a lawsuit would be relatively easy to predict according the circumstances and not dependent on non-merit factors. That means that a pro se litigant showing that his rights under any law had been violated and that he had suffered some kind of harm because of the violation would face no reduction in his chances of success because he was not represented by a lawyer. Only the law, which he would not necessarily have to cite correctly, and the facts of the case would determine the outcome. Any reduction in the chances of his success with a meritorious claim would indicate that the court has not fulfilled its function. The Task Force need only focus on a pro se litigant's chance of success with a meritorious claim to have performed its duties to the complete satisfaction of all.

If a pro se litigant fails to prevail in spite of the fact that his claim is meritorious, the system has failed. The Task Force should seek remedies assuring that each meritorious claim results in the relief prescribed by law regardless of whether or not the litigant is represented by counsel. It should seek a review process by which sufficient attention is given to each lawsuit to assure that the prejudice of one judge cannot perpetrate a miscarriage of justice for any reason. This may well require an increase in the personnel assigned to review each appeal and an increased recruitment of jurors. If so, then Congress should be forcefully informed that increased funding will be required.

It should not be the concern of the Task Force that baseless claims, lawsuits filed to harass, or esoteric challenges to established institutions are not given an appreciable amount of legal aid. It should also not concern the Task Force that jury decisions are challenged by the litigants who do not prevail. However, if almost every lawsuit filed pro se is dismissed without a trial, it should be clear that due process is not being provided by the courts.

The solution in the United States Constitution

The Constitution of the United States includes all necessary ingredients for making the courts function fairly and efficiently. In clear and concise English, it is demanded that every person accused of a crime and every litigant in a lawsuit involving more than $20 has a right to a trial by jury. It does not provide for judges substituting their opinions for the decision of a jury of peers. It requires speedy trial of persons indicted for crimes and assures that the common law rights enjoyed by the English colonists at the time the United States declared its independence are respected. Later amendments guaranteed every citizen equal treatment under the law.

Determining whether any claim is meritorious after the facts have been presented belongs to a jury. It is a basic right of every litigant to have a jury decide whether or not he prevails based on the evidence presented. A judge may rig the outcome of a jury trial by refusing to let a litigant present material evidence or by giving false instructions to the jury. However, most complaints by pro se litigants result from their being denied any trial by jury at all.

Any litigant, with or without counsel, must provide a complaint alleging that a specific law was violated causing him some form of damage or denying him some right. As an example, we can take the typical outcome of what should be an open and shut case to see whether the Constitution is being followed. The Privacy Act requires correction of false records concerning any citizen, and a citizen files a complaint that an agency is

maintaining records about him that he alleges are false. The Court is empowered to review the record and the evidence that the person presents and order correction or removal of the record. It also authorizes damages to the person who demanded the change and reasonable legal costs. Congress expressed the demand that agency responses be prompt.

In a typical case, the agency would respond to the complaint by claiming various immunities and file a motion for dismissal based on irrelevant claims of privilege and sovereign immunity. The matter would remain on the docket for more than a year without any action being taken, and finally the judge would dismiss the lawsuit. There would be no review of the records by either a judge or a jury, no review of the evidence, no discovery to reveal other relevant matters, and no consideration of the material facts. The judge would simply have assumed that the case would have no merit because it was filed pro se and any attention given to it would be a waste of time.

In such a case, there would be no question that the plaintiff alleged a violation of a law and that the law specifically waived sovereign immunity and authorized specific relief. That records existed would not be challenged, and neither would the existence of evidence calling the accuracy of the records into question. What was lacking is a review of the challenged records, a review of the evidence, and an impartial hearing to determine whether the preponderance of evidence indicates that the records are false.

Such a decision would naturally be unpublished, keeping it from the scrutiny of the legal profession, and the judge would enjoy absolute immunity whether or not the decision was in accord with the letter and spirit of the law. It should be obvious that the simple demands made of the judiciary by the Constitution were not followed. There was no due process, no fact-finding, no review by a jury, and different treatment given to the plaintiff than he would have received if he had been represented by a major law firm or an influential organization. The remedy in this case would be simply for a judge to follow the procedures outlined in the Constitution. The improvement of the treatment of pro se litigants would simply entail following the procedures spelled out in the Constitution and in the wording of the Privacy Act, itself. By not doing this, the judge was deliberately producing a chilling effect to keep other citizens from filing lawsuits under the Privacy Act. If any government agent maliciously creates a false record after a dispute with a citizen, the record must remain to mislead anyone who reads in the future. The Privacy Act has therefore been repealed at the whim of one judge without any allegation that the statute violates the Constitution in any way, and it is made clear that the repeal by judicial fiat applies only in the case of the one plaintiff and may be reversed in the next decision if the plaintiff is deemed worthier by the judge. Equal treatment under the law therefore becomes another casualty of the court.

Another example of a failure to meet the Constitutional mandates would be a lawsuit involving employment discrimination based on age. It is evident from the wording of the law and earlier decisions of the Supreme Court that proof of motive is irrelevant in such cases because motive can be implied from circumstances. If a government agency passes over the 50-year-old plaintiff in spite of his 25 years of relevant experience and high examination score in favor of a 30-year-old applicant with three years of experience and a low examination score, the decision should provide relief for the plaintiff unless the agency can show that there was a valid reason for the choice. However, judges routinely dismiss such cases without a jury trial on the defense of a simple denial by the agency, even though any ordinary person would consider the

denial to be without merit and contrary to the fact presented in the documents filed with the court. Again, the decision is unpublished, and appeal results in a rubber-stamped affirmation. With absolute immunity, the judge has nothing to fear even though a clear issue of fact remained to be decided by a jury under the Constitutional formula, and he illegally usurped the functions of the jury to create a chilling effect on the public and thereby discourage other people from filing what he regards as litigation that is too time-consuming.

In the examples given here, no problem exists with the laws cited, the issues are clear, and the relief is spelled out in the statutes. All submissions are timely, and no requirements for further fact-finding are recognized by the judge. The problem for the pro se litigants in such cases could not be remedied by better instruction on preparing submissions, assistance of law school students, or more helpful clerks. The problem is the failure of a judge to proceed according to common law and recognize the Constitutional rights of one of the litigants. It could only be remedied by making the judges follow established procedures without allowing their own personal opinions or prejudices to interfere with due process.

The search for remedies by the Task Force

The remedies to the problems not addressed by the Task Force involve changing the attitudes of judges toward litigants. While there are people who attempt to convince the court to make fundamental changes rightfully belonging to the legislative branch and others who use litigation for revenge or to vex an enemy, most people seeking the assistance of a court to settle a dispute do so because necessity demands it. Some people are forced to file several lawsuits because unscrupulous office holders are able to create multiple problems for them, motivated by personal dislike, political disputes, or a desire to obtain a coveted piece of property. The civil rights movement clearly revealed the extent to which officers of state and local government, including judges, are willing to go to violate the rights of individuals because of their political activities or because they belong to certain minorities. Federal courts are the last resort of many people who find themselves robbed of their fundamental rights.

The remedies suggested by the Task Force might be sufficient if all judges and court officials were competent, honest, and incorruptible. If one judge does not live up to the high standards demanded of him, there must be some kind of machinery established to undo the damage he does. However, a litigant soon finds that if he is unfortunate enough to have his case assigned to a less than competent, opinionated, or dishonest judge, his chances for redress of his grievances have been eliminated even before the proceedings start. The eclipse of the jury trial as the main means of settling lawsuits has brought about a preponderance of “fast track” summary judgements, rubber stamped by inattentive appeals court judges, and deemed unworthy of consideration by the Supreme Court. Judges have made themselves impervious to complaints of misconduct and have even provided immunity to anyone employed by any government agency. The pro se plaintiff is therefore left without legal, civil, or human rights for wont of a means of having those rights recognized and upheld.

Short of setting up an entirely new system of courts to pass judgement on the ones we already have, remedies will have to entail a more impartial treatment of lawsuits by judges. A person’s social standing must no longer have an impact on a court’s decision. The best way of preventing lawsuits from being rigged in favor of an influential or political powerful litigant is to leave decisions to a jury. If individual jurors are biased,

there should hopefully be other jurors on the same jury who will hold different opinions. It is also much more difficult to influence 12 randomly selected citizens than it is to improperly influence one judge. Jury trials are made mandatory by the Constitution in most cases, so there is no reason for them to be denied short of a litigant's obvious failure to demonstrate any law that might authorize relief of any kind.

The overriding factor that will eliminate almost all genuine problems faced by pro se litigants is a restoration of strict ethics and impartiality to members of the court. If a person's legal rights have been violated, it is an absolute duty of the judge to provide him with a fair hearing and every opportunity to present the evidence that he has. If the judge does this, allows the issues of fact to be decided by an impartial jury, and provides equitable relief to the prevailing party, the recommendations of the Task Force would be sufficient to provide fairness to pro se litigants. If, however, any judge fails to live up to his responsibilities, there must be another means of redress provided to correct the injustice created by the court when it denies due process. An oversight body would have to be sufficiently independent, unbiased, and competent to determine not only the merits of the original lawsuit but also the fairness of the presiding judge. A special grand jury composed of ordinary citizens might be established to pre-sort all lawsuits in order to recommend those that lack merit for early dismissal and refer all others to the judge for trial by jury. It might also be given oversight of the actions of judges that may be prejudicial to one of the parties.

An alternative to this would be to remove all civil immunity from judges. This might result in a flood of lawsuits against judges, but it would be a deterrent to unjustified dismissal of lawsuits prior to jury trial. Aside from obviously doctoring the evidence or giving the jury false information about the laws under which the lawsuit was brought, no failure by the judge could result in his being found liable for misconduct as long as he permitted the decision to be made by a jury.

Other effective remedies might also be found, but it is suggested here that the Task Force should consider the worst case scenario, in which all judges handling the initial proceedings and the appeals fail to perform their duties in the prescribed way. It should then consider the best methods to 1) uphold the litigant's legal rights by overturning the initial decision against him; 2) take action against the judge who rendered the decision to prevent the incident from repeating itself during actions brought by other litigants; 3) hold a trial by jury unless waived by all litigants; 4) provide suitable relief, and 5) see to it that the orders of the court are promptly carried out.

Closing words

No demands are made here other than that the courts function as close to the system foreseen by the founding fathers as humanly possible. A decision for a lawsuit on the merits with consideration given only to the law and the material facts has become an unattainable dream for the majority of American citizens. Errors cannot be avoided, but it is the duty of all judges sitting on a court to minimize errors to the point that they become extremely rare. Many of the cases tossed out of the courts based on flimsy technicalities involve the life savings, health, or even the survival of one of the litigants. The Task Force is in an excellent position to insist on a review of the court's actions, and it should do so. If bias for or against members of any one group is found, swift action should be taken to correct the injustice. In the long run, it will depend upon the court itself to determine whether or not it wants to bring justice under the law to all people who seek relief from it. If the court takes effective action, the improvement will

surely quiet all criticism. If it does not, public indignation is sure to increase to the point that Congress will be required to take some decisive action.

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Submitted in behalf of A Matter of Justice Coalition

See **http://www.amatterofjustice.org**

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3. Plaintiff's Case has Achieved Ripeness

Determining the criteria for ripeness the greater the significance of harm to denying a pre-enforcement review the more likely a federal court is to find ripeness.[4]

A. Hardship from choice between possibly unnecessary compliance and possible conviction.

Individual is faced with a choice between foregoing allegedly lawful behavior and risking likely prosecution with substantial consequences, the federal courts will deem the case ripe rather than insist that an individual violate the law and risk the consequences. … People should not be forced to exercise their rights at peril of criminal sanctions or loss of employment.

B.. Hardship where enforcement is certain.

The Court has found substantial hardship where the enforcement of a statute or regulation is certain and the only impediment to ripeness is simply delay fore the proceedings commence. Where the application of a law is inevitable and consequences attach to it the Court will find the matter ripe before the actual proceedings occur.

C. Hardship because of collaterial injuries.

[T]he Court has found substantial hardship based on collaterial injuries that are not the primary focus of the lawsuit. If hardship is demonstrated in any of these three ways, the case is likely to be found ripe. Moreover, if hasrdship is demonstrated in all three conditions, the case must be found to be ripe.

Kentucky Press Association, Inc. v. *Commonwealth of Kentucky*, 6th Cir. 545 F.3d 505 (July 7, 2006) citing *Thomas* v. *Union Carbide Agric. Prods. Co.*, 473 U.S. 568, 580 (1985) (internal quotation omitted) (Ripeness is a justiciability doctrine designed '*to prevent the courts, through premature adjudication, from entangling themselves in abstract disagreements*.').[5]

[4] Erwin Chemerinski, *FEDERAL JURISDICTION*, Aspen Publishers, New York, 2007, § 2.4. p. 117.

[5] *Adult Video Ass'n* v. *United States Dep't of Justice*, 71 F.3d 563, 568 (6th Cir. 1995) (internal quotation and brackets omitted). http://caselaw.lp.findlaw.com/data2/circs/6th/055224pv2.pdf

4. The Ripeness Doctrine

Nat'l Park Hospitality Ass'n v. *Dep't of the Interior*, 538 U.S. 803, 808 (2003) (internal citation and quotation omitted) (The ripeness doctrine is drawn both from Article III limitations on judicial power and from prudential reasons for refusing to exercise jurisdiction, but, even in a case raising only prudential concerns, the question of ripeness may be considered on a court's own motion.) In performing the ripeness inquiry, we must weigh three factors when deciding whether to address the issues presented for review:

RIPENESS FACTOR (1) the likelihood that the harm alleged by the plaintiffs will ever come to pass

Harm has already come to pass. (1) The U.S. COAST GUARD and the U.S. DEPARTMENT OF TRANSPORTATION and in the piling on offense (football offense) federal law enforcement have retaliated for my exercising constitutional rights against government wrongdoing; and (2) Somali pirates attacked, boarded, and hijacked MAERSK ALABAMA. That crisis was resolved by intervention of a U.S. Navy Seal Team Snipers fatally shooting the three Somali pirates holding the captain of MAERSK ALABAMA hostage.

RIPENESS FACTOR (2) whether the factual record is sufficiently developed to produce a fair adjudication of the merits of the parties' respective claims

The present case is more than sufficiently developed and is long overdue for a fair civil jury trial on the merits of my claims.

Three U.S. Supreme Court opinions and one Ninth Circuit opinion provides the causal effect ripening my case. Those four opinions are briefly presente here to help prove RIPENESS:

> **CAUSE 1:** Justice Thomas, with whom the Chief Justice [Rhenquist] joins, dissenting in *Saenz* v. *Roe* 526 US 489 (1999), (a right to travel case under the Fourteenth Amendment), wrote:
>
>> As *The Chief Justice* points out, *ante* at 1, it comes as quite a surprise that the majority relies on the ***Privileges or Immunities Clause*** at all in this case. That is because, as I have explained *supra*, at 1-2, The *Slaughter-House Cases* sapped the Clause of any meaning. Although the majority appears to breathe new life into the Clause today, it fails to address its historical underpinnings or its place in our constitutional jurisprudence. Because I believe that the demise of the Privileges or Immunities Clause has contributed in no small part to the current disarray of our Fourteenth Amendment jurisprudence, ***I would be open to reevaluating its meaning in an appropriate case*.** Before invoking the Clause, however, we should endeavor to understand what the framers of the Fourteenth Amendment thought that it meant. We should also consider whether the Clause should displace, rather than augment, portions of our equal protection and substantive due process jurisprudence. The majority's failure to consider these important questions *raises the specter that the Privileges or Immunities Clause will become yet another convenient tool for **inventing new rights**, limited solely by the predilections of those who happen at the time to be Members of this Court*. *Moore* v. *East Cleveland*, 431 U. S. 494, 502 (1977).

CAUSE 2: Justice Thomas, *Printz* v. *United States* 521 U.S. 898 (1997) wrote:

> . . . If, however, the Second Amendment is read to confer a personal right to keep and bear arms, a colorable argument exists that the Federal Government's regulatory scheme, at least as it pertains to the purely intrastate sale or possession of firearms, runs afoul of that Amendment's protections. As the parties did not raise this argument, however, we need not consider it here. ***Perhaps, at some future date, this Court will have the opportunity to determine whether Justice Story was correct when he wrote that the right to bear arms has justly been considered, as the palladium of the liberties of a republic***. 3 J. Story, Commentaries § 1890, p. 746 (1833).

CAUSE 3: Justice Scalia, in *District of Columbia* v. *Heller*, No. 07-290, 554 U.S. 290; 478 F. 3d 370 (2008), wrote:

> JUSTICE BREYER chides us for leaving so many applications of the right to keep and bear arms in doubt, and for not providing extensive historical justification for those regulations of the right that we describe as permissible. See post, at 42–43. But since this case represents this Court's first in-depth examination of the Second Amendment, one should not expect it to clarify the entire field, any more than *Reynolds* v. *United States*, 98 U. S. 145 (1879), our first in-depth Free Exercise Clause case, left that area in a state of utter certainty. **And there will be time enough to expound upon the historical justifications for the exceptions we have mentioned if and when those exceptions come before us**.

CAUSE 4: Judge O'Scannlain, in *Nordyke* v. *King*, 563 F.3d 439 (9th Cir. April 20, 2009),[6] was vacated and the case was remanded to that panel for further consideration in light of *McDonald* v. *City of Chicago*, No. 08-1521, slip op. (U.S. June 28, 2010) (Oral arguments scheduled for October 19, 2010) In *Nordyke* the Second Amendment is incorporated through the Due Process clause of the Fourteenth Amendment. The *Nordyke* opinion under remand is:

> We therefore conclude that the right to keep and bear arms is *deeply rooted in this Nation's history and tradition*. Colonial revolutionaries, the Founders, and a host of commentators and lawmakers living during the first one hundred years of the Republic all insisted on the fundamental nature of the right. It has long been regarded as the *true palladium of liberty*. Colonists relied on it to assert and to win their independence, and the victorious Union sought to prevent a recalcitrant South from abridging it less than a century later. The crucial role this deeply rooted right has played in our birth and history compels us to recognize that it is indeed fundamental, that it is necessary to the Anglo-American conception of ordered liberty that we have inherited.[7] **We are**

[6] www.ca9.uscourts.gov/datastore/opinions/2009/04/20/0715763.pdf

[7] By speaking of the two parts of the incorporation inquiry separately—deeply rooted in this Nation's history and tradition and necessary to an Anglo-American regime of ordered liberty—we do not mean to imply a distinct two-

> **therefore persuaded that the Due Process Clause of the Fourteenth Amendment incorporates the Second Amendment and applies it against the states and local governments**.[8, 9]
>
> . . . **we concluded that the Second Amendment is indeed incorporated against the states**, . . .

RIPENESS FACTOR (3) the hardship to the parties if judicial relief is denied at this stage in the proceedings.

I will be severely at risk of arrest and prosecution if I visit any headquarter buildings of the U.S. Department of Transportation, U.S. Department of Homeland Security, the FAA, and the U.S. Coast Guard as either a U.S. merchant seaman on maritime business or as a U.S. citizen on non-maritime business because the U.S. Department of Transportation's wrongful Bar Notices of 2004 and 2006 will remain in effect.

I will also be severely at imminent risk of arrest and prosecution by the U.S. Marshals Service, the U.S. Supreme Court Police, and the Capitol Police if I pursue my common law right of citizen's arrest of federal judges and federal court clerks on probable cause evidence of felony extortion of filing fees (28 U.S.C. § 1916 SEAMEN'S SUIT versus 18 U.S.C. § 872 EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES) as been ignored by the federal courts establishing a presumption that federal judges and court clerks are above the law, untouchable by the checks and balance protections of the Constitution or the due process of law.

5. U.S. Supreme Court's Avoidance of President Obama Natural Born Citizen Eligibility Cases as Evidence of Bias and Judicial Treason

Under Rule 201(d) *MANDATORY JUDICIAL NOTICE OF ADJUDICATIVE FACTS* under the *FEDERAL RULES OF EVIDENCE* no federal judge to date has allowed a federal lawsuit challenging President Obama's *natural born citizen* status and eligibility to be the President of the United States to go to trial indicating that no American citizen, not even members of the military, have standing to sue President Obama on that subject matter. From this fact comes the Rule 301 *PRESUMPTION IN GENERAL IN THIS CIVIL ACTION AND PROCEEDING* that these federal judges, including Judge John D. Bates with his Memorandum Opinion an Order dismissing my Complaint and ordering an Amended Complaint, have demonstrated their blind loyalty to the man presently occupying the Office of the President and abdicating their Oath of Office to support and defend the Constitution of the United States. This alone presents conclusory evidence that the Judicial Branch has lost their judicial independence from the Executive and Legislative Branches of the United States Government and with that loss the Judicial Branch has become the New Praetorian Guard for President Obama. to which I regard in accordance with my understanding and belief in the Rule of Law as an act of *TREASON* against the *UNITED STATES* and an act establishing judicial tyranny and despotism.

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pronged test. The incorporation cases and the substantive due process cases both treat these two phrases as aspects of a holistic inquiry.

[8] The County and its amici point out that, however universal its earlier support, the right to keep and bear arms has now become controversial. See generally Sanford Levinson, THE EMBARRASSING SECOND AMENDMENT, 99 Yale L.J. 637 (1989). But we do not measure the protection the Constitution affords a right by the values of our own times. If contemporary desuetude sufficed to read rights out of the Constitution, then there would be little benefit to a written statement of them. Some may disagree with the decision of the Founders to enshrine a given right in the Constitution. If so, then the people can amend the document. But such amendments are not for the courts to ordain.

[9] Available online at www.ca9.uscourts.gov/datastore/opinions/2009/04/20/0715763.pdf

6. Judge D. Bates' Implied Bias and Wrongful Dismissal of My Case because President Obama was a Named Defendant on Quo Warranto Basis Challenging Obama's Eligibility as a Natural Born Citizen Coerced Me to Removing Obama as Defendant otherwise a Guarantee for Dismissal

Because of the above facts and presumptions Judge John D. Bates' Memorandum Opinion and Court Order for an Amended Complaint has coerced me into removing President Obama as a defendant and cascadingly removing my Quo Warranto challenge to President Obama as the Commander-in-Chief of the Armed Forces and the U.S. Merchant Marine in regard to 10 U.S.C. § 351 *ARMING OF AMERICAN VESSELS DURING WAR OR THREAT TO NATIONAL SECURITY*, comprising of pivotal and vital CLAIMS FOR RELIEF that is otherwise my right to make such claims.

In the interest of justice Judge John D. Bates has a duty to recuse himself *sua sponte* or grant my motion for recusal for bias and order the Calendar Committee to assign this Complaint, *not to another judge in the U.S. District Court for the District of Columbia* but to judge from another District due to apparent corruption in the Court and the accumulating bias and stigma against the unrepresented civil Plaintiff as indicated by Judge D. Bates' prejudice against the Plaintiff revealed itself in citing dismissals of Plaintiff's cases in other courts without knowing the corrupt circumstances behind those dismissals. Judge John D. Bates can and must comply with Judge Richard W. Roberts' Court Orders of <u>January 13, 2004</u> in a previous Complaint but just 2 days later on January 15, 2004 Judge Reggie B. Walton, t was

On January 13, 2004 suspiciously and presumptively corruptly ignored by the Calendar Committee because was still involved in another Second Amendment case, *Seegars* v. *Ashcroft* (No. 03-834) 297 F. Supp. 2d 201 (D.D.C. 2004).

> **On January 13, 2004**, Judge Richard W. Roberts, of the U.S. District Court for the District of Columbia, No. 03-2160, issued his Order granting recusal recommending that a judge from another district be assigned to my case:
>
> > *"The Clerk of the Court is directed to reassign this matter to the Calendar Committee. Because United States District Judge Ellen Segal Huvelle of this Court is also a named defendant in this suit,* ***<u>I recommend to the Calendar Committee that it seek to have a judge from another district assigned to this matter</u>****."*
>
> **On January 14, 2004** Judge Reggie B. Walton issued his Memorandum Opinion in *Seegars* v. *Ashcroft*, No. 03-834; 297 F. Supp. 2d 201, 204 (D.D.C. January 14, 2004), a Second Amendment case, in which he claimed that "***<u>the Second Amendment does not apply to the District of Columbia</u>***."

On January 15, 2004 my Second Amendment case was *NOT* reassigned to a judge from another district but to Judge Reggie B. Walton of the same district as Judge Roberts – the U.S. District Court for the District of Columbia. My every attempt to get Judge Walton recused for bias failed. Judge Reggie B. Walton of the U.S. District Court for DC in Case No. 03-2160 was assigned to my case under suspicious circumstances on Motion for Recusal of Judge Roberts. How and why did the Calendar Committee reassign my case to Judge Reggie B. Walton when he just ruled on the Second Amendment in the *Seegars* case the day before? This has all the implications of judicial bias, misconduct, and corruption written all over it! My complaints to the U.S. Department of Justice for an investigation were ignored in 2004.

Furthermore, under this Protest preserving my rights on appeal for the predictable dismissal of this Complaint that is sure to come in the near future, in light of my interpretation of the *CONSTITUTION OF THE UNITED STATES* (i.e., *POPULAR CONSTITUTIONALISM*) and the *FEDERAL RULES OF CIVIL PROCEDURE* I hold Judge John D. Bates in contempt of the *CONSTITUTION OF THE UNITED STATES* and the *FEDERAL RULES OF CIVIL PROCEDURE*.

Judge John D. Bates cited *Conley* v. *Gibson,* 355 U.S. 41, 47 (1957) as the pleading stand that I must follow. However, the U.S. Supreme Court in *Bell Atlantic Corp*. v. *Twombly*, 550 U.S. 544

(2007) and *Ashcroft* v. *Iqbal*, 556 U.S. ___, 129 S.Ct. 1937 (2009), overturned *Conley*. Nowhere in Judge Bates' Memorandum Opinion dismissing my case does her refer to *Twombly* or *Iqbal*.

May 18, 2010 — My Original Complaint with several motions were filed and placed on the Docket. The case was assigned to Judge John D. Bates. One motion invoked my right as a seaman under 28 U.S.C. § 1916 SEAMEN'S SUIT to have the U.S. Marshals Service deliver the Summons, the Complaint, and the motions to the Defendants. Another motion requested the case be expedited for good cause. Another motion requested a Civil Gideon court-appointed attorney since my case met the conditions stipulated under the American Bar Association's August 7, 2006 unanimous recommendation:

> RESOLVED, That the American Bar Association urges federal, state, and territorial governments to provide legal counsel as a matter of right at public expense to low income persons in those categories of adversarial proceedings where basic human needs are at stake, such as those involving shelter, sustenance, safety, health or child custody, as determined by each jurisdiction.

July 21, 2010 — Two months (60 days) passed and no movement of my complaint and motions. It was not delivered to the U.S. Marshals Service. I emailed my Judicial Misconduct Complaint against Judge Bates to Greg Hughes, Clerk for the DC Circuit for printing and delivery to the Judicial Council of the DC Circuit because I was unemployed and had no money to pay for printing and mailing the complaint and because I am a seaman, a ward of the Admiralty Court, but I was not treated as such. I even doubt Greg Hughes printed my Judicial Misconduct Complaint. I suspect that Greg Hughes notified Judge Bates of my attempt to file my Judicial Misconduct Complaint against Judge Bates.

August 23, 2010 — More than three months (97 days) passed since the filing of my Original Complaint. I called Jeremy Presser, Clerk for Judge Bates by telephone to learn that Judge Bates has not ruled on my Motion for U.S. Marshals Service to deliver the Summons and Complaint with accompanying motions to the Defendants. I advised Jeremy Presser of my intent to contact the House Judiciary Committee with a complaint against Judge Bates. I subsequently emailed Rep. Howard Coble of North Carolina as a member of the House Judiciary Committee and Jennifer Burleson, staff member of Rep. Marion Berry at the Cabot, Arkansas office for help.

August 24, 2010 — More than three months (98 days) passed since the filing of my Original Complaint. Judge Bates dismissed my case *sua sponte* in violation of Rule 4(c)(3) more that 3 months after the may 18, 2010 filing of the case. One day is ample time to write up and file a 2-page (unsigned?) Memorandum Opinion dismissing my case. Who actually wrote the Memorandum Opinion? Was it Judge Bates' clerk, Jeremy Presser? Whoever wrote the Memorandum Opinion, in their haste they based their dismissal on the overturned Notice Pleading Standard of *Conley* v. *Gibson,* 355 U.S. 41, 47 (1957) and completely failed to reference Twombly or Iqbal's Plausible Pleading Standard. This suggests incompetence in whoever wrote the Memorandum Opinion. My advisement to Judge Bates' clerk, Jeremy Presser, that I would be contacting the House Judiciary Committee with my complaint against Judge Bates provides a motive for Jeremy Presser to hastily write the Memorandum Opinion on Judge Bates' behalf. If this is true did Judge Bates thoroughly read the Memorandum Opinion? Or did he sign off on it without reading it? The immediate

dismissal of my case just one day after my advisement of my going to the House Judiciary Committee with a complaint against Judge Bates is sufficient cause to file a Judicial Misconduct Complaint with the Judicial Council for the DC Circuit on a claim of bias and prejudice under Canon 3.B.(2) "not faithful to the law"; (4) "not dignified to the unrepresented civil plaintiff; (5) "bias or prejudice"; and (8) "unfair disposition" of the *MODEL CODE OF JUDICIAL CONDUCT*.

The Twombly/Iqbal Plausible Pleading Standard is so confusing and vaque that even the federal courts of the various circuits are not in agreement with a definition of a Plausible Pleading. See Nicholas Tymoczko, *BETWEEN THE POSSIBLE AND THE PROBABLE: DEFINING THE PLAUSIBILITY STANDARD AFTER* BELL ATLANTIC CORP. *V.* TWOMBLY *AND* ASHCROFT *V.* IQBAL, 94 Minnesota Law Review 505 (2009).

Twombly (pages 14–15, slip opinion)[10] presents a two-prong approach to the Plausible Pleading Standard:

> **First,** the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to **legal conclusions**. **Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice**. *Id.,* at 555 (Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we "are not bound to accept as true a legal conclusion couched as a factual allegation" (internal quotation marks omitted)). **Rule 8 marks a notable and generous departure from the hyper-technical, code-pleading regime of a prior era, but it does not unlock the doors of discovery for a plaintiff armed with nothing more than conclusions**.[11]
>
> **Second, only a complaint that states a plausible claim for relief survives a motion to dismiss**. *Id.,* at 556. Determining whether a complaint states a plausible claim for relief will, as the Court of Appeals observed, be **a context-specific task that requires the reviewing court to draw on its judicial experience and common sense**. 490 F. 3d, at 157-158. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint

[10] www.supremecourt.gov/opinions/08pdf/07-1015.pdf

[11] Simply because I included conclusions of law based on the facts alleged cannot be construed as not including facts alleged. Citing *71 C.J.S. PLEADING § 19: CONCLUSION OF LAW FROM FACTS ALLEGED—EFFECT OF PLEADING CONCLUSIONS WHERE FACTS ALLEGED*:

> The statement of a conclusion arising from facts under the law, is not prohibited in any system of pleading. Thus, a pleading is not rendered insufficient because it contains legal conclusions in addition to the facts which properly belong in it. In other words, the addition of a conclusion of law which may legitimastely be drawn from the facts pleaded will not invalidate the pleading. In accordance with this rule, various pleadings containing conclusions of law supported by facts are not invalid, including pleadings relating to legality and validity, the existence or adequacy of consideration, or t he existence of the relationship of principal and agent .
>
> However, it is essential to the sufficiency of a pleading alleging conclusions of law that such conclusions are supported by a statement of facts justifying them. Conclusions of law are not disregarded in determining the sufficiency of a pleading where the conclusions are supported by an averment of facts from which the conclusions are drawn.

> has alleged—but it has not "show[n]" — "that the pleader is entitled to relief." Fed. Rule Civ. Proc. 8(a)(2).
>
> In keeping with these principles a court considering a motion to dismiss can choose to begin by identifying pleadings that, because they are no more than conclusions,[12] are not entitled to the assumption of truth. **While legal conclusions can provide the framework of a complaint, they must be supported by factual allegations**.[13] **When there are well-pleaded factual allegations, a court should assume their veracity and then determine whether they plausibly give rise to an entitlement to relief**.[14]

With full knowledge of the lack of unity on the definition of a Plausible Pleading I relied on my own "experience and common sense" to add "DISCUSSIONS" as factual allegations in support of my designated "CLAIMS" as allowed by Rule 8(d)(2) *ALTERNATIVE STATEMENTS OF A CLAIM*:

> A party may set out 2 or more statements of a claim . . . **alternatively** or hypothetically, either in a single count . . . **or in separate ones**. **If a party makes alternative statements, the pleading is sufficient if any one of them is sufficient**.

In Judge Bates' Memorandum Opinion he gives lip service to the rights of a *pro se* plaintiff that they:

> "are held to less stringent standards than those applied to formal pleadings drafted by lawyers. See *Haines* v. *Kerner*, 404 U.S. 519, 520 (1972). Nonetheless, courts may dismiss an action *sua sponte* under Rule 8(a)(2) where the complaint sets forth "'a meandering, disorganized, prolix narrative'" or is "'**so verbose, confused and redundant that its true substance, if any, is well disguised**.'" *Hamrick* v. *United Nations*, 2007 WL 3054817, at *1 (D.D.C. 2007) (quoting Brown, 75 F.R.D. at 499). **Hamrick's exceedingly lengthy complaint -- utterly confusing, and at times indecipherable -- easily meets these standards**."

Judge Bates, appears ignorant of the facts behind *Hamrick* v. *United Nations* 2007 WL 3054817, at *1 (D.D.C. 2007) (quoting Brown, 75 F.R.D. at 499). What Judge Bates probably did not know was that there was corruption and dirty dealing behind the scenes to get rid of my case. The judge originally assigned to that case was Judge Howard Jr. On Saturday, April 21, 2007 at 12:23 a.m. Judge Howard died at Jefferson Regional Medical Center at the age of 82.[15] Judge Howard had my case for 7 months and 8 days. Six days later my case was reassigned to Judge James M. Moody on April 27, 2007. Just 27 days later Judge Moody dismisses my case most likely because of the increased case load from the distribution of deceased Judge Howard's case load. Not exactly a dismissal on its merits. That's an actual obstruction of justice disquised as a dismissal. It's an injustice without a remedy.

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[12] My Original Complaint was *NOT* limited to conclusions only. My Original Complaint was entitled to the assumption of truth.

[13] My Original Complaint was supported by factual allegations.

[14] Plausibility is a subjective method of determination allowing the judge to impose his perception of the truth based on his own experience and common sense instead of the Plaintiff's experience and common sense. Thus a judge's politicale ideological is like to influence his determination especially where the Second Amendment is the subject matter of the complaint.

[15] http://www.arkansasonline.com/news/2007/apr/22/howard-longtime-judge-dies-82-brief/

Where Judge Bates cites "**so verbose, confused and redundant that its true substance, if any, is well disguised**" from *Hamrick* v. *United Nations* that Complaint consist of four volumes (2 volumes for evidence) support the claims in my Complaint. I attempted to call into question all of my previously dismissed cases from the U.S. District Court for the District of Columbia for a judicial review in the U.S. District Court in Little Rock, Arkansas. But the Little Rock court was more hostile to me as an unrepresented civil plaintiff that the DC Circuit on the fact that the Little Rock court extorted their filing fee from me in violation of the Seaman's Suit law 28 U.S.C. § 1916. I designed my case to be 4 volumes on the hope that it would be treated as a complex case in accordance with Federal Judicial Center, *MANUAL FOR COMPLEX LITIGATION*, 4th Edition, (2004). Ignorance of the procedural

Dismissing my case solely based on the excessive case load brought about by the natural death of a federal judge did not warrant the insulting and disparaging remarks just to cover up the real reason for the dismissal. But it goes down in the books in an insulting manner. Judge Bates ignorance of the true facts behind the dismissal of my case in Little Rock does not justify using that case as justification to dismiss my case in this Court. He simply perpetuates judicial ignorance for justice. It can be argued that Judge Bates obstructed justice with fraud and false statements under 18 U.S.C. § 1001 as a predicate act of racketeering under the RICO Act.

Judge Bates violated my rights to due process under Rule 4(c)(3) and the Seventh Amendment right to a jury trial. The emailing of my July 21, 2010 Complaint of Judicial Misconduct against Judge Bates for the 3 month delay of my Rule 4(c)(3) motion is motive for his retaliatory *sua sponte* dismissal of my case. Again, an act obstructing justice.

My case had the proper Rule 8(a)(2) "*short and plain statements*" of claims showing that I am entitled to relief. Those *short and plain statements* were clearly identified and designed as "CLAIMS" distinct and separate from "DISCUSSIONS."

And because I exhausted all judicial remedies for the violations of 28 U.S.C. § 1916, and because my complaints to the U.S. Marshals Service transformed me from a civil plaintiff to a criminal suspect in the eyes of the U.S. Marshals, and because Judge John D. Bates' dismissal of my Complaint, cascading this Amended Complaint, violated my right to make *ALTERNATIVE STATEMENTS* of claims (in the form of DISCUSSIONS) under RULE 8(d)(2) of the *FEDERAL RULES OF CIVIL PROCEDURES* and because of chronic abuse of the *FEDERAL RULES OF CIVIL PROCEDURE* by other federal judges from 2002 to the present I have submitted a criminal complaint to the FBI in the hope of triggering a criminal investigation into corruption in the federal courts in Washington, DC.

7. FUNCTION OF COURT TO PROTECT RIGHTS (16A Corpus Juris Secundum § 634)

Courts must be ever watchful to protect the personal rights guaranteed by state and federal constitutions.[16] They are held to a standard of vigilance with respect to the protection of an individual's constitutional liberties,[17] and have a critical duty to protect a minority against a majority's attempt to reduce human rights.[18] Courts must, therefore,

[16] *Byars* v. *United States*, 273 U.S. 28, 47 S.Ct. 248, 71 L. Ed. 520 (1927).

Guaranties of Bill of Rights Must Be Zealously Guarded and States' Powers Recognized.

Milk Wagon Drivers Union of Chicago Local 753 v. *Meadowmoor Dairies*, 312 U.S. 287, 61 S.Ct. 552, 85 L. Ed. 836, 132 a.l.r. 1200 (1941).

[17] *Breese* v. *Smith*, 501 P.2d s159 (Alaska 1972).

[18] *Greenberg* v. *Bolger*, 497 F. Supp. 756 (E.D. N.Y. 1980).

afford all persons all statutory and constitutional rights to which they are entitled,[19] and they may not engage in any action which deprives a party before it of his or her constitutional rights.[20] Accordingly, constitutional rights cannot be made dependent on the favor of the court, but may be asserted as a matter of right.[21]

It is the duty of the federal courts to determine whether resulting restrictions on a person's freedom may be tolerated when the exercise of an enumerated power of Congress conflicts with individual liberties protected by the federal Bill of Rights.[22]

In the matter of safeguarding constitutional rights, the courts must generally look to the substance, rather than the technical forms of procedure taken to invoke the protection of the law.[23] Strict judicial scrutiny is appropriate in situations in which a constitutionally protected right is infringed.[24]

8. CONSTITUTIONAL FREEDOMS OR RIGHTS (16A Corpus Juris Secundum § 630)

Constitutional rights cannot be created by statutes or rules, nor can they be abolished by executive or judicial action.[25] A constitutional right differs from a right conferred by the common law or by statute only in the fact that it is guarded from any attack or interference by the legislature, or any other governmental agent of the state.[26] A constitutional freedom, defined as something more than liberty permitted and consisting of civil and political rights, is similarly absolutely guaranteed, assured, and guarded.[27]

9. FUNDAMENTAL RIGHTS (16A Corpus Juris Secundum § 631)

Fundamental rights are those rights which have their origin in the express terms of a constitution, or which are necessarily implied from those terms.[28] Fundamental rights, therefore, include those rights recognized as indispensable to the enjoyment of rights

[19] *Fazio* v. *State*, 399 So. 2d. 432 (Fla. Dist. Ct. App. 5th Dist. 1981).

[20] *In re Baldinger*, 356 F. Supp. 153, 28 A.L.R. Fed. 911 (C.D. Cal. 1973) (rejected on other grounds by *In re Grand Jury Proceedings*, 509 F.2d 1349 (5th Cir. 1975)).

[21] *People* v. *Humphreys*, 353 Ill. 340, 187 N.E. 466 (1933).

[22] United States v. Robel, 389 U.S. 258, 88 S.Ct. 419, 19 L. Ed. 2d 508 (1967); Veterans and Reservists for Peace in Vietnam v. Regional Commissioner of Customs, Region II, 459 F.2d 676 (3rd Cir. 1972).

[23] *Dickoff* v. *Dewell*, 152 Fla. 240, 9 So. 2d 804 (1942).

[24] *Arredondo* v. *Brockette*, 648 F.2d 425 (5th Cir. 1981), judgment affirmed, 461 u.s. 321, 103 S.Ct. 1838, 75 L.Ed. 2d 879, 10 Ed. Law Rep. 11 (1983).

[25] *Chev*ron U.S.A., Inc. v. *State*, 578 So. 2d 644, 67 Ed. Law Rep. 844 (Miss. 1991).

[26] Sanitation Dist. No. 1 of Jefferson County v. City of Louisville, 308 Ky. 368, 213 S.W.2d 995 (1948).

[27] *People ex rel. Le Roy* v. *Hurlbut*, 24 Mich. 44, 1871 WL 3042 (1871).

[28] *State ex rel. Gesswein* v. *Galvan*, 100 N.M. 769, 676 P.2d 1334 (1984). Ballard v. Commonwealth, 228 Va. 213, 321 S.E.2d 284 (1984).

Guaranteed, Explicitly or Implicitly, by Constitution

Application of Herrick, 82 Haw. 329, 922 P.2d 942 (1996).

Fact Fundamental Right Not Enumerated Not Impediment to its Existence

People v. *Belous*, 71 Cal. 2d 954, 80 Cal. Rptr. 354, 458 P.2d 194 (1969).

explicitly defined,[29] that is, a right without which other constitutionally guaranteed rights would have little meaning.[30]

A fundamental right cannot be based on the social or economic importance of interest.[31] In determining whether a fundamental right exists, the court must look to the traditions and collective conscience of the people,[32] though fundamental rights cannot be abolished by contrary judicial practices, no matter how long they have continued.[33] It is also not proper for courts to pick out certain other rights and characterize them as fundamental.[34]

10. FUNDAMENTAL RIGHTS GENERALLY (16A Corpus Juris Secundum § 632)

The basic principle of the American constitutional system is that all political power is inherent in the people, and that this inherent power is exercised by the people under a constitution adopted by them.[35] Rights constitutionally guaranteed are generally those specifically enumerated in the constitution or which existed at common law or by statute at the time the constitution is adopted.[36] Accordingly, the Federal Constitution guarantees more than simply freedom from those abuses which led the framers of the Federal Constitution to single out particular rights.[37] Certain important, but inarticulated rights, share constitutional protection in common with explicit guaranties. Both the concept of penumbral guaranties and the Ninth Amendment[38] support the existence of rights not explicitly mentioned in the Federal Constitution.[39] In order, however, for a claimed activity to be given constitutional protection, as within the penumbra of a constitutional right, it is necessary that the activity be essential to the free exercise of a constitutionally protected right.[40]

11. Lack of Justification for Limitation or Restriction [of Constitutional Rights] (16A Corpus Juris Secundum § 640)

A denial of constitutional rights may not be justified by inadequate resources or the saving of expense,[41] or upon the fact that implementation may require expenditure of

[29] *Richmond Newspapers, Inc*. v. *Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L.Ed. 2d 973 (1980).

[30] *State* v. *McCarthy*, 2004 MT 312, 324 Mont. 1, 101 P.3d 288 (2004).

[31] *Cold Indian Springs Corp.* v. *Ocean Tp.*, 154 N.J. Super. 75, 380 A.2d 1178 (Law Div. 1977), judgment affirmed, 161 N.J. Super. 586, 392 A.2d 175 (App. Div. 1978), judgment affirmed, 81 N.J. 502, 410 A.2d 652 (1980).

[32] *State* v. *Nugent*, 125 N.J. Super. 528, 312 A.2d 158 (App. Divs. 1973).

[33] *Ricks Exploration Co*. v. *Oklahoma Water Resources Bd*, 1984 OK 73, 695 P.2d 498 (Okla. 1984).

[34] Association for Educational Development v. Hayward, 533 S.W.2d 579 (Mo. 1976).

[35] *State ex rel. Ayres* v. *Gray*, 69 So. 2d 187 (Fla. 1953).

[36] *Craig* v. *Lane*, 60 Idaho 178, 89 P.2d 1008 (1939) (overruled in part on other grounds by *Coffin* v. *Cox*, 78 Idaho 111, 298 P.2d 742 (1956).

[37] *Richmond Newspapers, Inc.* v. *Virginia*, 448 U.S. 555, 100 S.Ct. 2814, 65 L. Ed. 2d 973 (1980).

[38] U.S. Const. Amend. IX.

[39] *United States* v. *Criden*, 675 F.2d 550 (3d Cir. 1982).

[40] Association for Educational Development v. Hayward, 533 S.W.2d 579 (Mo. 1976).

[41] *Todaro* v. *Ward*, 565 F.2d 48 (2d Cir. 1977).

public funds.[42] Such rights also may not be limited or denied simply because of a lack of implementing legislation,[43] or mere inconvenience.[44] Compliance with a statute cannot justify the improper invasion of constitutional rights,[45] and the fundamental rights protected by constitutional guarantees may not be transgressed with impunity or be disregarded because of expediency.[46] Thus, avoidance of delay cannot justify a tolerance of violations of fundamental rights.[47]

Inasmuch as fundamental rights may not be submitted to a vote and do not depend on the outcome of any elections,[48] such rights cannot be limited or denied simply because the majority of the people choose that it be.[49] Interference with constitutional rights may not, therefore, be justified on the grounds that the community is hostile to their exercise, and vigorously displays its feelings,[50] or simply because others do not exercise such rights.[51] Additionally, standing alone, historical patterns do not justify contemporary violations of constitutional guaranties.[52]

The denial or violation of a constitutional right is not justified by what the invasion reveals,[53] or because the degree of such invasion is minor.[54] It is also not justified by showing that, in all probability, the results would have been the same had proper procedures been followed.[55] While there is a basic difference between a direct state

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[42] *Hosier* v. *Evans*, 314 F.Supp. 316 (D.V.I. 1970).

[43] *State of Kansas* v. *Stanphill*, 206 Kan. 612, 481 P.2d 998 (1971).

[44] State New Jersey v. One 1990 Honda Accord, New Jersey Registration No. HRD20D, VIN No. 1HGCB7659LA063293 and Four Hundred and Twenty Dollars, 154 N.J. 373, 712 A.2d 1148 (1998).

Administrative Convenience

O'Clair v. *United States*, 470 F.2d 1199 (1st Cir. 1972).

Judicial Economy or Convenience

Commonwealth of Pennsylvania v. *White*, 228 Pa. Super. 23, 324 A.2d 469 (1974).

Governmental Convenience and Certainty Cannot Prevail Over Rights

Mountain States Tel. & Tel. Co. v. Arizona Corp. Com'n, 160 Ariz. 350, 773 P.2d 455 (1989).

[45] Doyle v. State Bar, 32 Cal. 3d 12, 184 Cal. Rptr. 720, 648 P.2d 942 (1982).

[46] *Armstrong* v. *Duffy*, 90 Ohio App. 233, 47 Ohio Op. 233, 61 Ohio L. Abs. 187, 103 N.E.2d 760 (7th Dist. Columbiana County 1951).

[47] *Great Lakes Screw Corp*. v. *N.L.R.B.*, 409 F.2d 375 (7th Cir. 1969).

[48] Santa Fe Independent School Dist. v. Doe, 530 U.S.

[49] *Evans* v. *Romer*, 854 P.2d 1270 (Colo. 1993).

[50] *Langford* v. *City of Texarkana, Ark.*, 478 F.2d 262 (8th Cir. 1973).

[51] *United States* v. *Rangel-Gonzales*, 617 F.2d 529 (9th Cir. 1980).

[52] *Marsh* v. *Chambers*, 463 U.S. 783, 103 S.Ct. 3330, 77 L. Ed. 2d 1019 (1983).

[53] *People* v. *Allen*, 15 Mich. App. 387, 166 N.W.2d 664 (1968).

[54] Citizens Concerned for Separation of Church and State v. City and County of Denver, 481 F. Supp. 522 (D. Colo. 1979).

[55] Tollett v. State, 272 So. 2d 490 (Fla. 1973).

interference with a protected activity and state encouragement of an alternative activity consonant with legislative policy,[56] an attempted justification of a burden on the exercise of a fundamental right, as a rational means for the accomplishment of some significant state policy, requires more than an unsupported assertion that the burden is connected to such a policy.[57]

[56] Maher v. Roe, 432 U.S. 464, 97 S.Ct. 2376, 53 L. Ed. 2d 484 (1977).

[57] Carey v. Population Services, Intern., 431 U.S. 678, 97 S. Ct. 2010, 52 L. Ed. 2d 675 (1977).

THE PRELIMINARIES

1. VERIFICATION OF ADMIRALTY/MARITIME COMPLAINT

In accordance with 28 U.S.C. § 1746 *Unsworn Declarations Under Penalty of Perjury*; and LCvR 5.1(h) *Verification* in the *Rules of the U.S. District Court for DC*; and Rule C(2)(a) *In Rem Actions – Special Provisions* of the *Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions*:

> *"I declare, certify, verify, and/or state under penalty of perjury that the foregoing is true and correct."*
>
> *"I further declare, certify, verify, and/or state under penalty of perjury that to the best of my knowledge and information this Complaint is a Petitory Action Quasi In Rem Suam et Jus Tertii and that this Complaint qualifies as an Action In Rem under the Supplemental Rules for Admiralty or Maritime Claims and Asset Forfeiture Actions."*

Executed on this day, ______________________.

Don Hamrick
5860 Wilburn Road
Wilburn, Arkansa 72179
Email: 4donhamrick@gmail.com

2. COMPLAINT AND SUMMONS TO BE DELIVERED TO THE U.S. MARSHALS SERVICE BY THE NEW CASE CLERK FOR SERVICE OF SUMMONS AND COMPLAINT UNDER RULE 4(c)(3)

Rule 4(c)(3) Service By a Marshal or Someone Specially Appointed.

> At the plaintiff's request, the court may order that service be made by a United States marshal or deputy marshal or by a person specially appointed by the court. **The court must so order if the plaintiff is authorized to proceed** in forma pauperis under 28 U.S.C. § 1915 or **as a seaman under 28 U.S.C. § 1916**.

In the interest of justice I am authorized by Rule 4(c)(3) to proceed as a seaman under 28 U.S.C. § 1916 by right of U.S. Supreme Court precedence under *Heller* overruling the dismissals of my previous cases even though my seamen's document is up for renewal.

3. PARTIES

A. THE UNREPRESENTED PLAINTIFF:

PLAINTIFF DON HAMRICK is a natural personal and a natural born citizen of the United States, residing in Wilburn, Arkansas. [Writing the Complaint in the first person.] I was a U.S. merchant seaman (Able Seaman) for 20 years. I hope to renew my seaman's papers if I can get the extorted filing fees amounting to nearly $2,000 from DC Circuit, the U.S. District Court in Little Rock, Arkansas, and the U.S. Supreme Court from 2002 to the present. (28 U.S.C. § 1916 versus 18 U.S.C. § 872).

B. THE DEFENDANTS:

DEFENDANT UNITED STATES is the national government of the of the United States as so named in the Constitution of the United States and so named in the Tenth Amendment of the Bill of Rights. I sue the United States under **5 U.S.C. § 702 *RIGHT OF REVIEW*** because I continue to suffer legal wrongs resulting from the 2002 Final Agency Action of the U.S. Coast Guard in the denial of my Second Amendment application for the disputed National Open Carry Handgun endorsement on the Merchant Mariner's Document (ID card, circa 2002; now evolved into the passport-style Merchant Mariner's Credential). I have been adversely affected and aggrieved by that Final Agency Action within the meaning of **46 C.F.R. § 1.03-15(j) *RIGHTS OF APPEAL*** (*Any decision made by the Commandant, or by the Assistant Commandant for Marine Safety and Environmental Protection, or by an office chief pursuant to authority delegated by the Commandant is final agency action on the appeal*.) and **46 C.F.R. § 1.01–30(a) *JUDICIAL REVIEW*** (*Nothing in this chapter shall be construed to prohibit any party from seeking judicial review of any Commandant's decision or action taken pursuant to the regulations in this part*…). **Under 5 U.S.C. § 702 *RIGHT OF REVIEW*** (*A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority* ***shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party***. *The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance*. …) and **46 C.F.R. § 1.01–30(a)**, I am entitled to judicial review.

DEFENDANT JOHN G. ROBERTS, CHIEF JUSTICE, SUPREME COURT OF THE U.S. is a natural person and a citizen of the United States, and is sued in his individual and official capacity for a Court Order compelling the return of feloniously extorted filing fees (28 U.S.C. § 1916 versus 18 U.S.C. § 872) of the U.S. Court of Appeals for the DC Circuit when he was a judge in that Circuit and presently as the Chief Justice of the U.S. Supreme Court and for the return of similarly extorted filing fees of the U.S. District Court in Little Rock, Arkansas and for PACER Service Center's Docket Access fees where said fees and costs are exempt for seamen in accordance with the Seamen's Suit law, 28 U.S.C. § 1916 and as Chairman of the Judicial Conference of the United States.[1] The total amount of these fees and costs are approximately $2,258.00. Chief Justice John G. Roberts is sued in his official capacity as *CHAIRMAN OF THE JUDICIAL CONFERENCE OF THE UNITED STATES* for failure or refusal to clarify whether the *SEAMEN'S SUIT LAW* implies of private right of action against federal judges and court clerks who coercively compel payment of their court's filing fee in violation of the *SEAMEN'S SUIT*

[1] www.uscourts.gov/judconf/members/JCMemsOct08.pdf

LAW and whether that private right of action includes the right to make citizen's arrest through the common law and/or through D.C. Code § 23-582(b)(1)(A), *ARRESTS WITHOUT WARRANT BY OTHER PERSONS* and D.C. Code § 23-582(c) (*Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay*) when all available remedies through judicial, executive, and legislative (i.e., the private bill), are exhausted. Chief Justice John G. Roberts is also sued in his official capacity to a determine whether extortion of exempted filing fees from a seamen is an administrative function of the court deserving no immunities from civil or criminal actions or whether it is a judicial function though it would imply a violation of the Fifth Amendment takings clause.

DEFENDANT (4) JOHN F. CLARK, DIRECTOR, US MARSHALS SERVICE is a natural person and a citizen of the United States. The Director of the U.S. Marshals Service, is chargeable with *imputed gross negligence* through the actions of subordinate U.S. Marshals and Deputy U.S. Marshals for obstructions of justice, harassment, and threats of arrest and prosecution in retaliation for exercising First Amendment rights to free speech and to petition the Government (i.e., U.S. Marshals Service) for redress of grievances by preventing me from making a citizen's arrest as a common law right and a right under D.C. Code § 23-582(b)(1)(A), and D.C. Code § 23-582(b) *ARRESTS WITHOUT WARRANT BY OTHER PERSONS* and D.C. Code § 23-582(c) (*Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay*) of federal judges and court clerks based on probable cause evidence of felony extortion of filing fees in violation of the *SEAMEN'S SUIT LAW*, 28 U.S.C. § 1916.

DEFENDANT (5) JANET NEPALITANO, SECRETARY OF HOMELAND SECURITY is a natural person and a citizen of the United States. The Secretary has general superintendence over the merchant marine of the United States and of merchant marine personnel insofar as the enforcement of [*TITLE 46, SHIPPING; SUBTITLE II VESSELS AND SEAMEN*] is concerned and insofar as those vessels and personnel are not subject, under other law, to the supervision of another official of the United States Government. In the interests of marine safety and seamen's welfare, the Secretary shall enforce this subtitle [i.e., 46 U.S.C. § 7306(a)(3) *GENERAL REQUIREMENTS AND CLASSIFICATIONS FOR ABLE SEAMEN*] and shall carry out correctly and uniformly administer this subtitle. The Secretary may prescribe regulations to carry out the provisions of [*TITLE 46, SHIPPING; SUBTITLE II VESSELS AND SEAMEN*].

DEFENDANT (6) ADMIRAL ROBERT PAPP, COMMANDANT, U.S. COAST GUARD is a natural person and a citizen of the United States. One of the Coast Guard's primary duties is that the Coast Guard shall administer laws and promulgate and enforce regulations for the Upromotion of safety of life and property on and under the high seas and waters subject to the jurisdiction of the United States covering all matters not specifically delegated by law to some other executive departmentU (see 14 U.S.C. § 2 PRIMARY DUTIES OF THE U.S. COAST GUARD). Admiral Robert Papp is sued in his individual and official capacity as Commandant of the Coast Guard for the wrongful, willful, malicious conduct of Coast Guard officers from 2002 to the present in retaliation not only for my advocacy for Second Amendment rights of seamen but for naming the Coast Guard in two lawsuits in 2002. The central question for the Coast Guard is whether the Oath of Office under 5 U.S.C. § 3331 as embodied in the Coast Guard Form CG-9556 *ACCEPTANCE AND OATH OF OFFICE* invoked a strictly ministerial duty[2] to grant my Second Amendment application for the non-existent *NATIONAL OPEN CARRY HANDGUN* endorsement for the now obsolete (ID card-style) *MERCHANT MARINER'S DOCUMENT* (MMD). The Coast Guard has replaced the MMD with the new passport-style *MERCHANT MARINER'S CREDENTIAL* and added, the *TRANSPORTATION WORKER'S IDENTIFICATION CARD*, which is another

[2] Ministerial duty is defined by Black's Law Dictionary as a duty that is absolute and imperative, requiring neither the exercise of official discretion nor judgment.

burdensome and costly document for seamen. It is as though the bureaucratic regulatory process is running out of control with no regard to the Bill of Rights for seamen. The pivotal, 28 U.S.C. § 1331 *FEDERAL QUESTION*, is whether the Coast Guard violated my procedural due process rights under the *ADMINISTRATIVE PROCEDURES ACT*, civil rights, my constitutional rights (i.e., the Second Amendment), and my right to armed self-defense in the form of the *NATIONAL OPEN CARRY HANDGUN* endorsement. Another question is whether the Coast Guard is guilty of negligence in law, hazardous negligence, criminal negligence, active negligence, and/or gross negligence, reckless negligence, wanton negligence willful negligence, or wanton and willful negligence equating to fraud by implementing *TITLE 33 OF THE CODE OF FEDERAL REGULATION*, *PART 101 MARITIME SECURITY – GENERAL; PART 103 MARITIME SECURITY – AREA MARITIME SECURITY; PART 104 MARITIME SECURITY – VESSELS; PART 105 MARITIME SECURITY – FACILITIES; PART 106 MARITIME SECURITY – OUTER CONTINENTAL SHELF FACILITIES* by not taking into account the Second Amendment rights of maritime personnel their right to keep and bear arms in intrastate, interstate, nautical, and maritime travel.

2. STATUTORY WAIVER OF SOVEREIGN IMMUNITY

The following waivers of sovereign immunity allow the Plaintiff to sue the United States as a legal entity for the purpose of establishing the United States as a racketeering enterprise in regard to the Second Amendment (18 U.S.C. § 1961(4) *DEFINITION OF ENTERPRISE*) and the other named defendants defined as "persons" under the RICO Act (18 U.S.C. § 1961(3) *DEFINITION OF PERSON*) in their official and individual capacities under the RICO Act for racketeering activities against the Second Amendment and for racketeering activities against my right to a civil jury trial under the Seventh Amendment

46 C.F.R. § 1.01–30(a) Judicial Review.

> (a) Nothing in this chapter shall be construed to prohibit any party from seeking judicial review of any Commandant's decision or action taken pursuant to the regulations in this part or part 5 of this chapter with respect to suspension and revocation proceedings arising under 46 U.S.C. chapter 77.

46 C.F.R. § 1.03–15(a) General.

> (a) Any person directly affected by a decision or action taken under this chapter or under chapter III of this title, by or on behalf of the Coast Guard, except for matters covered by subpart J of part 5 of this chapter dealing with suspension-and-revocation hearings, shall follow the procedures contained in this section when requesting that the decision or action be reviewed, set aside, or revised.

5 U.S.C. § 702 Right of Review

> A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute,[3] is entitled to judicial review thereof. An action in a

[3] 46 U.S.C. § 7306. General Requirements and Classifications for Able Seamen

(a) To qualify for an endorsement as able seaman authorized by this section, an applicant must provide satisfactory proof that the applicant—

(3) is qualified professionally as demonstrated by an applicable examination or educational requirements; and

18 U.S.C. § 926A. INTERSTATE TRANSPORTATION OF FIREARMS:

court of the United States seeking relief other than money damages [4] and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority **shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party**. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injunctive decree shall specify the Federal officer or officers (by name or by title), and their successors in office, personally responsible for compliance.

28 U.S.C. § 1346(b)(1) through 28 U.S.C. § 2680(h)'s Proviso

Sovereign immunity is waived "with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of [Chapter 171 TORT CLAIMS PRECEDURE] and [28 U.S.C. § 1346(b) UNITED STATES AS DEFENDANT] of this title shall apply to any claim arising, on or after the date of the enactment of this proviso, out of … **false imprisonment**, … **abuse of process**, or **malicious prosecution**."

Waiver of sovereign immunity cannot be denied under discretionary clause of 28 U.S.C. § 2680(a) DISCRETIONARY EXCEPTION TO THE FEDERAL TORT CLAIMS PROCEDURE because the duty of the U.S. Coast Guard under the Second Amendment is ministerial, NOT discretionary as mandated by their *OATH OF OFFICE*. The Defendant U.S. Coast Guard cannot claim 28 U.S.C. § 2680(a) as an affirmative defense.

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18 U.S.C. § 1651–1661 Piracy and Privateering

10 U.S.C. § 351 Arming of American Vessels During War or Threat to National Security

10 U.S.C. § 311(b)(2) The Unorganized Militia

10 U.S.C. § 312(a)(8) MILITIA DUTY (Mariners in the sea service of a citizen of, or a merchant in, the United States are exempt from militia duty. (Exempt from both organized and unorganized militia duty—I presume.)

FEDERAL QUESTION: Are Mariners who are *NOT* in the sea service of a citizen of, or a merchant in, the United States (i.e., not employed as a seaman) exempt from organized or unorganized militia duty?

And Various Maritime and International Treaties under the Treaty Clause of the Constitution.

FEDERAL QUESTION: Do treaties override or supercede provisions in the Constitution of the United States?

[4] The relief sought under 5 U.S.C. § 702 Right of Review is the Merchant Mariner Credential endorsement for National Open Carry Handgun or Small Arms and Light Weapons in defiance of the United Nations Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects (UN Document A/CONF.192/15), and in defiance of the International Maritime Organization's Maritime Safety Committee's Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships, MSC/Circ.623/Rev.3, dated May 29, 2002 (i.e., the full scope of the Second Amendment right to keep and bear arms in intrastate, interstate, nautical, and maritime travel {for maritime travel: subject to traditional maritime law such as at the discretion of the master facing the possible or imminent threat of or actual attack by pirates on the high seas.}) Relief for money damages is sought through 28 U.S.C. § 1346(b)(1).

46 U.S.C. § 30903 WAIVER OF IMMUNITY (Suits in Admiralty Against the United States)

> (a) In General.— In a case in which, if a vessel were privately owned or operated, or if cargo were privately owned or possessed, or if a private person or property were involved, a civil action in admiralty could be maintained, a civil action in admiralty in personam may be brought against the United States or a federally-owned corporation. In a civil action in admiralty brought by the United States or a federally-owned corporation, an admiralty claim in personam may be filed or a setoff claimed against the United States or corporation.

CASE LAW for *SUITS IN ADMIRALTY ACT* (SIAA)[5]

Suits in admiralty may be brought against the United States under the *SUITS IN ADMIRALTY ACT*; [SIAA] waives the government's sovereign immunity and is a jurisdictional statute providing for maintenance of admiralty suits against the United States which encompasses all maritime torts alleged against the Unted States. *Gordon* v. *Lykes Bros. S.S. Co.*, Inc. C.A.5 (La.) 1988, 835 F.2d 96, rehearing denied 841 F.2d 396, certiorari denied 109 S.Ct. 73, 488 U.S. 825, 102 l.Ed.2d 50.

Congress has waived sovereign immunity for certain torts occurring on the high seas. *O'Barry* v. *United States*, S.D.Fla. 1995, 915 F.Supp. 345, affirmed 119 F.3d 10.

Merchant seamen could maintain actions for martime torts against the United States as employer, though the Jones Act, [46 U.S.C. § 30104 PERSONAL INJURY OR DEATH OF SEAMEN (JONES ACT),] former § 688 of this title, afforded them no relief. *Forgione* v. *United States*, C.A.3 (Pa.) 1953, 202 F.2d 249, certiorari denied 73 S.Ct. 950, 345 U.S. 966, 97 L.Ed. 1384.

3. The Case of *Nguyen* v. *United States* 556 F.3d 1244 (11th Cir. (Feb. 4, 2009) Clarifying the Relationship Between 28 U.S.C. § 2680(a) and (h)

As to the matter of Exceptions to the *FEDERAL TORT CLAIMS ACT* and the relationship between 28 U.S.C. § 2680(a) DISCRETIONARY EXCEPTION and 28 U.S.C. § 2680(h) EXCEPTIONS TO THE FEDERAL TORT CLAIMS ACT FOR ASSAULT, BATTERY, FALSE IMPRISONMENT, FALSE ARREST, MALICIOUS PROSECUTION, ABUSE OF PROCESS, LIBEL, SLANDER, MISREPRESENTATION, DECEIT, OR INTERFERENCE WITH CONTRACT RIGHTS, I cite and excerpt from the case of a naturalized U.S. citizen from Vietnam, *Andrew Nguyen, MD* v. *United States*, 11th Cir. No. 07-12874 (February 4, 2009). Because 71% of the 11th Circuit Opinion in *Nguyen* address the relationship between 289 U.S.C. § 2680(a) and § 2680(h) of the Federal Tort Claims Act it is beneficial to my case herein to include the Opinion in its entirety here:

Andrew Nguyen, MD v. *United States*,

11th Cir. No. 07-12874; 556 F.3d 1244
(February 4, 2009)

III.

When interpreting a statute, we always begin with its plain language. *See, e.g., Harris* v. *Garner*, 216 F.3d 970, 972–73 (11th Cir. 2000) (en banc); *In re Griffith*, 206 F.3d 1389, 1393 (11th Cir. 2000) (en banc); *United States* v. *Steele*, 147 F.3d 1316, 1318 (11th Cir. 1998) (en banc). Section 1346 of the FTCA provides in part that:

> [T]he district courts . . . shall have exclusive jurisdiction of civil actions on claims against the United States, for money damages . . . for injury or

[5] *SUITS IN ADMIRALTY ACT* 46 U.S.C. § 741–752 recodified as 46 U.S.C. § 30901–30918.

> loss of property, or personal injury or death caused by the negligent or wrongful act or omission of any employee of the Government while acting within the scope of his office or employment, under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

28 U.S.C. § 1346(b)(1) UNITED STATES AS DEFENDANT. That paragraph is a general waiver of sovereign immunity, but some of the waiver is taken back in the "Exceptions" section of the FTCA, which provides, among other things, that the waiver in § 1346(b) "shall not apply to":

> Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a discretionary function or duty on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

Id. § 2680(a). That subsection, which often is referred to as the discretionary function exception, generally shields the government from tort liability based on the acts or omissions of federal agencies and employees when they are exercising or performing a discretionary function.[6] *See, e.g., United States* v. *Gaubert*, 499 U.S. 315, 322–23, 111 S. Ct. 1267, 1273–74 (1991) (explaining that "the purpose of the [discretionary function] exception is to prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort, [and] when properly construed, the exception protects only governmental actions and decisions based on considerations of public policy" (citations and quotation marks omitted)). The subsection shields the government from liability by

[6] The test to determine whether a federal employee was exercising a "discretionary" function that would invoke sovereign immunity is as follows:

> The Supreme Court in [*United States* v.] *Gaubert* [, 499 U.S. 315, 111 S. Ct. 1267 (1991),] developed a two-step test to determine whether the government's conduct meets the discretionary function exception. We consider first whether the conduct involves an element of judgment or choice, which will be the case unless a federal statute, regulation, or policy specifically prescribes a course of action embodying a fixed or readily ascertainable standard. The conduct need not be confined to the policy or planning level.
>
> We then ask whether the judgment or choice is grounded in considerations of public policy, because the purpose of the discretionary function exception is to prevent judicial second-guessing of legislative and administrative decisions grounded in social, economic, and political policy through the medium of an action in tort. When established governmental policy, as expressed or implied by statute, regulation, or agency guidelines, allows a government agent to exercise discretion, it must be presumed that the agent's acts are grounded in policy when exercising that discretion. Our inquiry does not focus either on the subjective intent of the government agent, or on whether the agent actually weighed policy considerations, but on the nature of the actions taken and on whether they are susceptible to policy analysis.

Cranford v. *United States*, 466 F.3d 955, 958 (11th Cir. 2006) (alterations, citations, and quotation marks omitted).

taking claims that arise from discretionary functions out of the waiver of sovereign immunity contained in § 1346(b).

Before 1974 there was also a provision in § 2680 that unequivocally barred (by excepting from the waiver of sovereign immunity): "*Any claim arising out of assault, battery, false imprisonment, false arrest, malicious prosecution, abuse of process, libel, slander, misrepresentation, deceit, or interference with contract rights*." 28 U.S.C. § 2680(h) (1970). Whether a particular claim that was barred because it arose out of one of the torts specified in § 2680(h) was also barred by § 2680(a) because it resulted from a discretionary function did not matter. Once barred was enough. Sovereign immunity would bar "any claim" arising out of the causes of action listed in subsection (h) regardless of whether the conduct of the government agency or official was "discretionary" within the meaning of subsection (a). *See, e.g., Blitz* v. *Boog*, 328 F.2d 596, 599 (2d Cir. 1964) (holding that because subsection (h) barred plaintiff's false imprisonment claim, the court did "not have to pass upon the government's claim that the action is barred because the acts complained of were within the 'discretionary function' provision of 28 U.S.C.A. § 2680(a)"). **That was the statutory situation until Congress changed it in 1974**.[7]

That year Congress amended the statute by adding an important proviso to § 2680(h), which turned that subsection around as to specified claims against federal investigative and law enforcement officers. *See* Pub. L. No. 93-253, § 2, 88 Stat. 50, 50 (1974). Instead of excepting those claims from the waiver of sovereign immunity, as the subsection originally had, the proviso included them within the waiver. The specified claims are "any claim arising . . . out of assault, battery, **false imprisonment**, false arrest, **abuse of process**, or **malicious prosecution**" based on acts "of investigative or law enforcement officers of the United States . . . ." *Id.* As amended, § 2680(h) now reads in its entirety: [8]

The provision of this chapter and section 1346(b) [the general waiver of sovereign immunity] of this title shall not apply to—

> * * *
>
> (h) Any claim arising out of assault, battery, **false imprisonment**, false arrest, **malicious prosecution**, **abuse of process**, libel, slander, misrepresentation, deceit, or interference with contract rights: ***Provided,*** That, **with regard to acts or omissions of investigative or law enforcement officers of the United States Government, the provisions of this chapter and section 1346(b) of this title shall apply to any claim arising**, on or after the date of the enactment of this proviso, **out of assault**, battery, **false imprisonment**, false arrest, **abuse of process**, or **malicious prosecution**. For the purpose of this subsection, "**investigative or law enforcement officer**" means any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law.

[7] Plaintiff's emphasis.

[8] Plaintiff's emphasis.

28 U.S.C. § 2680(h). **The "date of the enactment of this proviso" was March 16, 1974**. See § 2, 88 Stat. at 50.

The straightforward meaning of subsection (h) as it now reads is that the United States has expressly waived its sovereign immunity for the claims listed in the proviso, which includes the claims made in this case. **We must determine, however, how that subsection interacts with subsection (a)**. *See Wachovia Bank, N.A.* v. *United States*, 455 F.3d 1261, 1267–68 (11th Cir. 2006) ("[I]n order to determine the plain meaning of the statute we must consider both the particular statutory language at issue and the language and design of the statute as a whole." (quotation marks omitted)). The government's position would mean that the waiver of sovereign immunity in the § 2680(h) proviso is taken away by subsection (a) which effectively reasserts sovereign immunity for claims based on discretionary functions. The question is whether the waiver of sovereign immunity in § 1346(b), which is un-waived to some extent by § 2680(a), is rewaived for the claims specified in § 2680(h)'s proviso.

As one court has recognized, the relationship between § 2680(a) and(h) has posed some interpretive problems:

> **Federal courts have struggled somewhat in deciding (1) the types of conduct the § 2680(a) discretionary function exception protects; and (2) whether and how to apply the exception in cases brought under the intentional tort proviso found in § 2680(h). The Supreme Court has provided guidance in unraveling the former mystery; the latter question, on the other hand, remains unsettled**.[9]

Medina v. *United States*, 259 F.3d 220, 224 (4th Cir. 2001). Much of the problem is that the "**any**" in subsection (a) battles the "**any**" in subsection (h). Section 2680(a) covers "[a]ny claim" involving a discretionary function, and § 2680(h) covers "any claim" arising from the torts that are listed in that subsection. We all know that "any" is all-embracing and means nothing less than all. *See, e.g., Ali* v. *Fed. Bureau of Prisons*, 552 U.S. ___,128 S. Ct. 831, 835–36 (2008); *United States* v. *Gonzales*, 520 U.S. 1, 5, 117 S. Ct. 1032, 1035 (1997); *Laperriere* v. *Vesta Ins. Group, Inc*., 526 F.3d 715, 726 (11th Cir. 2008); *Price* v. *Time*, Inc., 416 F.3d 1327, 1336 (11th Cir. 2005). **But what happens when two "anys" face off so that they cannot both be all-embracing? Which one must yield?** [10]

Two fundamental canons of statutory construction, as well as the clear Congressional purpose behind the § 2680(h) proviso, provide the answer, which is that to the extent of any overlap and conflict between that proviso and subsection (a), **the proviso wins**. First, the § 2680(h) proviso, which applies only to six specified claims arising from acts of two specified types of government officers, is more specific than the discretionary function exception in § 2680(a), which applies generally to claims arising from discretionary functions or duties of federal agencies or employees. **The canon is that a specific statutory provision trumps a general one**. *See ConArt, Inc.* v. *Hellmuth, Obata + Kassabaum, Inc*., 504 F.3d 1208, 1210 (11th Cir. 2007) ("[W]hen

[9] Plaintiff's emphasis.

[10] Plaintiff's emphasis.

presented with a potential overlap between the broadly sweeping terms of a statute of general application that appear to apply to an entire class, and the narrow but specific terms of a statute that apply to only a subgroup of that class, we avoid conflict between the two by reading the specific as an exception to the general."); *Tug Allie-B, Inc.* v. *United States*, 273 F.3d 936, 949 (11th Cir. 2001).[11]

Second, the § 2680(h) **proviso was brought about through an amendment enacted in 1974, while the (a) subsection has been part of the statute since 1946**. **When subsections battle, the contest goes to the younger one; the canon is that a later enacted provision controls to the extent of any conflict with an earlier one**. *See ConArt*, 504 F.3d at 1210 ("[W]here two statutory provisions would otherwise conflict, the earlier enacted one yields to the later one to the extent necessary to prevent the conflict."); *Tug Allie-B*, 273 F.3d at 948–49.[12]

These canons of statutory construction that we apply to § 2680(a) and (h) are an expression of common sense applied to textual interpretation. Consider a common sense analogy. A big, burly doorman guarding the entrance to an exclusive club shouts to a large crowd of people wanting to get in that none of them may enter. A moment or two later he speaks specifically to a few people in the crowd and tells them to go on in. No one would doubt that while the general group has been barred a privileged few have been given permission to enter. So it is with § 2680. The later and more specific statement in subsection (h) permitting the listed claims trumps the earlier and more general one in subsection (a) barring a broader class of claims. In that manner the "any" in the proviso to § 2680(h) wins the face off with the "any" in subsection (a).

The result we reach by application of the canons of statutory construction is also required by the Congressional purpose behind the proviso to § 2680(h), which could not be clearer. **In enacting that proviso in 1974, Congress made a major change in the law regarding sovereign immunity for certain types of claims arising from intentional torts by particular types of officers**. Up until that time subsection (h), which had been enacted in 1946 without the proviso, left sovereign immunity in place as far as eleven listed intentional torts were concerned. The Third Circuit has summed up the legislative intent behind subsection (h) as originally enacted—before the proviso was added:

> Section 2680(h) addresses itself primarily to intentional torts for which Congress was unwilling to assume liability. "This section [28 U.S.C. § 2680] specifies types of claims which would not be covered by this title. They include ... deliberate torts such as assault and battery; and others...." (Emphasis supplied.) *S.Rep. No. 1400*, 79th Cong., 2d Sess., at 33 (1946); Jayson, *Handling Federal Tort Claims*, Vol. 2, Sec. 260.01 n.1.
>
> In the hearings before the Committee on the Judiciary, House of Representatives, the following colloquy occurred with respect to this exception: "MR. ROBSION. On that point of deliberate assault that is where some agent of the Government gets in a fight with some fellow?

[11] Plaintiff's emphasis.

[12] Plaintiff's emphasis.

> MR. SHEA. Yes. MR. ROBSION. And socks him? MR. SHEA. That is right. MR. CRAVENS. Assume a C.C.C. automobile runs into a man and damages him then under the common law, where that still prevails, is not that considered an assault and is not the action based on assault and battery? MR. SHEA. I should think not. I should think under old common law rather that would be trespass on the case. MR. CRAVENS. Trespass on the case? MR. SHEA. Yes. MR. CRAVENS. I do not remember those things very well, but it seems to me there are some cases predicated on assault and battery even though they were personal injury cases. MR. SHEA. No; I think under common-law pleading you have the same writ, but it makes a distinction between an assault and negligence. MR. CRAVENS. This refers to a deliberate assault? MR. SHEA. That is right. MR. CRAVENS. If he hit someone deliberately? MR. SHEA. That is right. MR. CRAVENS. It is not intended to exclude negligent assaults? MR. SHEA. No. An injury caused by negligence could be considered under the bill." (Emphasis supplied.) *HEARINGS ON H.R. 5373 AND H.R. 6463 BEFORE THE HOUSE COMMITTEE OF THE JUDICIARY*, 77th Cong., 2nd Sess., ser. 13, at 33, 34 (1942).
>
> Does the injury sustained by [the plaintiff] arise out of an assault and battery? Assault and battery by definition are intentional acts. Intention is the very essence of the tortious act. Congress intended to exclude liability for injuries caused by intentional misconduct and not for negligence. This is consistent with the strong public policy expressed in the statute to waive immunity for injuries caused by negligence of employees and to except claims arising out of assault or battery.

Gibson v. *United States*, 457 F.2d 1391, 1395–96 (3d Cir. 1972) (some brackets added and footnote numbering omitted). That was the way things stood for nearly thirty years.

Then came two highly-publicized raids by federal narcotics agents on the homes of innocent families in Collinsville, Illinois. *See S. REP. NO. 93-588* (1974), reprinted in *1974 U.S.S.C.A.N.* 2789, 2790. Both raids were conducted without warrants, both were based on mistaken information, and both occurred on the same night in the same town.[13] Id.

In the first of the Collinsville raids federal agents smashed in the door of the Giglotto family's home, brandished pistols, threw Mr. Giglotto down and handcuffed him, interrogated him at gunpoint, pointed a pistol at Mrs. Giglotto as she pleaded for her husband's life, and ransacked the house. *See 119 CONG. REC. 23246* (1973). Only later did the agents realize that they were at the wrong address and leave. *Id.* In their wake, they left a smashed television, a broken camera, scattered books and clothes, scratched furniture, a shattered antique dragon, and two distraught people. Id.; see also id. at 14084.

[13] The Collinsville raids were widely reported by news media. See, e.g., In the Name of the Law, *Time*, May 14, 1973, at 38; Law Enforcement: The Collinsville Reich, *Newsweek*, May 14, 1973, at 45; Andrew H. Malcolm, Drug Raids Terrorize 2 Families–by Mistake, *N.Y. Times*, Apr. 29, 1973, at 1, 43. In discussing the need for an amendment to FTCA § 2680(h), several senators introduced into the Congressional Record news accounts of the raids. In the next two paragraphs of the text of this opinion we draw facts from that part of the record to show Congress' understanding about what had happened during the raids.

Later that evening federal narcotics agents led twenty-five members of the same strike force to the home of the Askew family who lived nearby. *Id.* at 14085. An agent forced his way in as Mr. Askew tried to close the door. *Id.* His wife fainted. Id. The officers searched the home and interrogated Mr. Askew at gunpoint. *Id.* at 14085, 23243. After the officers realized that they were at the wrong house, they left. *Id.*

Under § 2680(h) of the FTCA, as it was then written, sovereign immunity barred the innocent victims of the Collinsville raids from recovering damages from the government. *See 1974 U.S.C.C.A.N.* at 2790. ("There is no effective legal remedy against the Federal Government for the actual physical damage, much less the pain, suffering and humiliation to which the Collinsville families have been subjected.") Congress added the proviso to § 2680(h) to ensure that future victims of these kinds of torts inflicted by federal law enforcement officers or agents would have a damages remedy against the United States.

The Senate Report reinforces our understanding of the purpose of the proviso-adding amendment:

> During the course of these hearings several incidents were brought to the Committee's attention in which Federal narcotics agents engaged in abusive, illegal and unconstitutional 'no-knock' raids. The Committee's amendment is designed to prevent future abuses of the Federal 'no-knock' statute (21 U.S.C. 879). . . .
>
> As a general principle under present law, if a Federal agent violates someone's constitutional rights—for instance, Fourth Amendment rights against illegal search and seizure—there is no remedy against the Federal Government. This ancient doctrine—sovereign immunity—stands as a bar.
>
> Only recently was there even a right of action against the offending officers themselves. In the case of *Bivens* v. *Six Unknown Federal Narcotics Agents*, 403 U.S. 388 (1971), the Supreme Court held that the Fourth Amendment and elementary justice require that there b[e] a right of action against the Federal agents for illegal searches conducted in bad faith or without probable cause. Of course, Federal agents are usually judgment proof so this is a rather hollow remedy.
>
> For years scholars and commentators have contended that the Federal Government should be liable for the tortious acts of its law enforcement officers when they act in bad faith or without legal justification. However, the *FEDERAL TORTS CLAIMS ACT* (28 U.S.C. 2671-2680) the embodiment of sovereign immunity in the *UNITED STATES CODE*, protects the Federal Government from liability where its agents commit intentional torts such as assault and battery. The injustice of thi[s] provision should be manifest—for under the *FEDERAL TORTS CLAIMS ACT* a Federal mail truck driver creates direct federal liability if he negligently runs down a citizen on the street but the Federal Government is held harmless if a federal narcotics agent intentionally assaults that same citizen in the course of an illegal 'no-knock' raid. . . .

> The Committee amendment to the bill, contained in a new section 2 thereof, would add a proviso at the end of the intentional torts exception to the *FEDERAL TORT CLAIMS ACT* (28 U.S.C. 2680(h)). The effect of this provision is to deprive the Federal Government of the defense of sovereign immunity in cases in which Federal law enforcement agents, acting within the scope of their employment, or under color of Federal law, commit any of the following torts: assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process. Thus, after the date of enactment of this measure, innocent individuals who are subjected to raids of the type conducted in Collinsville, Illinois, will have a cause of action against the individual Federal agents and the Federal Government. Furthermore, this provision should be viewed as a counterpart to the Bivens case and its progenty [sic], in that it waives the defense of sovereign immunity so as to make the Government independently liable in damages for the same type of conduct that is alleged to have occurred in Bivens (and for which that case imposes liability upon the individual Government officials involved). . . .
>
> This whole matter was brought to the attention of the Committee in the context of the Collinsville raids, where the law enforcement abuses involved Fourth Amendment constitutional torts. Therefore, the Committee amendment would submit the Government to liability whenever its agents act under color of law so as to injure the public through search and seizures that are conducted without warrants or with warrants issued without probable cause. However, the Committee's amendment should not be viewed as limited to constitutional tort situations but would apply to any case in which a Federal law enforcement agent committed the tort while acting within the scope of his employment or under color of Federal law.

Id. at 2789–91.

Taking the allegations of the complaint in this case as true, as we must at this stage of the proceedings, Agent Yakubec was not acting with probable cause when he arrested Dr. Nguyen, and proceeding against the doctor was malicious prosecution. This is precisely the kind of factual situation for which Congress has expressly and specifically waived sovereign immunity under § 2680(h). It is what the Committee Report meant when it said: "The effect of this provision is to deprive the Federal Government of the defense of sovereign immunity in cases in which Federal law enforcement agents, acting within the scope of their employment, or under color of Federal law, commit any of the following torts: assault, battery, false imprisonment, false arrest, malicious prosecution, or abuse of process." Id. at 2791.

To hold in this case that the discretionary function exception in subsection (a) trumps the specific proviso in subsection (h) would defeat what we know to be the clear purpose of the 1974 amendment. *See Sutton* v. *United States*, 819 F.2d 1289, 1297 (5th Cir. 1987) (concluding that "if the law enforcement proviso is to be more than an illusory—now you see it, now you don't—remedy, the discretionary function exception cannot be an absolute bar which one must clear to proceed under § 2680(h)"). It would also modify the statute by either removing the proviso to § 2680(h), which Congress put

there, or by rewriting the words "any claim" in the proviso to mean only claims based on the performance of nondiscretionary functions. **We are not authorized to rewrite, revise, modify, or amend statutory language in the guise of interpreting it**, *Ali*, 128 S. Ct. at 841; *Artuz* v. *Bennett*, 531 U.S. 4, 10, 121 S. Ct. 361, 365 (2000); *In re Hedrick*, 524 F.3d 1175, 1187–88 (11th Cir. 2008); *Albritton* v. *Cagle's, Inc.*, 508 F.3d 1012, 1017 (11th Cir. 2007); *Harris*, 216 F.3d at 976, **especially when doing so would defeat the clear purpose behind the provision. We would give effect to the plain meaning and clear purpose of the statutory language by concluding that sovereign immunity does not bar a claim that falls within the proviso to subsection (h), regardless of whether the acts giving rise to it involve a discretionary function**.[14]

IV.

Although the Fifth Circuit agrees with our reconciliation of § 2680(a) with (h), *see* Sutton, 819 F.2d at 1297, five other circuits have taken a different approach about how the two subsections interact. They have concluded that even claims listed in the proviso to § 2680(h) are barred if they are based on the performance of discretionary functions within the meaning of § 2680(a). *See, e.g., Medina* v. *United States*, 259 F.3d 220, 224–26 (4th Cir. 2001); *Gasho* v. *United States*, 39 F.3d 1420, 1435 (9th Cir. 1994); *Garcia* v. *United States*, 826 F.2d 806, 809 (9th Cir. 1987); *Pooler* v. *United States*, 787 F.2d 868, 871–72 (3d Cir. 1986); *Gray* v. *Bell*, 712 F.2d 490, 508 (D.C. Cir. 1983); *Caban* v. *United States*, 671 F.2d 1230, 1234–35 (2d Cir. 1982).

Some of those decisions have tried to avoid making the subsection (h) proviso meaningless by defining "*discretionary*" in subsection (a) so narrowly that it excludes most of the actions of rank and file federal law enforcement officers that lead to subsection (h) proviso claims. *See Garcia*, 826 F.2d at 809 ("While law enforcement involves exercise of a certain amount of discretion on the part of individual officers, such decisions do not involve the sort of generalized social, economic and political policy choices that Congress intended to exempt from tort liability."); *Pooler*, 787 F.2d at 872 ("Reading the intentional tort proviso as limited to activities in the course of a search, a seizure or an arrest as a practical matter largely eliminates the likelihood of any overlap between section 2680(a) and section 2680(h)."); *Gray*, 712 F.2d at 508 ("[I]f the 'investigative or law enforcement officer' limitation in section 2680(h) is read to include primarily persons (such as police officers) whose jobs do not typically include discretionary functions, it will be rare that a suit permissible under the proviso to section 2680(h) is barred by section 2680(a)"); *Caban*, 671 F.2d at 1234–35 (holding that INS officers' decisions about whether to detain an alien did not constitute a discretionary function under the FTCA and that sovereign immunity did not bar the lawsuit). We recognize that every one of those decisions would reach the same result that we do in

[14] Plaintiff's emphasis. Even if the Coast Guard's Final Agency Action was determined to be a discretionary act instead of a ministerial act under the Oath of Office to support and defend the Constitution and the Second Amendment rights of seamen it is the fact that the Coast Guard ordered my removal from a U.S. Government vessel anchored off the coast of Klaipėda, Lithuania causing, what I characterize and allege to be, my unlawful 12-day detention at the Hotel Klaipėda in Lithuania as false imprisonment qualifies as a waiver of sovereign immunity under 46 CFR § 1.01–30 Judicial review.

this case because Dr. Nguyen's claims arise from acts or omissions of Agent Yakubec that those other circuits would define as **non-discretionary**.[15]

Still, we are not persuaded to follow their approach. None of those other decisions addresses the war between the "**anys**"[16] in § 2680 (a) and (h). **None of them applies the canons of statutory construction under which a more specific and more recently enacted provision trumps a more general and earlier one. None of them comes to grips with the clear congressional purpose behind the enactment of the proviso to subsection (h). None of them persuades us to abandon our conclusion that if a claim is one of those listed in the proviso to subsection (h), there is no need to determine if the acts giving rise to it involve a discretionary function; sovereign immunity is waived in any event**.[17]

V.

Having laid out the law as we would decide it if we were writing on a clean slate, we turn now to whether there is anything on the precedential slate preventing us from making our conclusion a holding. **There are no Supreme Court decisions instructing us about the relationship between § 2680(a) and the proviso to subsection (h)**.[18] We are, of course, bound to follow prior panel precedent that is on point. There are only two decisions of our Court that arguably address the issue of sovereign immunity for any claim listed in the proviso to subsection (h) stemming from acts or omissions of federal investigative or law enforcement officers.[19] Neither reached a holding contrary to our conclusion.

The first of those two decisions is *Brown* v. *United States*, 653 F.2d 196 (5th Cir. Unit A Aug. 1981).[20] It did involve a claim, malicious prosecution, that is listed in the § 2680(h) proviso, but we had no occasion to decide anything about the interaction of the proviso and subsection (a) in *Brown* because sovereign immunity applied regardless. It applied regardless of subsections (a) and (h) because § 1346(b) itself provides that sovereign immunity is waived only "*under circumstances where the United States, if a private person, would be liable to the claimant in accordance with the law of the place where*

[15] Plaintiff's emphasis.

[16] Plaintiff's emphasis.

[17] Plaintiff's emphasis.

[18] Plaintiff's emphasis.

[19] *Seibert* v. *Baptist*, 594 F.2d 423 (5th Cir. 1979), is not such a decision because the claims in that case arose two years before the effective date of the § 2680(h) proviso, and it involved § 2680(c). Id. at 425–28. Nor is Mesa v. United States, 123 F.3d 1435 (11th Cir. 1997), which involved only negligence claims and in which we specifically refused to speculate about what might have happened if the plaintiffs had pursued claims based on the causes of action set forth in § 2680(h). Id. at 1437 n.3, 1439 n.5. Nor is Mid-South Holding Co. v. United States, 225 F.3d 1201 (11th Cir. 2000), which involved a claim about negligence in carrying out a search instead of any of the intentional tort claims listed in the § 2680(h) proviso. Id. at 1202, 1205.

[20] In our en banc decision *Bonner* v. *City of Prichard*, 661 F.2d 1206, 1209 (11th Cir. 1981), we adopted as binding precedent all decisions of the former Fifth Circuit handed down prior to October 1, 1981. The preexisting Fifth Circuit precedent that the *Bonner* decision adopted as binding precedent in this circuit includes all Unit A panel decisions issued before October 1, 1981. *United States* v. *Todd*, 108 F.3d 1329, 1333 n.5 (11th Cir. 1997).

the act or omission occurred."[21] 28 U.S.C. § 1346(b)(1). The pivotal fact in *Brown* was that there was no malice and as a result the malicious prosecution claim was not valid under the law of Texas, which is the place where the acts occurred. 653 F.2d at 199–201. There was, therefore, no occasion to decide what effect § 2680(a) or (h) would have had if there were a valid malicious prosecution claim. *See* id. at 201–02 ("We leave for another day the question of whether . . . a constitutional tort action 'arising out of' one of Section 2680(h)'s six enumerated torts is viable under the Act if sanctioned by 'the law of the place.'").

The other post-proviso decision of our Court addressing the issue of sovereign immunity in a lawsuit asserting some of the six claims listed in the proviso to § 2680(h) is *Adras* v. *Nelson*, 917 F.2d 1552 (11th Cir. 1990). That case involved allegations that INS officials had **unlawfully detained**[22] black Haitian refugees and discriminated against them on the grounds of national origin and race. *Id*. at 1553. The plaintiffs, who were excludable aliens,[23] brought a large number of claims under the FTCA including ones for abuse of process and false imprisonment, which are two of the claims listed in the § 2680(h) proviso. *Id*. At 1555. We held that the claims were barred by sovereign immunity because they "ar[o]se from the exercise or the performance of a discretionary function on the part of the government and its agents and . . . the defendants are shielded from liability by the provisions of Section 2680(a)." *Id*.

Under the facts of the Adras case, and specifically in the context of immigration and the rights of excludable aliens, we reasoned that the claims were a direct attack on a discretionary decision by the Attorney General because he had weighed policy considerations in deciding to withhold parole for excludable aliens. *Id*. at 1556 ("[T]he Attorney General is under no obligation to parole excludable aliens—he may do so in his discretion." (emphasis and quotation marks omitted)). We explained that:

> Excludable aliens cannot challenge the decisions of executive officials with regard to their applications for admission, asylum, or parole on the basis of the rights guaranteed by the United States Constitution. They do have rights, however, to whatever process Congress—and through its regulations and established policies, the Executive Branch—have extended them.

Id. at 1554.

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[21] Plaintiff's emphasis.

[22] Plaintiff's emphasis. Comparable to the U.S. Coast Guard, through the services of NCIS unlawfully detained me from a U.S. Government vessel anchored off the coast of Klaipėda, Lithuania for a wrongful criminal interrogation over a Second Amendment article I emailed to Capt. Brusseau from which he unreasonably perceived a threat. The NCIS agents confirmed my innocence as a Second Amendment advocating seamen's rights under the Second Amendment. Capt. Brusseau's actions caused me to miss the ship's sailing on the following day for a 10-day exercise with the U.S. Navy for which I was "stranded" in Klaipėda, Lithuania even though I was provided with hotel accommodation for 12 days waiting for the vessel to arrive at its next port of call, Tallinn, Estonia. The emotional distress resulted from 12-day cultural isolation in a foreign country compounded by the knowledge that Capt. Brusseau retaliated with the NCIS criminal investigation simply because I exercised First Amendment rights to free speech and to petition for Second Amendment rights of seamen.

[23] "[E]xcludable aliens are those who seek admission into the United States but have not achieved entry." *Adras*, 917 F.2d at 1555.

The § 2680(h) proviso was not even mentioned in the *Adras* decision. The reason probably is that the lawsuit does not appear to have been brought because of "*acts or omissions of investigative or law enforcement officers of the United States*," and if it was not brought because of acts or omissions of those specific types of officers, the proviso did not apply. *See* 28 U.S.C. § 2680(h). The term "*investigative or law enforcement officer*" is defined in the proviso to mean "*any officer of the United States who is empowered by law to execute searches, to seize evidence, or to make arrests for violations of Federal law*." *Id*. The *Adras* lawsuit was brought against officials of the Immigration and Naturalization Service responsible for the policy that resulted in detention of the excludable alien plaintiffs and apparently not against rank and file investigative and law enforcement officers. *See* 917 F.2d at 1553. According to the docket sheet in the *Adras* case the following INS officials were listed as defendants: Alan C. Nelson, Commissioner of Immigration and Naturalization Service; Doris Meissner, former Acting Commissioner, INS; David Crosland, former General Counsel and former Acting Commissioner, INS; Hugh J. Brien, former Acting Associate Commissioner of INS for Enforcement; Joe Howerton, former District Director District VI, INS; Leonard Rowland, Assistant District Director, Detention and Deportation; District VI, INS; the United States; the INS; and John Does I–XXV.[24] *See Adras* v. *Nelson*, No. 85-0197-CIV-Scott (S.D. Fla. March 14, 1989).

Even if some of the John Doe defendants in the *Adras* case had been working investigative or law enforcement officers—and there is no indication that they were—the decision in that case would not control this one. Regardless of who the defendants were and how the claims were cast in that case, the plaintiffs' grievances were not with the agents who had **ministerially**[25] carried out the Attorney General's detention policy but with the Attorney General and other high ranking officials who were responsible for the existence of that policy. *Cf. Jean* v. *Nelson*, 727 F.2d 957, 967 (11th Cir. 1984) ("[A]s a result of the existence of inherent executive power over immigration and the broad delegations of discretionary authority in the INA, the separation-of-powers doctrine places few restrictions on executive officials in dealing with aliens who come to this country in search of admission or asylum."). The district court explained that the allegations in the plaintiffs' complaint were based "on Defendants' initiating, planning, supervising, coordinating, and preparing the detention policy and subsequent detention of Plaintiffs." *See* No. 85-0197-CIV-Scott at 6. The Attorney General, not any local INS agents, was the source of the policy about which the plaintiffs complained. *See Adras*, 917 F.2d at 1556 ("The district court noted that '[p]laintiffs were detained as a result of the Attorney General's order requiring INS officials to hold without parole all aliens unable to establish a prima facie case for admission.'" (citations omitted)).

Even if the Attorney General does fit within the definition of "investigative or law enforcement officer" contained in the last sentence of the § 2680(h) proviso, the *Adras*[26]

[24] We take judicial notice of the docket sheet in *Adras* in order to determine the identity of the defendants in that case. *See United States* v. *Glover*, 179 F.3d 1300, 1302 n.5 (11th Cir. 1999) ("A court may take judicial notice of its own records and the records of inferior courts.").

[25] Plaintiff's emphasis.

[26] The Attorney General has very broad authority and is empowered to perform all the functions that anyone in the Department of Justice is authorized to perform except for three specifically listed functions that have no application here. *See* 28 U.S.C. § 509 (providing that "[a]ll functions of other officers of the Department of Justice

decision extends no further than the facts of that case. *See Watts* v. *BellSouth Telecomms., Inc.*, 316 F.3d 1203, 1207 (11th Cir. 2003) ("[J]udicial decisions cannot make law beyond the facts of the cases in which those decisions are announced."). The central fact that defines the Adras decision and limits its scope is that the claims arose not from an investigative or law enforcement officer's decision to search or arrest or charge in a particular case but from a general policy decision made in the exercise of his discretion by a high official in the Executive branch. *See* 917 F.2d at 1556.

At least where the special circumstances present in the *Adras* case do not exist, and the § 2680(h) proviso applies to waive sovereign immunity, the exception to waiver contained in § 2680(a) is of no effect. To the extent of any conflict, the later enacted and more specific subsection (h) proviso trumps the earlier and more general subsection (a), as Congress clearly intended that it would.

4. THE ABOVE WAIVERS OF SOVEREIGN IMMUINITY OPENS THE DOOR TO RICO ACT ALLEGATIONS AGAINST THE DEFENDANTS.

A. Citing U.S. Department of Justice, RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS: A MANUAL FOR FEDERAL PROSECUTORS, Fourth Edition, July 2000

II. DEFINITIONS: 18 U.S.C. § 1961[27]

D. Enterprise

The term enterprise includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity. 18 U.S.C. § 1961(4). (For a full discussion of the enterprise's required relationship to interstate and foreign commerce, see infra Section III(C)(3)). It is now settled that the term enterprise encompasses both legitimate and illegitimate enterprises. *United States* v. *Turkette*, 452 U.S. 576 (1981).[28] Prosecution under RICO, however,

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and all functions of agencies and employees of the Department of Justice are vested in the Attorney General" except three listed functions). [Plaintiff's Note: The three listed functions are:

> (1) vested by [Part I The Agencies Generally, Chapter 5 Administrative Procedure, Subchapter II Administrative Procedure] of title 5 Government Organization and Employees] in administrative law judges employed by the Department of Justice;
>
> (2) of the Federal Prison Industries, Inc.; and

(3) of the Board of Directors and officers of the Federal Prison Industries, Inc.]

[27] Prepared by the Staff of the Organized Crime and Racketeering Section (OCRS), U.S. Department of Justice, Washington, DC 20530, (pp. 39-46). Available Online at:

http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/rico.pdf,

[28] See also *United States* v. *Doherty*, 867 F.2d 47, 68 (1st Cir. 1989); *United States* v. *Blackwood*, 768F.2d 131 (7th Cir.), cert. denied, 474 U.S. 1020 (1985); *United States* v. *Ruggiero*, 726 F.2d 913, 923 (2d Cir.), cert. denied, 469 U.S. 831 (1984); *United States* v. *Cauble*, 706 F.2d 1322, 1330 (5th Cir. 1983), cert. denied, 465 U.S. 1005 (1984); *United States* v. *Lemm*, 680 F.2d 1193, 1198 (8th Cir. 1982), cert. denied, 459 U.S. 1110 (1983); *United States* v. *Bledsoe*, 674 F.2d 647, 662 (8th Cir. 1982), cert. denied, 459 U.S. 1040 (1983); *United States* v. *Thevis*, 665 F.2d 616, 626 (5th Cir.), cert. denied, 456 U.S. 1008 (1982); *United States* v. *Griffin*, 660 F.2d 996, 999 (4th Cir. 1981), cert. denied, 454 U.S. 1156 (1982); *United States* v. *Martino*, 648 F.2d 367, 380-81 (5th Cir. 1981), rev'd in part on other grounds, 681 F.2d 952 (5th Cir.) (en banc), cert. denied, 456 U.S. 949 (1982); *United States* v. *Clark*, 646 F.2d 1259, 1267 n.7 (8th Cir. 1981); *United States* v. *Sutton*, 642 F.2d 1001,

does not require proof that either the defendant or the enterprise was connected to organized crime.[29]

(2). Types of Enterprises

The courts have given a broad reading to the term enterprise. Noting that Congress mandated a liberal construction of the RICO statute in order to effectuate its remedial purposes and pointing to the expansive use of the word includes in the statutory definition of the term, courts have held that the list of enumerated entities in Section 1961(4) is not exhaustive but merely illustrative.[30] Thus public and **governmental entities** as well as private entities may constitute a RICO enterprise,[31] including commercial entities such as corporations[32] or groups of corporations[33] (both foreign and

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1006-09 (6th Cir. 1980) (en banc), cert. denied, 453 U.S. 912 (1981); *United States* v. *Errico*, 635 F.2d 152, 155 (2d Cir. 1980), cert. denied, 453 U.S. 911 (1981); *United States* v. *Provenzano*, 620 F.2d 985, 992-93 (3d Cir.), cert. denied, 449 U.S. 899 (1980); *United States* v. *Aleman*, 609 F.2d 298, 304-05 (7th Cir. 1979), cert. denied, 445 U.S. 946 (1980); *United States* v. *Rone*, 598 F.2d 564, 568-69 (9th Cir. 1979), cert. denied, 445 U.S. 946 (1980); *United States* v. *Swiderski*, 593 F.2d 1246, 1248-49 (D.C. Cir. 1978), cert. denied, 441 U.S. 993 (1979). An enterprise, however, cannot be an inanimate object such as a bank account, *Guidry* v. *Bank of LaPlace*, 954 F.2d 278, 283 (5th Cir. 1992), or an apartment building, *Elliott* v. *Foufas*, 867 F.2d 877, 881 (5th Cir. 1989).

[29] See *National Organization for Women, Inc.* v. *Scheidler*, 510 U.S. 249, 260 (1994); *H.J. Inc.* v. *Northwestern Bell Telephone Co.*, 492 U.S. 229, 245, 248-49 (1989); *United States* v. *Aucoin*, 964 F.2d 1492, 1496 (5th Cir.), cert. denied, 506 U.S. 1023 (1992); *United States* v. *Ruiz*, 905 F.2d 499, 502 (1st Cir. 1990); *Plains Resources, Inc.* v. *Gable*, 782 F.2d 883, 886-87 (10th Cir. 1986); *United States* v. *Hunt*, 749 F.2d 1078, 1088 (4th Cir. 1984), cert. denied, 472 U.S. 1018 (1985); *United States* v. *Romano*, 736 F.2d 1432, 1441 (11th Cir. 1985); *United States* v. *Cauble*, 706 F.2d 1322, 1330 (5th Cir. 1983), cert. denied, 465 U.S. 1005 (1984). *See also United States* v. *Gottesman*, 724 F.2d 1517, 1521 (11th Cir. 1984); *Moss* v. *Morgan Stanley, Inc.*, 719 F.2d 5, 21 (2d Cir. 1983), cert. denied, 465 U.S. 1025 (1984); *Bennett* v. *Berg*, 685 F.2d 1053, 1063 (8th Cir.), aff'd in part, rev'd in part, 710 F.2d 1361 (8th Cir. 1982), cert. denied, 464 U.S. 1008 (1983); *United States* v. *Bledsoe*, 674 F.2d 647, 663 (8th Cir. 1982), cert. denied, 459 U.S. 1040 (1984); *United States* v. *Uni Oil, Inc.*, 646 F.2d 946, 953 (5th Cir. 1981), cert. denied, 455 U.S. 908 (1982); *United States* v. *Aleman*, 609 F.2d 298, 303 (7th Cir. 1979), cert. denied, 423 U.S. 946 (1980); *United States* v. *Campanale*, 518 F. 1975), cert. denied, 423 U.S. 1050 (1976).

[30] See *United States* v. *London*, 66 F.3d 1243-44 (1st Cir. 1995) (association-in-fact enterprise consisting of bar and check cashing business), cert. denied, 116 S. Ct. 1542 (1996); *United States* v. *Aimone*, 715 F.2d 822, 828 (3d Cir. 1983), cert. denied, 468 U.S. 1217 (1984); *United States* v. *Thevis*, 665 F.2d 616, 625 (5th Cir.), cert. denied, 456 U.S. 1008 (1982); *United States* v. *Angelilli*, 660 F.2d 23, 31 (2d Cir. 1981), cert. denied, 455 U.S. 945 (1982). *See also United States* v. *Huber*, 603 F.2d 387, 394 (2d Cir. 1979), cert. denied, 445 U.S. 927 (1980); *United States* v. *Perkins*, 596 F. Supp. 528, 530-31 (E.D. Pa.), aff'd, 749 F.2d 28 (3d Cir. 1984), cert. denied, 471 U.S. 1015 (1985). Cf. *United States* v. *Turkette*, 452 U.S. 576, 580 (1981) ([t]here is no restriction upon the associations embraced by the definition [of enterprise]).

[31] *See United States* v. *Lee Stoller Enterprise*, 652 F.2d 1313, 1318 (7th Cir.), cert. denied, 517 U.S. 1155 (1981); *United States* v. *Clark*, 646 F.2d 1259, 1263 (8th Cir. 1981); *United States* v. *Frumento*, 563 F.2d 1083, 1090-92 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1978); *see also United States* v. *Brown*, 555 F.2d 407, 415-16 (5th Cir. 1977), cert. denied, 435 U.S. 904 (1978); *United States* v. *Barber*, 476 F. Supp. 182 (S.D. W. Va. 1979), aff'd, 668 F.2d 778 (4th Cir.), cert. denied, 459 U.S. 829 (1982).

[32] *See United States* v. *Kravitz*, 738 F.2d 102, 113 (3d Cir. 1984) (health care delivery corporation), cert. denied, 470 U.S. 1052 (1985); *United States* v. *Hartley*, 678 F.2d 961, 988 n.43 (11th Cir. 1982) (corporation producing seafood products), cert. denied, 459 U.S. 1170 (1983); *United States* v. *Webster*, 639 F.2d 174, 184 n.4 (4th Cir.) (tavern and liquor store), cert. denied, 454 U.S. 857 (1981); *United States* v. *Zemek*, 634 F.2d 1159, 1167 (9th Cir. 1980) (taverns), cert. denied, 450 U.S. 916 (1981); *United States* v. *Weisman*, 624 F.2d 1118, 1120 (2d

domestic),[34] partnerships,[35] sole proprietorships[36] and cooperatives;[37] benevolent and non-profit organizations such as unions and union benefit funds,[38] schools,[39] and

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Cir.) (theater), cert. denied, 449 U.S. 871 (1980); *United States* v. *Swiderski*, 593 F.2d 1246, 1248 (D.C. Cir. 1978) (restaurant serving as front for narcotics trafficking), cert. denied, 441 U.S. 933 (1979); *United States* v. *Brown*, 583 F.2d 659, 661 (3d Cir. 1978) (auto dealership), cert. denied, 440 U.S. 909 (1979); *United States* v. *Forsythe*, 560 F.2d 1127, 1135-36 (3d Cir. 1977) (bail bond agency).

[33] *See Securitron Magnalock Corp*. v. *Schnabolk*, 65 F.3d 256, 262-64 (2d Cir. 1995) (defendant and two corporations constituted the RICO enterprise), cert. denied, 516 U.S. 1114 (1996); *United States* v. *Kirk*, 844 F.2d 660, 664 (9th Cir.)(group of corporations), cert. denied, 488 U.S. 890 (1988); *United States* v. *Huber*, 603 F.2d 387, 394 (2d Cir. 1979) (group of corporations can be an enterprise within meaning of RICO), cert. denied, 445 U.S. 927 (1980); *United States* v. *Perkins*, 596 F. Supp. 528, 530-31 (E.D. Pa.), aff'd, 749 F.2d 28 (3d Cir. 1984) (group of corporations set up by defendant to defraud government constituted a RICO enterprise), cert. denied, 471 U.S. 1015 (1985); *United States* v. *Pryba*, 674 F. Supp. 1504, 1508 (E.D. Va. 1987) (enterprise could consist of group of individuals and corporations); *Snider* v. *Lone Star Art Trading Co*., 659 F. Supp. 1249, 1253 (E.D. Mich. 1987)(combination of individuals and corporations meets enterprise definition); *Trak Microcomputer Corp*. v. *Wearne Bros*., 628 F. Supp. 1089, 1094-95 (N.D. Ill. 1985) (group of corporations can constitute RICO enterprise).

[34] *See United States* v. *Parness*, 503 F.2d 430, 439 (2d Cir. 1974) (foreign corporation can constitute a RICO enterprise), cert. denied, 419 U.S. 1105 (1975).

[35] *See United States* v. *Cauble*, 706 F.2d 1322, 1331 (5th Cir. 1983) (limited partnership), cert. denied, 465 U.S. 1005 (1984); *United States* v. *Zang*, 703 F.2d 1186, 1194 (10th Cir. 1982) (partnership), cert. denied, 464 U.S. 828 (1983); *United States* v. *Griffin*, 660 F.2d 996, 999 (4th Cir. 1981) (partnership may be enterprise), cert. denied, 454 U.S. 1156 (1982); *Eisenberg* v. *Gagnon*, 564 F. Supp. 1347, 1353 (E.D. Pa. 1983) (limited partnership); *United States* v. *Jannotti*, 501 F. Supp. 1182, 1185-86 (E.D. Pa. 1980), rev'd on other grounds, 673 F.2d 578 (3d Cir.) (en banc) (law firm operated through payment of bribes), cert. denied, 457 U.S. 1106 (1982).

[36] *See United States* v. *Benny*, 786 F.2d 1410, 1414-15 49 (9th Cir.), cert. denied, 479 U.S. 1017 (1986); *McCullough* v. *Suter*, 757 F.2d 142 (7th Cir. 1985); *United States* v. *Tille*, 729 F.2d 615, 618 (9th Cir.), cert. denied, 471 U.S. 1064 (1984); *United States* v. *Melton*, 689 F.2d 679, 685 (7th Cir. 1982); *State Farm Fire & Casualty Co*. v. *Estate of Caton*, 540 F. Supp. 673, 676 (N.D. Ind. 1982). However, the sole proprietorship is not favored as a RICO enterprise. See cases infra at pp. 73-75.

[37] *See United States* v. *Bledsoe*, 674 F.2d 647, 660 (8th Cir. 1982) (dicta), cert. denied, 459 U.S. 1040

(1983).

[38] *See United States* v. *Norton*, 867 F.2d 1354, 1359 (11th Cir. 1989) (the Laborers International Union of North America, its subordinate local unions and its affiliated employee benefit funds); *United States* v. *Robilotto*, 828 F.2d 940, 947 (2d Cir. 1987) (Local 294 of the International Brotherhood of Teamsters), cert. denied, 484 U.S. 1011 (1988); *United States* v. *Provenzano*, 688 F.2d 194, 199-200 (3d Cir.) (Local 560 of the Teamsters Union), cert. denied, 459 U.S. 1071 (1982); *United States* v. *LeRoy*, 687 F.2d 610, 616-17 1982) (Local 214 of Laborers International Union of North America), cert. denied, 459 U.S. 1174 (1983); *United States* v. *Scotto*, 641 F.2d 47, 51, 54 (2d Cir. 1980) (Local 1814 of the International Longshoremen's Association), cert. denied, 452 U.S. 961 (1981); *United States* v. *Rubin*, 559 F.2d 975, 989 (5th Cir. 1977) (unions and employees welfare benefit plans), vacated and remanded, 439 U.S. 810 (1978), aff'd in part and rev'd in part on other grounds, 591 F.2d 278 (5th Cir.), cert. denied, 444 U.S. 864 (1979); *United States* v. Kaye, 556 F.2d 855, 861-62 (7th Cir.) (Local 714 of the International Brotherhood of Teamsters), cert. denied, 434 U.S. 921 (1977); *United States* v. *Campanale*, 518 F.2d 352, 355 (9th Cir. 1975) (applying RICO without discussion to Local 626 of the International Brotherhood of Teamsters), cert. denied, 423 U.S. 1050 (1976); *United States* v. *Local 560, International Brotherhood of Teamsters*, 581 F. Supp. 279, 335 (D.N.J. 1984), aff'd, 780 F.2d 267 (3d Cir. 1985) (Local 560 and its benefit fund), cert. denied, 476 U.S. 1140 (1986); *United States* v. *Field*, 432 F. Supp. 55, 57-58 (S.D.N.Y. 1977) (International Longshoremen's Association), aff'd, 578 F.2d 1371 (2d Cir.), cert. denied, 439 U.S. 801 (1978);

political associations;[40] **governmental units such as the offices of governors, state and congressional legislators**,[41] **courts and judicial offices**,[42] **police departments and sheriffs' offices**,[43] **county prosecutors' offices**,[44] tax bureaus,[45]

United States v. *Ladmer*, 429 F. Supp. 1231 (E.D.N.Y. 1977) (applying RICO without discussion to the International Production Service & Sales Employees Union, but dismissing action for failure to establish a pattern of racketeering activity); *United States* v. *Stofsky*, 409 F. Supp. 609 (S.D.N.Y. 1973) (applying RICO to a union representing workers in New York's fur garment manufacturing industry), aff'd, 527 F.2d 237 (2d Cir. 1975), cert. denied, 429 U.S. 819 (1976).

[39] *See United States* v. *Weatherspoon,* 581 F.2d 595, 597-98 (7th Cir. 1978) (beauty college approved for veterans' vocational training by the Veterans Administration).

[40] *See Hudson* v. *LaRouche*, 579 F. Supp. 623, 628 (S.D.N.Y. 1983) (unincorporated national political association affiliated with a political candidate).

[41] *See United States* v. *Blandford*, 33 F.3d 685, 703 (6th Cir.) (Office of the Representative for House District 14 together with individuals employed therein), cert. denied, 514 U.S. 1095 (1995); *United States* v. *McDade*, 28 F.3d 283, 295-96 (3d Cir.) (Congressman McDade and his Congressional offices in Washington, D.C. and in the 10th Congressional District of Pennsylvania), cert. cert. denied, 514 U.S. 1003 (1995); *United States* v. *Freeman*, 6 F.3d 586, 596-97 (9th Cir. 1993)(Offices of the 49th Assembly District), cert. denied, 511 U.S. 1077 (1994); *United States* v. *Thompson*, 685 F.2d 993 (6th Cir. 1982) (en banc) (applying RICO to the Tennessee Governor's Office, but questioning the wisdom of not defining the enterprise in the indictment as a group of individuals associated in fact that made use of the office of Governor of the State of Tennessee), cert. denied, 459 U.S. 1072 (1983); *United States* v. *Long*, 651 F.2d 239, 241 (4th Cir.) (office of Senator in the South Carolina legislature), cert. denied, 454 U.S. 896 (1981); *United States* v. *Sisk*, 476 F. Supp. 1061, 1062-63 (M.D. Tenn. 1979), aff'd, 629 F.2d 1174 (6th Cir. 1980) (Tennessee Governor's Office), cert. denied, 449 U.S. 1084 (1981); *see also United States* v. *Gillock*, 445 U.S. 360, 373 n.11 (1979) ([o]f course, even a member of Congress would not be immune under the federal Speech or Debate Clause from prosecution for the acts which form the basis of the . . . [RICO] charges here). *But see United States* v. *Mandel*, 415 F. Supp. 997, 1020-22 (D. Md. 1976), rev'd on other grounds, 591 F.2d 1347 (4th Cir.), aff'd on reh'g, 602 F.2d 653 (4th Cir. 1979) (en banc) (state of Maryland not an enterprise for RICO purposes), cert. denied, 445 U.S. 961 (1980). Mandel, however, has been discredited by all courts that have considered the issue, including the Fourth Circuit. *See, e.g., United States* v. *Angelilli*, 660 F.2d 23, 33 n.10 (2d Cir. 1981), cert. denied, 455 U.S. 945 (1982); *United States* v. *Long*, 651 F.2d 239, 241 (4th Cir.), cert. denied, 454 U.S. 896 (1981); United States v. Clark, 646 F.2d 1259, 1261-67 (8th Cir. 1981); *United States* v. *Altomare*, 625 F.2d 5, 7 n.7 (4th Cir. 1980*); United States* v. *Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980); *see also United States* v. *Powell*, No. 87 CR 872-3 (N.D. Ill. February 27, 1988) (City of Chicago proper enterprise for purposes of RICO); *State of New York* v. *O'Hara*, 652 F. Supp. 1049 (W.D.N.Y. 1987) (in civil RICO suit, City of Niagara Falls proper enterprise); *Commonwealth* v. *Cianfrani*, 600 F. Supp. 1364 (E.D. Pa. 1985) (Pennsylvania Senate).

[42] *See United States* v. *Grubb*, 11 F.3d 426, 438 (4th Cir. 1993)(55 Office of the 7th Judicial Circuit); *United States* v. *Conn*, 769 F.2d 420, 424-25 (7th Cir. 1985) (Cook County Circuit Court); *United States* v. *Blackwood*, 768 F.2d 131, 137-38 (7th Cir.) (Cook County Circuit Court), cert. denied, 474 U.S. 1020 (1985); *United States* v. *Angelilli*, 660 F.2d 23, 30-34 (2d Cir. 1981) (New York City Civil Court), cert. denied, 455 U.S. 945 (1982); *United States* v. *Sutherland*, 656 F.2d 1181 (5th Cir. 1981) (applying RICO without discussion to Municipal Court of El Paso, Texas), cert. denied, 455 U.S. 949 (1982); *United States* v. *Stratton*, 649 F.2d 1066, 1074-75 (5th Cir. 1981) (judicial circuit); *United States* v. *Bacheler*, 611 F.2d 443, 450 (3d Cir. 1979) (Philadelphia Traffic Court); *United States* v. *Joseph*, 526 F. Supp. 504, 507 (E.D. Pa. 1981) (Office of the Clerk of Courts of Lehigh County, Pennsylvania); *United States* v. *Vignola*, 464 F. Supp. 1091 (E.D. Pa.), aff'd, 605 F.2d 1199 (3d Cir. 1979) (same), cert. denied, 444 U.S. 1072 (1980).

[43] *See United States* v. *DePeri*, 778 F.2d 963 (3d Cir. 1985) (Philadelphia Police Department), cert. denied, 475 U.S. 1109 (1986); *United States* v. *Alonso*, 740 F.2d 862, 870 (11th Cir. 1984) (Dade County Public Safety

fire departments,[46] **and executive departments and agencies**.[47] **An enterprise may also be comprised of a combination of entities**[48] **called an association-in-fact**.[49]

Department, Homicide Section), cert. denied, 469 U.S. 1166 (1985); *United States* v. *Ambrose*, 740 F.2d 505, 512 (7th Cir. 1984) (Chicago Police Department), cert. denied, 472 U.S. 1017 (1985); *United States* v. *Davis*, 707 F.2d 880, 882-83 (6th Cir. 1983) (Sheriff's Office of Mahoning County, Ohio); *United States* v. *Lee Stoller Enterprise, Inc*., 652 F.2d 1313, 1316-19 (7th Cir.) (Sheriff's Office of Madison County, Illinois), cert. denied, 454 U.S. 1082 (1981); *United States* v. *Bright*, 630 F.2d 804, 829 (5th Cir. 1980) (Sheriff's Office of DeSoto County, Mississippi); *United States* v. *Karas*, 624 F.2d 500, 504 (4th Cir. 1980) (Office of County Law Enforcement Officials), cert. denied, 449 U.S. 1078 (1981); *United States* v. *Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980) (Sheriff's Department of Wilson County, North Carolina); *United States* v. *Grzywacz*, 603 F.2d 682, 685-87 (7th Cir. 1979) (Police Department of Madison, Illinois), cert. denied, 446 U.S. 935 (1980); *United States* v. *Burnsed*, 566 F.2d 882 (4th Cir. 1977) (applying RICO without discussion to the Vice Squad of the Charleston, South Carolina Police Department), cert. denied, 434 U.S. 1077 (1978); *United States* v. *Brown*, 555 F.2d 407, 415-16 (5th Cir. 1977) (Macon, Georgia Municipal Police Department), cert. denied, 435 U.S. 904 (1978); *United States* v. *Cryan*, 490 F. Supp. 1234, 1239-44 (D.N.J.) (applying RICO to Sheriff's Office of Essex County, New Jersey, but limiting RICO culpability to only those defendants who actually committed or authorized the acts charged in the indictment), aff'd, 636 F.2d 1211 (3d Cir. 1980).

[44] *See United States* v. *Goot*, 894 F.2d 231, 239 (7th Cir.), cert. denied, 498 U.S. 811 (1990); *United States* v. *Yonan*, 800 F.2d 167-68 (7th Cir. 1986) (Cook County State's Attorney's Office), cert. denied, 479 U.S. 1055 (1987); *United States* v. *Altomare*, 625 F.2d 5, 7 n.7 (4th Cir. 1980) (Office of Prosecuting Attorney of Hancock County, West Virginia).

[45] *See United States* v. *Burns*, 683 58 F.2d 1056, 1059 n.2 (7th Cir. 1982) (Cook County, Illinois, Board of Tax Appeals), cert. denied, 459 U.S. 1173 (1983); *United States* v. *Frumento*, 563 F.2d 1083, 1089-92 (3d Cir. 1977) (Pennsylvania Department of Revenue's Bureau of Cigarette and Beverage Taxes), cert. denied, 434 U.S. 1072 (1978).

[46] *See United States* v. Balzano, 916 F.2d 1273, 1290 (7th Cir. 1990)(Chicago Fire Department).

[47] See *United States* v. *Hocking*, 860 F.2d 769, 778 (8th Cir. 1988) (Illinois Department of Transportation); *United States* v. *Dozier*, 672 F.2d 531, 543 and n.8 (5th Cir.) (Louisiana Department of Agriculture), cert. denied, 459 U.S. 943 (1982); *United States* v. *Angelilli*, 660 F.2d 23, 33 n.10 (2d Cir. 1981), cert. denied, 455 U.S. 945 (1982); *United States* v. *Long*, 651 F.2d 239, 241 (4th Cir.), cert. denied, 454 U.S. 896 (1981); *United States* v. *Clark*, 646 F.2d 1259, 1261-67 (8th Cir. 1981); *United States* v. *Altomare*, 625 F.2d 5, 7 n.7 (4th Cir. 1980); *United States* v. *Baker*, 617 F.2d 1060, 1061 (4th Cir. 1980); *United States* v. *Davis*, 576 F.2d 1065, 1067 (3d Cir.) (warden of county prison), cert. denied, 439 U.S. 836 (1978); *State of Maryland* v. *Buzz Berg Wrecking Co*., 496 F. Supp. 245, 247-48 (D. Md. 1980) (Construction and Building Inspection Division of the Department of Housing and Community Development for the City of Baltimore); *United States* v. *Barber*, 476 F. Supp. 182, 191 (S.D. W. Va. 1979) (West Virginia Alcohol Beverage Control Commission).

[48] *See United States* v. *Parise*, 159 F.3d 790, 794-95 (3d Cir. 1998) (enterprise consisted of four organizations); *United States* v. *London*, 66 F.3d 1227, 1243-44 (1st Cir. 1995)(two or more legal entities), cert. denied, 511 U.S. 1155 (1996); *United States* v. *Console*, 13 F.3d 641, 652 (3d Cir. 1993)(law firm and medical practice), cert. denied, 511 U.S. 1076 (1994); *United States* v. *Blinder*, 10 F.3d 1468, 1473 (9th Cir. 1993)(six corporations); *United States* v. *Butler*, 954 F.2d 114, 120 (2d Cir. 1992) (broad enterprise consisting of Local 200, the pension funds, and Local 362); *United States* v. *Collins*, 927 F.2d 605 (6th Cir.)(Table)(group of corporations), cert. denied, 502 U.S. 858 (1991); *United States* v. *Masters*, 924 F.2d 1362, 1366 (7th Cir.)(law firm, two police departments, and three individuals who are defendants), cert. denied, 500 U.S. 919 (1991); *United States* v. *Stolfi*, 889 F.2d 378, 379-80 (2d Cir. 1989) (local union and its welfare benefit fund); *United States* v. *Feldman*, 853 F.2d 648, 655-59 (9th Cir. 1988) (association of five corporations and two individuals, including the defendant), cert. denied, 489 U.S. 1030 (1989); *United States* v. *Perholtz*, 842 F.2d 343, 352-54 (D.C. Cir.) (group of individuals, corporations, and partnerships), cert. denied, 488 U.S. 821 (1988); *United States* v. *Pryba*,

B. Pattern of Racketeering Activities

"A pattern may be comprised of any combination of two or more of these state or federal crimes committed within a statutorily prescribed time period. Moreover, the predicate acts must be related and amount to or pose a threat of, continued criminal activity." U.S. Department of Justice, *RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS: A MANUAL FOR FEDERAL PROSECUTORS*, Fourth Edition , July 2000, at 4.[50]

It is my allegation that the U.S. Congress blocking *ARTICLE V CONVENTION* calls by the States to amend the Constitution;[51] the Federal Government's Tenth Amendment power grab[52] against the

674 F. Supp. 1504, 1508 (E.D. Va. 1987) (enterprise could consist of group of individuals and corporations); *Snider* v. *Lone Star Art Trading Co*., 659 F. Supp. 1249, 1253 (E.D. Mich. 1987) (group of individuals and corporations proper enterprise); *United States* v. *Dellacroce*, 625 F. Supp. 1387, 1390 (E.D.N.Y. 1986) (two crews of the Gambino Crime Family and their supervisor sufficient RICO enterprise); *United States* v. *Aimone*, 715 F.2d 822, 826 (3d Cir. 1983) (enterprise may be comprised of a combination of illegal entities and a group of individuals associated in fact), cert. denied, 468 U.S. 1217 (1984); *United States* v. *Thevis*, 665 F.2d 616, 625-26 (5th Cir.), cert. denied, 456 U.S. 1008 (1982); *United States* v. *Huber*, 603 F.2d 387, 393-94 (2d Cir. 1979), cert. denied, 445 U.S. 927 (1980); *United States* v. *Campanale*, 518 F.2d 352, 357 n.11 (9th Cir. 1975) (enterprise composed of two corporations and a union), cert. denied, 423 U.S. 1050 (1976).

[49] *See United States* v. *Turkette*, 452 U.S. 576, 581 (1981); *United States* v. Nabors, 45 F.3d 238 (8th Cir. 1995) (association-in-fact consisting of the defendants); *United States* v. *Stefan*, 784 F.2d 1093, 1103 (11th Cir.) (enterprise consisting of a group of individuals associated in fact sufficient where individuals identified by name), cert. denied, 479 U.S. 1009 (1986); *United States* v. *Mitchell*, 777 F.2d 248, 259 (5th Cir. 1985) (group of individuals associated together for the purpose of importing marijuana sufficient for RICO enterprise), cert. denied, 476 U.S. 1184 (1986); *United States* v. *Local 560, Int'l Brotherhood of Teamsters*, 780 F.2d 267, 273 (3d Cir. 1985) (Provenzano group, group of individuals, could constitute enterprise), cert. denied, 476 U.S. 1140 (1986); *United States* v. *Santoro*, 647 F. Supp. 153, 176 (E.D.N.Y. 1986) (Luchese Family alleged as association-infact enterprise), aff'd, 880 F.2d 1319 (2d Cir. 1989); *Van Dorn Co*. v. *Howington*, 623 F. Supp. 1548, 1554 (N.D. Ohio 1985) (unnamed association of defendants could constitute proper enterprise).

[50] Available Online at: http://www.usdoj.gov/usao/eousa/foia_reading_room/usam/title9/rico.pdf.

[51] See *FRIENDS OF ARTICLE V CONVENTION* Website at www.foavc.org "Some opponents to Article V try to perpetuate fear of an Article V Convention by claiming that it could be a run-away convention. However, that fear-mongering is not based on any facts or history. Already, the American states have had 679 (or more) Constitutional Conventions, and none of them were run-away conventions. Recently, Iraq and Afghanistan have had Constitutional Conventions. Many nations have Constitutional Conventions. It should also be pointed out that no amendment to the U.S. Constitution can become law unless ratified by three-fourths of the states. That, by design, is a significant hurdle. Over 10,000 amendments to the U.S. Constitution have been proposed over the past 220 years, but only 27 have been ratified. Thus, the fear-mongering about a run-away convention is unjustified. What is a major concern however, is the blatant violation by Congress to call an Article V Convention as specified in the U.S. Constitution." *See LIST OF 679 AMERICAN STATE CONSTITUTIONAL CONVENTIONS* (between 1776 and 1917) at www.article-5.org/file.php/1/Articles/StateConstitutionalConventions.pdf. See also, Judge Bruce M. Van Sickle and Attorney Lynn M. Boughey, *A LAWFUL AND PEACEFUL REVOLUTION: ARTICLE V AND CONGRESS' PRESENT DUTY TO CALL A CONVENTION FOR PROPOSING AMENDMENTS*, Hamline Law Review (Fall 1990), in three parts. See also, Bill Walker (pro se), *ARTICLE V CONSTITUTIONAL CONVENTION HISTORY: BRIEF IN SUPPORT OF CONVENTION, GENERAL BRIEF ARGUMENTS*, pp. 215–268. (September 30, 2004). Joel S. Hirschhorn, *CONSTITUTIONAL RUBBISH,* (May 14, 2009)

http://foavc.org/file.php/1/Articles/ConstitutionalRubbish20090514.pdf.

http://www.article-5.org/file.php/1/Articles/StateConstitutionalConventions.pdf

States and the People and the States are fight back with the Tenth Amendment Resolution[53] and the Tenth Amendment Talking Points;[54] and Congress clamping down on Private Bills to zero from 1945 to 2008; and the U.S. Supreme Court's transition from the *TREASON DOCTRINE* under *Cohens* v. *Virginia* 19 U. S. 264 (1821),[55] to the *NO SET OF FACTS DOCTRINE* under *Conley* v. *Gibson*, 355 U. S. 41, 45-46 (1957),[56] to the *PLAUSIBLE STANDARD* under *Bell Atlantic Corp*. v. *Twombly* 550 U.S. 544 (2007),[57] establishes proof by the preponderance of the evidence that there is, in fact and law, a pattern of tyrannical government oppression sufficient to sustain the allegation of racketeering activity.

Citing U.S. Department of Justice, *RACKETEER INFLUENCED & CORRUPT ORGANIZATIONS: A MANUAL FOR FEDERAL PROSECUTORS*, Fourth Edition, July 2000, at 76–81 (footnotes omitted):

> E. Pattern of Racketeering Activity
>
> The definition of a *pattern of racketeering activity* is one of the most important in the RICO statute because it defines a key element of each substantive RICO offense under Section 1962. Section 1961(5) provides that a pattern of racketeering activity requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter [October 15, 1970] and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering.
>
> The two violations may both be state offenses, federal offenses, or a combination of the two; they may be violations of the same statute, or of different statutes; and the acts need not have previously been charged.104 The Supreme Court, however, has concluded that the pattern provision means there is something to a RICO pattern beyond simply the number of predicate acts involved.
>
> 1. *Continuity and Relationship*—Sedima S.P.R.L. and its Progeny

[52] See generally, The Tenth Amendment Center, http://www.tenthamendmentcenter.com/; and David Gordon, *PLANNERS IN BLACK ROBES*, online September 1, 2009 at http://www.tenthamendmentcenter.com/2009/09/01/planners-in-black-robes/; and *STATE SOVEREIGNTY SOLUTIONS*, online February 23, 2009 at

http://www.tenthamendmentcenter.com/2009/02/23/state-sovereignty-resolutions/.

[53] http://www.tenthamendmentcenter.com/10th-amendment-resolution/.

[54] http://www.tenthamendmentcenter.com/tenth-amendment-talking-points/.

[55] "It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary can not, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. **The one or the other would be treason to the Constitution.** Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty."

[56] "In appraising the sufficiency of the complaint, we follow, of course, the accepted rule that a complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."

[57] "Asking for plausible grounds does not impose a probability requirement at the pleading stage; it simply calls for enough fact to raise a reasonable expectation that discovery will reveal evidence of illegal agreement. The need at the pleading stage for allegations plausibly suggesting (not merely consistent with) agreement reflects Rule 8(a)(2)'s threshold requirement that the plain statement possess enough heft to sho[w] that the pleader is entitled to relief."

In Sedima, S.P.R.L. v. Imrex Co., 473 U.S. 479 n.14 (1985), the Supreme Court stated that the RICO pattern element required more than merely proving two predicate acts of racketeering. The Court pointed to legislative history indicating that the RICO pattern was not designed to cover merely sporadic or isolated unlawful activity, but rather was intended to cover racketeering activity that demonstrated some relationship and the threat of continuing [unlawful] activity. Accordingly, the Supreme Court ruled that proof of such continuity plus relationship was required to establish a RICO pattern in addition to proof of two acts of racketeering.

Following Sedima, the Eighth Circuit formulated the strictest test, holding that multiple acts of racketeering activity did not constitute a pattern under RICO when the acts were all related to a single scheme or criminal episode.106

In H.J. Inc. v. Northwestern Bell Telephone Co., 492 U.S. 229 (1989), the Supreme Court unanimously rejected the Eighth Circuit's multiple-scheme requirement to establish a pattern of racketeering activity and reversed the lower court's affirmation of the dismissal of a civil RICO claim for failure to allege a pattern of racketeering activity.107 The case involved an alleged bribery scheme by Northwestern Bell designed to illegally influence members of the Minnesota Public Utilities Commission in the performance of their duties as regulators of Northwestern Bell. The Eighth Circuit affirmed the dismissal, holding that the petitioner's allegations were insufficient to establish the requisite continuity prong because the complaint alleged only a series of fraudulent acts committed in furtherance of a single scheme to influence the Commissioners. In light of the division among the circuits, the Supreme Court granted certiorari to determine whether proof of multiple separate schemes was necessary to establish a RICO pattern of racketeering activity.

The Supreme Court held that RICO does not require proof of multiple schemes, stating in part as follows: The Eighth Circuit's test brings a rigidity to the available methods of proving a pattern that simply is not present in the idea of continuity itself; and it does so, moreover, by introducing a concept—the scheme—that appears nowhere in the language or legislative history of the Act. 492 U.S. at 240-41.

The Court concluded that a prosecutor must prove continuity of racketeering activity, or its threat, simpliciter. 490 U.S. at 241. Because the proof could be made in many ways, the Court declined to formulate in the abstract a general test for continuity but provided the following delineation:

> Continuity is both a closed and open-ended concept, referring either to a closed period of repeated conduct, or to past conduct that by its nature projects into the future with a threat of repetition. . . . It is, in either case, centrally a temporal concept--and particularly so in the RICO context, where **what** must be continuous, RICO's predicate acts or offenses, and the **relationship** these predicates must bear one to another, are distinct requirements. A party alleging a RICO violation may demonstrate continuity over a closed period by proving a series of related predicates extending over a substantial period of time. Predicate acts extending over a few weeks or months and threatening no future criminal conduct do not satisfy this requirement: Congress was concerned in RICO with long-term criminal conduct. Often a RICO action will be brought before continuity can be established in this way.

> In such cases, liability depends on whether the **threat** of continuity is demonstrated. [emphasis in original]
>
> Whether the predicates proved establish a threat of continued racketeering activity depends on the specific facts of each case. Without making any claim to cover the field of possibilities--preferring to deal with this issue in the context of concrete factual situations presented for decision--we offer some examples of how this element might be satisfied. **A RICO pattern may surely be established if the related predicates themselves involve a distinct threat of long-term racketeering activity, either implicit or explicit.** Suppose a hoodlum were to sell insurance to a neighborhood's storekeepers to cover them against breakage of their windows, telling his victims he would be reappearing each month to collect the premium that would continue their coverage. Though the number of related predicates involved may be small and they may occur close together in time, the racketeering acts themselves include a specific threat of repetition extending indefinitely into the future, and thus supply the requisite threat of continuity. **In other cases, the threat of continuity may be established by showing that the predicate acts or offenses are part of an ongoing entity's regular way of doing business. Thus, the threat of continuity is sufficiently established where the predicates can be attributed to a defendant operating as part of a long-term association that exists for criminal purposes.** Such associations include, but extend well beyond, those traditionally grouped under the phrase organized crime. The continuity requirement is likewise satisfied where it is shown that the predicates are a regular way of conducting defendant's ongoing legitimate business (in the sense that it is not a business that exists for criminal purposes), or of conducting or participating in an ongoing and legitimate RICO enterprise.

492 U.S. at 241-43 (citations omitted)(emphasis added).

5. JURISDICTION

Citing *FDIC* v. *Meyer*, 510 U.S. 471, 475 (1994):

> Section 1346(b) grants the federal district courts jurisdiction over a certain category of claims for which the United States has waived its sovereign immunity and "render[ed]" itself liable. *Richards* v. *United States,* 369 U. S. 1, 6 (1962). This category includes claims that are:
>
> > **[1] against the United States**,
> >
> > **[2] for money damages**, . . .
> >
> > **[3] for injury or loss of property**, or personal injury or death [*Plaintiff's Note: Including injury to reputation and regulatory loss, i.e., Fifth Amendment takings clause, of Second Amdendment rights as intangible property under Admiralty Law*.]

> [4] **caused by the negligent or wrongful act or omission of any employee of the Government** [*Plaintiff's Note: i.e., Abrogating the U.S. Coast Guard's Oath of Office to support and defend the Second Amendment rights of U.S. merchant seamen*.]
>
> [5] **while acting within the scope of his office or employment**,
>
> [6] under circumstances where the United States, **if a private person**, would be liable to the claimant in accordance with the law of the place where the act or omission occurred." 28 U. S. C. § 1346(b)."

A claim comes within this jurisdictional grant—and thus is "cognizable" under § 1346(b)—if it is actionable under § 1346(b). And a claim is actionable under § 1346(b) if it alleges the six elements outlined above. See [*Loeffler* v. *Frank*, 486 U. S. 549, at 562 (1988)] (§ 2679(a) limits the scope of sue-and-be-sued waivers "in the context of suits for which [Congress] *provided a cause of action* under the FTCA" (emphasis added)).[58]

The 28 U.S.C. § 2680(a) *DISCRETIONARY EXCEPTION* TO THE FEDERAL TORT CLAIMS ACT does NOT apply because the *OATH OF OFFICE* to support and defend the Constitution of the United includes the Second Amendment of the Bill of Rights which is NOT a Discretionary Function of the U.S. Coast Guard or any employee of the United States but it IS a Ministerial Function of the Coast Guard for the protection of merchant marine personnel.

> 28 U.S.C. § 2680(a) *DISCRETIONARY EXCEPTION TO THE FEDERAL TORT CLAIMS ACT*: Any claim based upon an act or omission of an employee of the Government, exercising due care, in the execution of a statute or regulation, whether or not such statute or regulation be valid, or based upon the exercise or performance or the failure to exercise or perform a **discretionary function or duty** on the part of a federal agency or an employee of the Government, whether or not the discretion involved be abused.

A. CASES AND CONTROVERSIES

This Court has subject matter jurisdiction over this **Admiralty and Non-Admiralty action arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority; to all CASES OF ADMIRALTY and MARITIME JURISDICTION**; **— to CONTROVERSIES to which the United States shall be a Party under Article III of the Constitution as the following federal laws indicate**:

1. Action to Compel (Peremptory Mandamas)

> 28 U.S.C. § 1361 *ACTION TO COMPEL AN OFFICER OF THE UNITED STATES TO PERFORM HIS DUTY* (The district courts shall have original jurisdiction of any

[58] Because we were not asked to define "cognizability" in *Loeffler*, our language was a bit imprecise. The question is not whether a claim is cognizable *under the FTCA* generally, as *Loeffler* suggests, but rather whether it is "cognizable *under section 1346(b)*." 28 U. S. C. § 2679(a) (emphasis added).

action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.)

2. Admiralty/Maritime Case.

28 U.S.C. § 1333(1) *ADMIRALTY, MARITIME CASE*. (The district courts shall have original jurisdiction, exclusive of the courts of the States, of any civil case of admiralty or maritime jurisdiction, saving to suitors in all cases all other remedies to which they are otherwise entitled.)

46 *U.S.C. APPENDIX* § 741 Extension of Admiralty and Maritime Jurisdiction; Libel In Rem or In Personam; Exclusive Remedy; Waiting Period (Suits in Admiralty Act)

3. Federal Questions

28 U.S.C. § 1331 *FEDERAL QUESTIONS* (The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States.)

4. Civil Rights

42 U.S.C. § 1981(a) *EQUAL RIGHTS UNDER THE LAW STATEMENT OF EQUAL RIGHTS*

42 U.S.C. § 1983 *CIVIL ACTION FOR DEPRIVATION OF RIGHTS*.

42 U.S.C. § 1985(1) *CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS: PREVENTING OFFICER FROM PERFORMING DUTIES*.

42 U.S.C. § 1985(2) *OBSTRUCTING JUSTICE; INTIMIDATING PARTY*.

42 U.S.C. § 1985(3) *CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS: DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES*.

42 U.S.C. § 1986 *ACTION FOR NEGLECT TO PREVENT*.

42 U.S.C. § 1988(a) *PROCEEDINGS IN VINDICATION OF CIVIL RIGHTS*

5. Civil Remedy for Racketeering Activities under the RICO Act

18 U.S.C. § 1962(a) *PROHIBITED ACTIVITIES* (Racketeering) – It shall be unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity or through collection of an unlawful debt in which such person has participated as a principal within the meaning of 18 U.S.C. § 2 [*DEFINITION OF*] *PRINCIPALS*, to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.),

18 U.S.C. § 1962(b) *PROHIBITED ACTIVITIES* (Racketeering) – It shall be unlawful for any person through a pattern of racketeering activity or through collection of an unlawful debt to acquire or maintain, directly or indirectly, any interest in or control of any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.

18 U.S.C. § 1962(c) *PROHIBITED ACTIVITIES* (Racketeering) – It shall be unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise's affairs through a pattern of racketeering activity or collection of unlawful debt.

18 U.S.C. § 1964(a) *CIVIL REMEDIES* [*FOR RACKETEERING ACTIVITIES*]

18 U.S.C. § 1964(b) *CIVIL REMEDIES* [ATTORNEY GENERAL INTERVENTION *FOR RACKETEERING ACTIVITIES*] – The Attorney General may institute proceedings under this section. Pending final determination thereof, the court may at any time enter such restraining orders or prohibitions, or take such other actions, including the acceptance of satisfactory performance bonds, as it shall deem proper.

18 U.S.C. § 1964(c) *CIVIL REMEDIES* [THREEFOLD DAMAGES *FOR RACKETEERING ACTIVITIES*] – (c) Any person injured in his business or property by reason of a violation of section 1962 of this chapter may sue therefor in any appropriate United States district court and shall recover **threefold the damages he sustains and the cost of the suit**, including a reasonable attorney's fee, except that no person may rely upon any conduct that would have been actionable as fraud in the purchase or sale of securities to establish a violation of section 1962. The exception contained in the preceding sentence does not apply to an action against any person that is criminally convicted in connection with the fraud, in which case the statute of limitations shall start to run on the date on which the conviction becomes final.

28 U.S.C. § 1343(a)(1) *CIVIL RIGHTS*: The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in 42 U.S.C. § 1985 *CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS*: (2) *OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR*; and (3) *DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES*.

28 U.S.C. § 1343(a)(2) *CIVIL RIGHTS*: The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person to recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in 42 U.S.C. § 1985 *CONSPIRACY TO INTERFERE WITH CIVIL RIGHTS*: (2) *OBSTRUCTING JUSTICE; INTIMIDATING PARTY, WITNESS, OR JUROR*; and (3) *DEPRIVING PERSONS OF RIGHTS OR PRIVILEGES*; which he had knowledge were about to occur and power to prevent.

18 U.S.C. § 1961(1)(A) *DEFINITION OF RACKETEERING ACTIVITY* (*Includes Extortion*)

18 U.S.C. § 1961(1)(B) *DEFINITION OF RACKETEERING ACTIVITY* (Is any act which is indictable under any of the following provisions of title 18, United States Code:

18 U.S.C. § 1512 *TAMPERING WITH A VICTIM* (i.e. harassing the Plaintiff herein).

18 U.S.C. § 1513(e), (f), & (g) *RETALIATING AGAINST A VICTIM*, (i.e., the Plaintiff) ((e) Whoever knowingly, with the intent to retaliate, takes any action harmful to any person, including interference with the lawful employment or livelihood of any person, for providing to a law enforcement officer any truthful information relating to the commission or possible commission of any Federal offense, shall be fined under this title or imprisoned not more than 10 years, or both; (f) Whoever conspires to commit any offense under this section shall be subject to the same penalties as those prescribed for the offense the commission of which was the object of the conspiracy; (g) A prosecution under this section may be brought in the district in which the official proceeding (whether pending, about to be instituted, or completed) was intended to be affected, or in which the conduct constituting the alleged offense occurred.)

18 U.S.C. § 1961(4) *DEFINITION OF AN ENTERPRISE* includes any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity;

18 U.S.C. § 1961(5) *DEFINITION OF A PATTERN OF RACKETEERING ACTIVITY* requires at least two acts of racketeering activity, one of which occurred after the effective date of this chapter and the last of which occurred within ten years (excluding any period of imprisonment) after the commission of a prior act of racketeering activity;

18 U.S.C. § 1951(b)(2) *INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE* (The term "**extortion**" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.);

28 U.S.C. § 2201 *CREATION OF REMEDY* – (In a case of actual controversy within its jurisdiction, … upon the filing of an appropriate pleading, may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought. Any such declaration shall have the force and effect of a final judgment or decree and shall be reviewable as such.)

28 U.S.C. § 2202 *FURTHER RELIEF* – (Further necessary or proper relief based on a declaratory judgment or decree may be granted, after reasonable notice and hearing, against any adverse party whose rights have been determined by such judgment.)

6. VENUE

18 U.S.C. § 1965 Venue and Process (RICO Act)

28 U.S.C. § 1391 The U.S. District Court for the District of Columbia is the proper venue for this Complaint.

46 U.S.C. § 30906(a)(1) Venue (Admiralty/Maritime)

7. NATURE OF THE CASE

A. Because of the Complex Nature of this Case and Public Corruption in this Court Demands Recusal and the Case Assigned to a Judge from Another District.

What started as a simple case of Judicial Review of a Final Agency Action in 2002 evolved into a complex RICO Act case under Admiralty/Maritime Law involving eight years of public corruption in the federal judiciary creating a demand for recusal so that a judge from another district can be assigned to my case as previously recommend by Judge Richard W. Roberts in one of my previous cases.

B. National Open Carry Handgun and Seamen's Rights

The *MERCHANT MARINE ACT OF 1936*; OPNAVINST 3591.1F *WATCH STANDER SMALL ARMS RE-CERTIFICATION COURSE* dated August 12, 2009; *EXECUTIVE ORDER 12866 REGULATORY PLANNING AND REVIEW* date September 30, 1993;[59] *TITLE 46 OF THE U.S. CODE*; *TITLE 33 OF THE CODE OF FEDERAL REGULATIONS*; and the "*support and defend the Constitution of the United States*" clause of the *OATH OF OFFICE* for all employees of the United States compel the *U.S. DEPARTMENT OF TRANSPORTATION*, the *U.S. DEPARTMENT OF HOMELAND SECURITY*, and the *U.S. COAST GUARD*, to include the Second Amendment, Ninth, Thirteenth, and Fourteenth Amendment rights of American seamen in all federal regulatory matters and legislation in Congress impacting the safety of American seamen in intrastate and interstate travel in the United States and in parallel with matters of treaties and conventions of the *INTERNATIONAL MARITIME ORGANIZATION* and the *UNITED NATIONS* impacting the safety of American seamen on the high seas to defend against armed attacks by pirates on the high seas.

The following five exhibits in this section provide the basis in law to address the long lost constitutional right to *openly* keep and bear arms in intrastate and interstate travel, the loss of which has aided and abetted violent crimes. This case presents a *SECOND AMENDMENT* case from a U.S. merchant seaman's point of view arguing for *NATIONAL OPEN CARRY HANDGUN* (at a minimum) and *NATIONAL OPEN CARRY SMALL ARMS IN LIGHT WEAPONS* (at a maximum in regard to 10 U.S.C. § 311(b)(2) THE UNORGANIZED MILITIA and to U.S. seamen in interstate travel to and from U.S. flag vessels ported in the United States under federal law and maritime law). This subject matter falls under the "full scope" of *SECOND AMENDMENT* rights with a connection to the *NINTH AMENDMENT* rights and

[59] 33 C.F.R. § 1.05-1(c) DELEGATION OF RULEMAKING AUTHORITY (The Commandant has reserved the authority to issue any rules and regulations determined to be significant under Executive Order 12866, Regulatory Planning and Review.)

TENTH AMENDMENT powers reserved to the People as applied to the *MERCHANT MARINER'S CREDENTIAL* (MMC) and the *TRANSPORTATION WORKER'S IDENTIFICATION CREDENTIAL* (TWIC).

EXHIBIT 1. Excerpts from Merchant Marine Act of 1936

EXCERPTS FROM MERCHANT MARINE ACT OF 1936

U.S. CODE

TITLE 46, APPENDIX—SHIPPING
CHAPTER 27—MERCHANT MARINE ACT, 1936

SUBCHAPTER I DECLARATION OF POLICY

46 U.S.C. APPENDIX § 1101 FOSTERING DEVELOPMENT AND MAINTENANCE OF MERCHANT MARINE

It is necessary for the national defense and development of its foreign and domestic commerce that the United States shall have a merchant marine

(b) capable of serving as a naval and military auxiliary in time of war or national emergency,

(d) composed of the best-equipped, safest, and most suitable types of vessels, constructed in the United States and manned with a trained and efficient citizen personnel, and

46 U.S.C. APPENDIX § 1131 MANNING AND WAGE SCALES

(a) Investigation of wages and working conditions; establishment of wage and manning scales; incorporation in subsidy contracts

The Secretary of Transportation is authorized and directed to investigate the employment and wage conditions in ocean-going shipping and, after making such investigation and after appropriate hearings, to incorporate in the contracts authorized under subchapters VI and VII of this chapter minimum manning scales and minimum wage scales, and minimum working conditions for all officers and crews employed on all types of vessels receiving an operating-differential subsidy. After such minimum manning and wage scales, and working conditions shall have been adopted by the Secretary of Transportation, no change shall be made therein by the Secretary of Transportation except upon public notice of the hearing to be had, and a hearing by the Secretary of Transportation of all interested parties, under such rules as the Secretary of Transportation shall prescribe. The duly elected representatives of the organizations certified as the proper collective bargaining agencies shall have the right to represent the employees who are members of their organizations at any such hearings. Every contractor receiving an operating-differential subsidy shall post and keep posted in a conspicuous place on each such vessel operated by such contractor a printed copy of the minimum manning and wage scales, and working conditions prescribed by his contract and applicable to such vessel: Provided, however, That any increase in the operating expenses of the subsidized vessel occasioned by any change in the wage or manning scales or working conditions as provided in this section shall be added to the operating-differential subsidy previously authorized for the vessel.

EXHIBIT 1. Excerpts from Merchant Marine Act of 1936 (continued)

SUBCHAPTER XIII
MARITIME EDUCATION AND TRAINING

46 U.S.C. APPENDIX § 1295 CONGRESSIONAL DECLARATION OF POLICY

It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States. In furtherance of this policy—

(1) the Secretary of Transportation is authorized to take the steps necessary to provide for the education and training of citizens of the United States who are capable of providing for the safe and efficient operation of the merchant marine of the United States at all times and as a naval and military auxiliary in time of war or national emergency; and

46 U.S.C. APPENDIX § 1295d ADDITIONAL TRAINING

(a) In general

The Secretary may provide additional training on maritime subjects, as the Secretary deems necessary, to supplement other training opportunities and may make any such training available to the personnel of the merchant marine of the United States and to individuals preparing for a career in the merchant marine of the United States.

46 U.S.C. APPENDIX § 1295G. POWERS AND DUTIES OF SECRETARY

(a) Rules and regulations

The Secretary shall establish such rules and regulations as may be necessary to carry out this subchapter.

EXHIBIT 2. Excerpts from U.S. CODE: TITLE 46—SHIPPING

Excerpts from U.S. CODE

TITLE 46—SHIPPING

SUBTITLE V—MERCHANT MARINE

PART A—GENERAL

CHAPTER 501 POLICY, STUDIES, AND REPORTS

46 U.S.C. § 50101 OBJECTIVES AND POLICIES (OF THE U.S.MERCHANT MARINE)

(a) Objectives.

It is necessary for the national defense and the development of the domestic and foreign commerce of the United States that the United States have a merchant marine—

(2) capable of serving as a naval and military auxiliary in time of war or national emergency;

(4) composed of the best-equipped, safest, and most suitable types of vessels and manned with a trained and efficient citizen personnel;

(b) Policy.—

It is the policy of the United States to encourage and aid the development and maintenance of a merchant marine satisfying the objectives described in subsection (a).

46 U.S.C. § 50102. SURVEY OF MERCHANT MARINE

(a) In General.

The Secretary of Transportation shall survey the merchant marine of the United States to determine whether replacements and additions are required to carry out the objectives and policy of section 50101 of this title. The Secretary shall study, perfect, and adopt a long-range program for replacements and additions that will result, as soon as practicable, in

(3) vessels designed to afford the best and most complete protection for passengers and crew against fire and all marine perils; and

EXHIBIT 2. Excerpts from U.S. CODE: TITLE 46—SHIPPING (continued)

PART B—MERCHANT MARINE SERVICE

CHAPTER 511
GENERAL

46 U.S.C. § 51101. POLICY (OF U.S. MERCHANT MARINE SERVICE)

It is the policy of the United States that merchant marine vessels of the United States should be operated by highly trained and efficient citizens of the United States and that the United States Navy and the merchant marine of the United States should work closely together to promote the maximum integration of the total seapower forces of the United States.

46 U.S.C. § 51103. GENERAL AUTHORITY OF SECRETARY OF TRANSPORTATION

(a) Education and Training.

The Secretary of Transportation may provide for the education and training of citizens of the United States for the safe and efficient operation of the merchant marine of the United States at all times, including operation as a naval and military auxiliary in time of war or national emergency.

(c) Assistance From Other Agencies.

(1) In general.

The Secretary of Transportation may secure directly from an agency, on a reimbursable basis, information, facilities, and equipment necessary to carry out this part.

(2) Detailing personnel.

At the request of the Secretary, the head of an agency (including a military department) may detail, on a reimbursable basis, personnel from the agency to the Secretary to assist in carrying out this part.

CHAPTER 517
OTHER SUPPORT FOR MERCHANT MARINE TRAINING

46 U.S.C. § 51703. ADDITIONAL TRAINING

(a) General Authority.

The Secretary of Transportation may provide additional training on maritime subjects to supplement other training opportunities and make the training available to the personnel of the merchant marine of the United States and individuals preparing for a career in the merchant marine of the United States.

EXHIBIT 2. Excerpts from U.S. CODE: TITLE 46—SHIPPING (continued)

SUBTITLE VII—SECURITY AND DRUG ENFORCEMENT

CHAPTER 703
MARITIME SECURITY

46 U.S.C. § 70301. DEFINITIONS (OF SECRETARY = HOMELAND SECURITY)

(3) Secretary.

The term "Secretary" means the Secretary of the department in which the Coast Guard is operating. [**Secretary of Homeland Security**]

46 U.S.C. § 70302. INTERNATIONAL MEASURES FOR SEAPORT AND VESSEL SECURITY

Congress encourages the President to continue to seek agreement on international seaport and vessel security through the International Maritime Organization. In developing an agreement, each member country of the International Maritime Organization should consult with appropriate private sector interests in that country. The agreement would establish seaport and vessel security measures and could include—

(1) seaport screening of cargo and baggage similar to that done at airports;

(2) security measures to restrict access to cargo, vessels, and dockside property to authorized personnel only;

(3) additional security on board vessels;

(4) licensing or certification of compliance with appropriate security standards; and

(5) other appropriate measures to prevent unlawful acts against passengers and crews on vessels.

EXHIBIT 3. Excerpts from U.S. CODE: TITLE 14—COAST GUARD

U.S. CODE

TITLE 14—COAST GUARD
PART I—REGULAR COAST GUARD

CHAPTER 7
COOPERATION WITH OTHER AGENCIES

14 U.S.C.§ 142. STATE DEPARTMENT (COOPERATING WITH OTHER AGENCIES)

The Coast Guard, through the Secretary, may exchange information, through the Secretary of State, with foreign governments and suggest to the Secretary of State international collaboration and conferences on all matters dealing with the safety of life and property at sea, other than radio communication.

EXHIBIT 4. Excerpt from U.S. CODE: TITLE 10—ARMED FORCES

U.S. CODE

TITLE 10—ARMED FORCES
SUBTITLE A—GENERAL MILITARY LAW
PART I—ORGANIZATION AND GENERAL MILITARY POWERS

CHAPTER 13
THE MILITIA

10 U.S.C. § 311. MILITIA: COMPOSITION AND CLASSES

(a) The militia of the United States consists of all able-bodied males at least 17 years of age and, except as provided in section 313 of title 32, under 45 years of age who are, or who have made a declaration of intention to become, citizens of the United States and of female citizens of the United States who are members of the National Guard.

(b) The classes of the militia are—

(1) the organized militia, which consists of the National Guard and the Naval Militia; and

(2) the unorganized militia, which consists of the members of the militia who are not members of the National Guard or the Naval Militia.

EXHIBIT 5. Excerpts from C.F.R. TITLE 33—NAVIGATION & NAVIGABLE WATERS

CODE OF FEDERAL REGULATIONS

TITLE 33: NAVIGATION AND NAVIGABLE WATERS

CHAPTER I -- COAST GUARD, DEPARTMENT OF HOMELAND SECURITY

SUBCHAPTER A--GENERAL

PART 1—GENERAL PROVISIONS

SUBPART 1.05—RULEMAKING

33 C.F.R. § 1.05-1 DELEGATION OF RULEMAKING AUTHORITY.

(a) The Secretary of Homeland Security is empowered by various statutes to issue regulations regarding the functions, powers and duties of the Coast Guard.

(b) The Secretary of Homeland Security has delegated much of this authority to the Commandant, U.S. Coast Guard, including authority to issue regulations regarding the functions of the Coast Guard and the authority to redelegate and authorize successive redelegations of that authority within the Coast Guard.

(c) The Commandant has reserved the authority to issue any rules and regulations determined to be significant under Executive Order 12866, Regulatory Planning and Review.

(d) The Commandant has redelegated the authority to develop and issue those regulations necessary to implement laws, treaties and Executive Orders to the Assistant Commandant for Marine Safety, Security and Stewardship (CG–5). The Commandant further redelegates this same authority to the Director, National Pollution Fund Center (Director, NPFC) for those regulations within the Director, NPFC area of responsibility.

(1) The Assistant Commandant for Marine Safety, Security, and Stewardship may further reassign the delegated authority of this paragraph to:

(i) Any Director within the CG–5 Directorate as appropriate; or

(ii) Any other Assistant Commandant as appropriate.

(2) The authority redelegated in paragraph (d) of this section is limited to those regulations determined to be nonsignificant within the meaning of Executive Order 12866.

33 C.F.R. § 1.05-60 NEGOTIATED RULEMAKING.

(a) The Coast Guard may establish a negotiated rulemaking committee under the Negotiated Rulemaking Act of 1990 and the Federal Advisory Committee Act (FACA) (5 U.S.C. App. 2) when it is in the public interest.

(b) Generally, the Coast Guard will consider negotiated rulemaking when:

(1) There is a need for a rule;

EXHIBIT 5. Excerpts from C.F.R. TITLE 33—NAVIGATION & NAVIGABLE WATERS (continued)

(2) There are a limited number of representatives for identifiable parties affected by the rule;

(3) There is a reasonable chance that balanced representation can be reached in the negotiated rulemaking committee and that the committee members will negotiate in good faith;

(4) There is a likelihood of a committee consensus in a fixed time period;

(5) The negotiated rulemaking process will not unreasonably delay the rule;

(6) The Coast Guard has resources to do negotiated rulemaking; and

(7) The Coast Guard can use the consensus of the committee in formulating the NPRM and final rule.

SUBCHAPTER H--MARITIME SECURITY
PART 101—MARITIME SECURITY: GENERAL
SUBPART E—OTHER PROVISIONS

33 C.F.R. §101.514 TWIC Requirement.

33 C.F.R. §101.515 TWIC/Personal Identification.

PART 104—MARITIME SECURITY: VESSELS

SUBPART B—VESSEL SECURITY REQUIREMENTS

33 C.F.R. § 104.220 COMPANY OR VESSEL PERSONNEL WITH SECURITY DUTIES.

Company and vessel personnel responsible for security duties must maintain a TWIC, and must have knowledge, through training or equivalent job experience, in the following, as appropriate:

(a) Knowledge of current security threats and patterns;

(b) Recognition and detection of dangerous substances and devices;

(c) Recognition of characteristics and behavioral patterns of persons who are likely to threaten security;

(d) Techniques used to circumvent security measures;

(e) Crowd management and control techniques;

(f) Security related communications;

(g) Knowledge of emergency procedures and contingency plans;

(h) Operation of security equipment and systems;

EXHIBIT 5. Excerpts from C.F.R. TITLE 33—NAVIGATION & NAVIGABLE WATERS (continued)

(i) Testing and calibration of security equipment and systems, and their maintenance while at sea;

(j) Inspection, control, and monitoring techniques;

(k) Relevant provisions of the Vessel Security Plan (VSP);

(l) Methods of physical screening of persons, personal effects, baggage, cargo, and vessel stores; and

(m) The meaning and the consequential requirements of the different Maritime Security (MARSEC) Levels.

(n) Relevant aspects of the TWIC program and how to carry them out.

33 C.F.R. § 104.230 DRILL AND EXERCISE REQUIREMENTS.

(a) General.

(1) Drills and exercises must test the proficiency of vessel personnel in assigned security duties at all Maritime Security (MARSEC) Levels and the effective implementation of the Vessel Security Plan (VSP). They must enable the Vessel Security Officer (VSO) to identify any related security deficiencies that need to be addressed.

(2) A drill or exercise required by this section may be satisfied with the implementation of security measures required by the Vessel Security Plan as the result of an increase in the MARSEC Level, provided the vessel reports attainment to the cognizant COTP.

(b) Drills.

(1) The VSO must ensure that at least one security drill is conducted at least every 3 months, except when a vessel is out of service due to repairs or seasonal suspension of operation provided that in such cases a drill must be conducted within one week of the vessel's reactivation. Security drills may be held in conjunction with non-security drills where appropriate.

(2) Drills must test individual elements of the VSP, including response to security threats and incidents. Drills should take into account the types of operations of the vessel, vessel personnel changes, and other relevant circumstances. Examples of drills include unauthorized entry to a restricted area, response to alarms, and notification of law enforcement authorities.

(3) If the vessel is moored at a facility on the date the facility has planned to conduct any drills, the vessel may, but is not required to, participate in the facility's scheduled drill.

EXHIBIT 5. Excerpts from C.F.R. TITLE 33—NAVIGATION & NAVIGABLE WATERS (continued)

(4) Drills must be conducted within one week from whenever the percentage of vessel personnel with no prior participation in a vessel security drill on that vessel exceeds 25 percent.

(5) Not withstanding paragraph (b)(4) of this section, vessels not subject to SOLAS may conduct drills within 1 week from whenever the percentage of vessel personnel with no prior participation in a vessel security drill on a vessel of similar design and owned or operated by the same company exceeds 25 percent.

(c) Exercises.

(1) Exercises must be conducted at least once each calendar year, with no more than 18 months between exercises.

(2) Exercises may be:

(i) Full scale or live;

(ii) Tabletop simulation or seminar;

(iii) Combined with other appropriate exercises; or

(iv) A combination of the elements in paragraphs (c)(2)(i) through (iii) of this section.

(3) Exercises may be vessel-specific or part of a cooperative exercise program to exercise applicable facility and vessel security plans or comprehensive port exercises.

(4) Each exercise must test communication and notification procedures, and elements of coordination, resource availability, and response.

(5) Exercises are a full test of the security program and must include the substantial and active participation of relevant company and vessel security personnel, and may include facility security personnel and government authorities depending on the scope and the nature of the exercises.

SUBPART C—VESSEL SECURITY ASSESSMENT (VSA)

33 C.F.R. § 104.300 GENERAL (VESSEL SECURITY ASSESSMENT).

(a) The Vessel Security Assessment (VSA) is a written document that is based on the collection of background information and the completion and analysis of an on-scene survey.

(b) A single VSA may be performed and applied to more than one vessel to the extent that they share physical characteristics and operations.

EXHIBIT 5. Excerpts from C.F.R. TITLE 33—NAVIGATION & NAVIGABLE WATERS (continued)

(c) Third parties may be used in any aspect of the VSA if they have the appropriate skills and if the Company Security Officer (CSO) reviews and accepts their work.

(d) Those involved in a VSA should be able to draw upon expert assistance in the following areas:

(1) Knowledge of current security threats and patterns;

(2) Recognition and detection of dangerous substances and devices;

(3) Recognition of characteristics and behavioral patterns of persons who are likely to threaten security;

(4) Techniques used to circumvent security measures;

(5) Methods used to cause a security incident;

(6) Effects of dangerous substances and devices on vessel structures and equipment;

(7) Vessel security requirements;

(8) Vessel-to-vessel activity and vessel-to-facility interface business practices;

(9) Contingency planning, emergency preparedness and response;

(10) Physical security requirements;

(11) Radio and telecommunications systems, including computer systems and networks;

(12) Marine engineering; and

(13) Vessel and port operations.

C. Pre-enforcement Challenge to 18 U.S.C. § 926A *INTERSTATE TRASPORTATION OF FIREARMS* and 27 C.F.R. § 478.38 *TRANSPORTATION OF FIREARMS* as Unconstitutional As Applied to U.S. Merchant Seamen's Right to Travel with a Firearm for the Purposes of the Common Defence; for Personal Security, Safety and Self-Defense; and a Pre-Enforcement Challenge as Facially Unconstitutional for Law Abiding U.S. Citizens At Large.

United States Code **TITLE 18 - CRIMES AND CRIMINAL PROCEDURE** *Part I - Crimes* *Chapter 44 – Firearms*	**Code of Federal Regulations** **TITLE 27–ALCOHOL, TOBACCO PRODUCTS, AND FIREARMS**; *Chapter II –Bureau of Alcohol, Tobacco, Firearms, and Explosives, Department Of Justice;* *Part 478–Commerce In Firearms And Ammunition*
18 U.S.C. § 926A Interstate Transportation of Firearms: Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, **any person who is not otherwise prohibited by this chapter from transporting**, shipping, or receiving a firearm **shall be entitled to transport a firearm for any lawful purpose from any place where <u>he</u> may lawfully possess and carry such firearm to any other place where <u>he</u> may lawfully possess and carry such firearm <u>if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided*, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console</u>**.	**27 C.F.R. § 478.38 Transportation of Firearms** Notwithstanding any other provision of any law or any rule or regulation of a State or any political subdivision thereof, any person who is not otherwise prohibited by this chapter from transporting, shipping, or receiving a firearm shall be entitled to transport a firearm for any lawful purpose from any place where <u>such person</u> may lawfully possess and carry such firearm to any other place where <u>such person</u> may lawfully possess and carry such firearm <u>if, during such transportation the firearm is unloaded, and neither the firearm nor any ammunition being transported is readily accessible or is directly accessible from the passenger compartment of such transporting vehicle: *Provided*, That in the case of a vehicle without a compartment separate from the driver's compartment the firearm or ammunition shall be contained in a locked container other than the glove compartment or console</u>.

D. Case Law: Plaintiff has the Right to Challenge the Constitutionality of a Statute and a Rule of the Court

Nashville, C. & St. L. R. Co. v. *Walters*, 294 US 405, 55 S Ct 486, (1935) (A statute valid when enacted may become invalid by change in the conditions to which it is applied.)

Brennan v. *U.S. Postal Service*, 439 US 1345, 98 S Ct 22 (1978) [Per Marshall, J., as Circuit Justice.]. Longevity does not ensure that a statute is constitutional.

Hamilton v. *Kentucky Distilleries & Warehouse Co*. 251 US 146 (1919), 40 S Ct 106, 64 L Ed 194. (The principle that a statute, valid, when enacted may cease to have validity, owing to a change of circumstances, is applicable to Acts of Congress.)

Kl Mistretta v. *United States*, 488 US 361, 109 S Ct 647, 102 L Ed 2d 714 (1989) (When the United States Supreme Court is asked to invalidate a statutory provision that has been approved by both houses of Congress and signed by the President, it should do so only for the most compelling constitutional reasons.)

Nashville, C. & St. L.+R. Co. v. *Walters*, 294 US 405, 55 S Ct 486, (1935). A statute valid when enacted may become invalid by change in the conditions to which it is applied.

CHALLENGED AS UNCONSTITUTIONAL:

1. FEDERAL RULES OF CIVIL PROCEDURE, RULE 5.1(a)(1)(A) *CONSTITUTIONAL CHALLENGE TO A STATUTE — NOTICE, CERTIFICATION, AND INTERVENTION*

(a) NOTICE BY A PARTY. A party that files a pleading, written motion, or other paper drawing into question the constitutionality of a federal or state statute must promptly:

(1) file a notice of constitutional question stating the question and identifying the paper that raises it, if:

(A) **a federal statute is questioned and the parties do not include the United States, one of its agencies, or one of its officers or employees in an official capacity** **[UNCONSTITUTIONAL]**

E. Preenforcement Standing Under *Maxwell Hodkins, et al*, v. *Eric Holder*, U.S. District Court for DC, No. 09-0587-JR (January 5, 1010)

The *MEMORANDUM* of Judge James Robertson, U.S. District Court for DC dismissing *Hodgkins* v. *Eric Holder*, No. 09-0587-JR (January 5, 1010) for lack of standing in any of the plaintiffs. The plaintiffs presented constitutional challenges to 18 U.S.C. § 922(a)(9) (does not allow any person "*who does not reside in any State to receive any firearms unless such receipt is for lawful sporting purposes*") and 18 U.S.C. § 922(a)(5) (prohibits the transfer of firearms to any person "*who the transferor knows or has reasonable cause to believe does not reside in . . . the State in which the transferor resides*"). *See* ATF Form 4473 Firearms Transaction Record, and 27 C.F.R. § 478.124(c)(1) FIREARMS TRANSACTION RECORD.

In *Hodgkins*, [t]o have **standing** pursuant to Article III of the Constitution, plaintiffs must demonstrate, inter alia, "*an injury in fact — an invasion of a legally protected interest which is (a) concrete and particularized and (b) actual or imminent, not conjectural or hypothetical*." Citing ***Lujan* v. *Defenders of Wildlife***, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted).

In *Hodgkins*, [t]o establish a right to proceed under the ***DECLARATORY JUDGMENT ACT***, plaintiffs must demonstrate "***a case of actual controversy***." Again citing *Lujan* v. *Defenders of Wildlife*, 504 U.S. 555, 560 (1992) (internal quotation marks and citations omitted).

Citing *Medimmune, Inc.* v. *Genentech, Inc., et al.*, No. 05-608; 549 U.S. ____ (January 9, 2007) for an explanation on ***THE DECLARATORY JUDGMENT ACT*** by the U.S. Supreme Court:

III

> ***THE DECLARATORY JUDGMENT ACT*** provides that, "[i]n a case of actual controversy within its jurisdiction . . . any court of the United States . . . may declare the rights and other legal relations of any interested party seeking such declaration, whether or not further relief is or could be sought." 28 U. S. C. §2201(a).
>
> ...
>
> The federal *DECLARATORY JUDGMENT ACT* was signed into law the following year, and we upheld its constitutionality in *Aetna Life Ins. Co.*

v. *Haworth*, 300 U. S. 227 (1937). Our opinion explained that the phrase "***case of actual controversy***" in the Act refers to the type of "***Cases***" and "***Controversies***" that are justiciable under **Article III**. Id., at 240.

Aetna and the cases following it do not draw the brightest of lines between those declaratory-judgment actions that satisfy the case-or-controversy requirement and those that do not. Our decisions have required that the dispute be "***definite and concrete, touching the legal relations of parties having adverse legal interests***"; and that it be "***real and substantial***" and "***admi[t] of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts***." *Id.*, at 240–241. In *Maryland Casualty Co.* v. *Pacific Coal & Oil Co.*, 312 U. S. 270, 273 (1941), we summarized as follows: "***Basically, the question in each case is whether the facts alleged, under all the circumstances, show that there is a substantial controversy, between parties having adverse legal interests, of sufficient immediacy and reality to warrant the issuance of a declaratory judgment***." [60]

...

As long as those payments are made, there is no risk that respondents will seek to enjoin petitioner's sales. Petitioner's own acts, in other words, eliminate the imminent threat of harm.[61] The question before us is whether this causes the dispute no longer to be a case or controversy within the meaning of Article III.

[60] The dissent asserts, post, at 1, that "the declaratory judgment procedure cannot be used to obtain advanced rulings on matters that would be addressed in a future case of actual controversy." As our preceding discussion shows, that is not so. If the dissent's point is simply that a defense cannot be raised by means of a declaratory-judgment action where there is no "actual controversy" or where it would be "premature," phrasing that argument as the dissent has done begs the question: whether this is an actual, ripe controversy. Coffman v. Breeze Corps., 323 U. S. 316, 323–324 (1945), cited post, at 3, does not support the dissent's view (which is why none of the parties cited it). There, a patent owner sued to enjoin his licensee from paying accrued royalties to the Government under the ROYALTY ADJUSTMENT ACT OF 1942, and sought to attack the constitutionality of the Act. The Court held the request for declaratory judgment and injunction nonjusticiable because the patent owner asserted no right to recover the royalties and there was no indication that the licensee would even raise the Act as a defense to suit for the royalties. The other case the dissent cites for the point, Calderon v. Ashmus, 523 U. S. 740, 749 (1998), simply holds that a litigant may not use a declaratory-judgment action to obtain piecemeal adjudication of defenses that would not finally and conclusively resolve the underlying controversy. That is, of course, not the case here.

[61] The justiciability problem that arises, when the party seeking declaratory relief is himself preventing the complained-of injury from occurring, can be described in terms of **standing** (whether plaintiff is threatened with "*imminent*" injury in fact " '*fairly . . . trace[able] to the challenged action of the defendant*,' " ***Lujan* v. *Defenders of Wildlife*, 504 U. S. 555, 560 (1992)**), or in terms of **ripeness** (whether there is sufficient "*hardship to the parties* [*in*] *withholding court consideration*" until there is enforcement action, *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 149 (1967)). As respondents acknowledge, **standing and ripeness boil down to the same question in this case**. *BRIEF FOR RESPONDENT GENENTECH* 24; *BRIEF FOR RESPONDENT CITY OF HOPE* 30–31.

Our analysis must begin with the recognition that, where threatened action by government is concerned, we do not require a plaintiff to expose himself to liability before bringing suit to challenge the basis for the threat—for example, the constitutionality of a law threatened to be enforced. The plaintiff's own action (or inaction) in failing to violate the law eliminates the imminent threat of prosecution, but nonetheless does not eliminate Article III jurisdiction. For example, in *Terrace* v. *Thompson*, 263 U. S. 197 (1923), the State threatened the plaintiff with forfeiture of his farm, fines, and penalties if he entered into a lease with an alien in violation of the State's anti-alien land law. Given this genuine threat of enforcement, we did not require, as a prerequisite to testing the validity of the law in a suit for injunction, **that the plaintiff bet the farm, so to speak, by taking the violative action.** *Id*., at 216. See also, e.g., *Village of Euclid* v. *Ambler Realty Co.*, 272 U. S. 365 (1926); *Ex parte Young*, 209 U. S. 123 (1908). Likewise, in *Steffel* v. *Thompson*, 415 U. S. 452 (1974), we did not require the plaintiff to proceed to distribute hand-bills and risk actual prosecution before he could seek a declaratory judgment regarding the constitutionality of a state statute prohibiting such distribution. *Id*., at 458–460. As then-Justice Rehnquist put it in his concurrence, "***the declaratory judgment procedure is an alternative to pursuit of the arguably illegal activity***." *Id*., at 480. **In each of these cases, the plaintiff had eliminated the imminent threat of harm by simply not doing what he claimed the right to do** (enter into a lease, or distribute handbills at the shopping center). **That did not preclude subject-matter jurisdiction because the threat-eliminating behavior was effectively coerced**. *See Terrace, supra*, at 215– 216; Steffel, *supra*, at 459. **The dilemma posed by that coercion—putting the challenger to the choice between abandoning his rights or risking prosecution—is "*a dilemma that it was the very purpose of the DECLARATORY JUDGMENT ACT to ameliorate*."** *Abbott Laboratories* v. *Gardner*, 387 U. S. 136, 152 (1967).

Supreme Court jurisprudence is more rare regarding application of the DECLARATORY JUDGMENT ACT to situations in which the plaintiff's self-avoidance of imminent injury is coerced by threatened enforcement action of a private party rather than the government. Lower federal courts, however (and state courts interpreting declaratory judgment Acts requiring "*actual controversy*"), **have long accepted jurisdiction in such cases.** *See, e.g., Keener Oil & Gas Co*. v. *Consolidated Gas Utilities Corp*., 190 F. 2d 985, 989 (CA10 1951); *American Machine & Metals, Inc*. v. *De Bothezat Impeller Co*., 166 F. 2d 535 (CA2 1948); *Hess* v. *Country Club Park*, 213 Cal. 613, 614, 2 P. 2d 782, 783 (1931) (in bank); *Washington-Detroit Theater Co*. v. *Moore*, 249 Mich. 673, 675, 229 N.

W. 618, 618–619 (1930); *see also* ADVISORY COMMITTEE'S NOTE ON FED. RULE CIV. PROC. 57.[62]

Thompson v. *Trent Maritime Co*., 149 F. Supp. 468 (E.D. Pa. 1957) (Where the plaintiff has an inchoate right which will materialize if and when valid service is made on the defendant, the defendant's motion to dismiss the complaint for lack of jurisdiction will be denied.) *The Canadian Commander*, 43 F.2d 857 (E.D. N.Y. 1930) (A dismissal may also be refused where the court, acting within its powers, elects to assume jurisdiction.)

Citing from Erwin Chemerinsky, *FEDERAL JURISDICTION* (5th ed., Aspen Publishers, New York, 2007. ISBN 978-0-7355-6407-7. Library of Congress Cataloging-in-Publication Data: KF8858.C48 2007):[63]

> § 2.3.1. Standing: Introduction. pp. 57-58.
>
> Standing is the determination of whether a specific person is the proper party to bring a matter to the court for adjudication. The Supreme Court has declared that [i]n essence the question of standing is whether the litigant is entitled to have the court decide the merits of the dispute or particular issues.[64]
>
> Standing frequently has been identified by both justices and commentators as one of the most confused areas of the law. Professor Vining wrote that it is impossible to read the standing decisions *without coming away with a sense of intellectual crisis. Judicial behavior is erratic, even bizarre. The opinions and justifications do not illuminate*.[65] Thus, it is hardly surprising that standing has been the topic of extensive academic scholarship and that the doctrines are frequently attacked. Many factors account for the seeming incoherence of the law of standing. The requirements for standing have changed greatly in the past 25 years as the Court has formulated new standing requirements and reformulated old ones. The Court has not consistently asrticulated a test for the requirements for standing in federal court. The Court itself observed: <u>We need not mince words when we say that the concept of Art. III standing has not been defined with complete consistency in all of the various cases decided by this Court.</u> *Valley Forge Christian College* v. *Americans United for Separation of Church and State*, 454 U.S. 464, 475 (1982). Moreover many comnmentators believe that the Court has

[62] The dissent claims the cited cases do not "*rely on the coercion inherent in making contractual payments*." Post, at 9, n. 3. That is true; they relied on (to put the matter as the dissent puts it) the coercion inherent in complying with other claimed contractual obligations. The dissent fails to explain why a contractual obligation of payment is magically different. It obviously is not. In our view, of course, the relevant coercion is not compliance with the claimed contractual obligation, but rather the consequences of failure to do so.

[63] Hereinafter refered to as Chemerinsky 2007.

[64] *Warth* v. *Seldin* 422 U.S. 490, 498 (1975).

[65] Chemerinsky 2007 citing Joseph Vining, *LEGAL IDENTITY* 1 (1978).

> manipulated standing rules based on its views of the merits of particular cases.[66]
>
> There is no ascertainable principle to rationalize rulings on standing for common law, constitutional rights, and statutory rights or other types of injuries that permit federal court review.[67]
>
> Injury plus allegation and proof that the injury is fairly traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief.[68] These requirements have been labeled *Causation* — the plaintiff must allege that the defendant's conduct caused the harm; and redressability — the plaintiff must allege that a favorable court decision is likely to remedy the injury. The Supreme Court has declared that both causation and redressability are constitutional requirements for standing.[69]

From the U.S. Attorney's Manual, Title 4: Civil Resource Manual:

> SECTION 35: STANDING TO SUE
>
> The case or controversy clause of Article III of the Constitution imposes a minimal constitutional standing requirement on all litigants attempting to bring suit in federal court. In order to invoke the court's jurisdiction, the plaintiff must demonstrate, at an irreducible minimum, that:
>
> (1) he/she has suffered a distinct and palpable injury as a result of the putatively illegal conduct of the defendant;
>
> (2) the injury is fairly traceable to the challenged conduct; and
>
> (3) it is likely to be redressed if the requested relief is granted.
>
> *See Valley Forge Christian College* v. *Americans United for Separation of Church and State, Inc.*, 454 U.S. 464, 472 (1982); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979); *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 37 (1976).
>
> In order to have standing to sue under RICO civil liability provisions, plaintiff must show a violation of RICO, injury to business or property, and causation of the injury by the violation. *Heckt* v. *Commerce Clearing House, Inc.*, C.A.2(N.Y.) 1990, 897 F.2D 21, 100A.L.R. Fed. 655.

I am United States citizen and a U.S. Merchant Seaman, (a.k.a. Able Seaman for purposes of the U.S. Code). I reported aboard a U.S. government vessel as a new crew member. I was required to attend a small arms recertification course as a job-related requirement for the position of Able

[66] Chemerinsky 2007 citing: *See e.g.*, Richard J. Pierce, *STANDING: LAW OR POLITICS?*, 77 N.C. L. Rev. 1741 (1999); Gene Nichol, Jr., *ABUSING STANDING: A COMMENT ON* ALLEN *V.* WRIGHT, 133 U. Pa. L. Rev. 635, 650 (1985).

[67] Paraphrased Chemerinsky 2007, p. 73.

[68] *Allen* v. *Wright* 468 U.S. 737, at 751 (1984) (*Allen* also denied standing based on failure to meet causation requirement).

[69] *See e.g., United States* v. *Hays* 515 U.S. 737, 743 (1995).

Seaman aboard that ship. Upon successful completion of that small arms training I applied to the U.S. Coast Guard to have that extra training recognized by the Coast Guard in the form of an endorsement on his *MERCHANT MARINER'S DOCUMENT* to read *NATIONAL OPEN CARRY HANDGUN* in accordance with 46 U.S.C. § 7306(a)(3) GENERAL REQUIREMENTS AND CLASSIFICATIONS FOR ABLE SEAMEN IS QUALIFIED PROFESSIONALLY AS DEMONSTRATED BY AN APPLICABLE EXAMINATION OR EDUCATIONAL REQUIREMENTS.

April 19, 2002 the Coast Guard denied that application with their 46 C.F.R. § 1.03-15(j) *FINAL AGENCY ACTION.* In June of 2002, I initiated a federal civil rights case under 42 U.S.C. § 1983 CIVIL ACTION FOR DEPRIVATION OF RIGHTS on Second Amendment grounds at the U.S. District Court for DC. That case was wrongfully denied with prejudice and I have been trying to get my Seventh Amendment civil jury trial ever since.

F. Stigmatic Harm and Standing

Despite *Allen* v. *Wright* 468 U.S. 737 (1984) the Court has never completely ruled out stigmatic harm as a basis for standing. Citing and adapting the conclusion from Thomas Healy, *STIGMATIC HARM AND STANDING*, 92 Iowa Law Review 417 (2007) to my case herein:

> My argument is both bold and modest. It is bold in that it would give access to the federal courts to plaintiffs who have been denied access in the past. It also would allow some claims to be heard in federal court that currently cannot be heard there. But my argument is modest in that it does not propose a change in substantive law. I do not argue that the government is prohibited from stigmatizing individuals or groups. Nor do I suggest that courts should invalidate most, or even many, of the government actions that inflict stigmatic harm. I argue only that when the government does stigmatize a group, members of that group should have standing to argue that the government's action is unlawful. If they do not have a meritorious claim, their cases will be dismissed. But they should not be turned away on the supposition that their injury is abstract. As I have tried to show, this is not true. Those who are stigmatized by government action are not simply concerned bystanders seeking to vindicate value interests. They suffer serious and concrete injuries and should therefore have the same standing in federal court as other plaintiffs alleging concrete harms.

(1). Stigmatizing Trait

After 7 years of unsuccessful litigation in the federal courts as an American merchant seaman and an unrepresented civil plaintiff now with combined multi-faceted civil rights case, civil RICO Act case, and an Admiralty/Maritime case where I presume to act as a Private Attorney General for unnamed Third Parties (the *jus tertii* doctrine) by applying the civil RICO Act against the United States Government and as a seaman, a ward of the Admiralty, in defense of the Second Amendment as a constitutional right and as an international human right I would say that taking on such a judicially taboo subject that I have standing to sue on the basis of the Stigmatic Harm Doctrine.

(2). Denial of Equal Treatment

> Read together, [*Allen* v. *Wright*, 468 U.S. 737 (1984) and *Heckler* v. *Mathews*, 465 U.S. 728 (1984)] suggest a fairly straightforward rule: a plaintiff who alleges that he was denied equal treatment can claim standing on the basis of stigmatic harm, while a plaintiff who alleges that governmental action stigmatizes a group of which he is a member lacks standing unless he personally was denied equal treatment. [Healy, 432]

[Stigmatic Harm] would give access to the federal courts to plaintiffs who have been denied access in the past. It also would allow some claims to be heard in federal court that currently cannot be heard there. . . . when the government does stigmatize a group, members of that group should have standing to argue that the government's action is unlawful. If they do not have a meritorious claim, their cases will be dismissed. But they should not be turned away on the supposition that their injury is abstract. As I have tried to show, this is not true. Those who are stigmatized by government action are not simply concerned bystanders seeking to vindicate value interests. They suffer serious and concrete injuries and should therefore have the same standing in federal court as other plaintiffs alleging concrete harms. [Healy, 488].

Perpetual dismissals of my cases for the last 6 years combined with federal law enforcement agencies harassing me and my family just because I am exercising my First Amendment right to petition the Government for redress of grievance and my Seventh Amendment right to a civil jury trial constitutes a denial of equal treatment under the Rule of Law qualifies my case for standing on the basis of stigmatic harm.

(3). The Experience of the Stigmatized

First, because the stigmatized are marked as less than fully human, they face the ever-present possibility that they will be the targets of prejudice and discrimination. . . . This threat of discrimination is harmful in itself, **producing anxiety and a feeling that one must be constantly on guard.** But even more harmful is the actual discrimination experienced by the stigmatized. Research shows that members of stigmatized groups are more likely to experience derision, exclusion, discrimination, and violence than are those who are not stigmatized. **This discrimination makes it harder for the stigmatized to obtain employment, housing, education, and to develop lasting relationships with others**. In the words of Goffman, we exercise varieties of discrimination [against the stigmatized], through which we effectively, if often unthinkingly, reduce his life chances. [Healy, 453-454]

Stigmatization also threatens one's self-esteem. Research has shown that most stigmatized individuals are aware that society views them as devalued and tainted. And social scientists have long maintained that people construct their self-identities, at least in part, on the basis of how others react to them. Thus, the knowledge that others view them as less than fully human can undermine the self-esteem of the stigmatized. They may even come to conclude that society is right—that they are in fact less worthwhile, deserving, or valuable than others. As the social psychologist Gordon Allport once asked rhetorically, [W]hat would happen to your own personality if you heard it said over and over again that you were lazy . . . and had inferior blood?. . . . [Healy, 454].

Finally, the stigmatized are usually the targets of negative stereotypes, which can lead to self-fulfilling prophecies. One example is what social scientists have labeled stereotype threat. In lay terms, stereotype threat exists when the fear of conforming to stereotype creates self-doubt that interferes with one's performance. . . . [Healy, 456]

Stereotype threat involves the internalization of negative stereotypes by the stigmatized. Self-fulfilling prophecies also occur when a negative stereotype influences the way we treat a person and the person reacts to this treatment with behavior that confirms the stereotype. . . . [Healy, 457]

> Stigmatic harms are not insurmountable. Many stigmatized individuals develop ways of coping with their situations. As noted above, they may attribute negative outcomes to the prejudice of others rather than allow those outcomes to affect their self-esteem. They may also try to compensate for, or even eliminate, their stigmatizing traits by changing their behaviors or working harder. . . . But although these strategies can lessen the harms associated with stigma, they also carry costs. Reflexively blaming negative outcomes on prejudice can prevent one from understanding other reasons behind those outcomes. Attempting to change behavior can backfire if those efforts fail, causing one to feel even worse than before. And avoiding situations that might expose one to ridicule or prejudice limits one's access to important resources and severely circumscribes one's freedoms. [Healy 457-458]
>
> In short, stigmatization is a serious injury with harmful consequences. Not all stigmatized people experience these harms in the same way, and many individuals are able to overcome these harms and lead happy, fulfilling lives. But for the most part, [p]eople who are stigmatized tend to experience more negative outcomes in their work lives and in their personal lives than do the nonstigmatized. [Healy, 458]

(4). Questions of Causation and Redressability

> It is true that much of the harm experienced by the stigmatized likely would exist even in the absence of government action. It is also true that we cannot measure precisely the extent to which government action in a given case contributes to stigmatic harm. But it seems clear that when the government stigmatizes members of a particular group, it exacerbates the harm they experience. By reinforcing the social belief that those with a particular trait are discredited, the government adds to the prejudice and discrimination against them, creates additional threats to their self-esteem, and reaffirms the stereotypes that lead to selffulfilling prophecies. The government's role also likely increases the intensity of these harms, particularly the threat to self-esteem. [Healy, 464].

Harm has already been inflicted with retaliation and harassment from the U.S. Coast Guard, U.S. Marshals Service, U.S. Supreme Court Police Threat Assessment United, U.S. Department of Transportation Office of Security Operations, and unknown others because my exercising statutory and constitutional rights (i.e. the right to sue) has been viewed as suspicious criminal activity to which I have been denied my right to an administrative appeal under the Administrative Procedures Act. If the present case is dismissed there is in all likelihood that I will be permanently stigmatized by the U.S. Government as a threat remaining on government watch lists and BOLO'S (Be On the LookOut) simply because I attempted to hold employs of the United States Government accountable to the U.S. Constitution and federal laws by means of statutory rights and regulatory procedures and other lawful means.

(5). Stigmatic Harm, the U.S. Coast Guard, and the International Maritime Organization

Stereotyping others as a class of people of lower standing stems from ignorance in varying degrees of sociological or sociopathic behavior patterns. Applying the same question above to American merchant seamen:

> *What would happen to your own personality if you heard it said over and over again that you were too stupid to handle a firearm aboard ship,*

> *that you do not have the aptitude to handle firearms safely and efficiently?*

Merchant seamen are trusted to work shipboard deck machinery far more complicated than firearms! The illegal discrimination against seamen internationally by the United Nations and the International Maritime Organization (IMO) and nationally here in the United States by the U.S. Coast Guard and the U.S. Department of Homeland Security, depriving seamen of their human right to armed self-defense is highly insulting, demeaning, and degrading to their dignity has human beings.

International Maritime Organization, *Piracy and Armed Robbery Against Ships: Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships*. Maritime Safety Commission Circular 623/Rev.2, dated June 20, 2001 (OUTDATED):

> **Firearms**
>
> 45 The carrying and use of firearms for personal protection or protection of a ship is strongly discouraged.
>
> 46 Carriage of arms on board ship may encourage attackers to carry firearms thereby escalating an already dangerous situation, and any firearms on board may themselves become an attractive target for an attacker. **The use of firearms requires special training and aptitudes** and the risk of accidents with firearms carried on board ship is great. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he has acted in self defence.

As a direct result of the escalating attacks by Somali pirates the International Maritime Organization replaced their policies noted above with *Piracy And Armed Robbery Against Ships: Recommendations to Governments for Preventing and Suppressing Piracy and Armed Robbery Against Ships*,[70] **MSC.1/Circ.1333**, **26 June 2009** and the one standing in dispute for the purpose of this Complaint as extremely denigratingly prejudicial and insulting to seafarers of all maritime nations is the International Maritime Organization, *Piracy And Armed Robbery Against Ships: Guidance to Shipowners and Ship Operators, Shipmasters and Crews on Preventing and Suppressing Acts of Piracy and Armed Robbery Against Ships*,[71] **MSC.1/Circ.1334**, **23 June 2009** (CURRENT):

> **Firearms**
>
> 59 With respect to the carriage of firearms on board, masters, shipowners and companies should be aware that ships entering the territorial sea and/or ports of a State are subject to that State's legislation. It should be borne in mind that importation of firearms is subject to port and coastal State regulations. It should also be borne in mind that carrying firearms may pose an even greater danger if the ship is carrying flammable cargo or similar types of dangerous goods.

[70] Online at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D25884/1333.pdf

[71] Online at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D25885/1334.pdf

Non-arming of Seafarers

60 The carrying and use of firearms by seafarers for personal protection or for the protection of a ship is strongly discouraged. **Seafarers are civilians and the use of firearms requires special training and aptitudes and the risk of accidents with firearms carried on board ship is great**. **Carriage of arms on board ship may encourage attackers to carry firearms or even more dangerous weapons, thereby escalating an already dangerous situation**. Any firearm on board may itself become an attractive target for an attacker.

61 It should also be borne in mind that shooting at suspected pirates may impose a legal risk for the master, shipowner or company, such as collateral damages. In some jurisdictions, killing a national may have unforeseen consequences even for a person who believes he or she has acted in self defence. Also the differing customs or security requirements for the carriage and importation of firearms should be considered, as taking a small handgun into the territory of some countries may be considered an offence.

Use of Unarmed Security Personnel

62 The use of unarmed security personnel is a matter for individual shipowners, companies, and ship operators to decide. The use of unarmed security personnel to provide security advice and an enhanced lookout capability could be considered.

Use of Privately Contracted Armed Security Personnel

63 If armed security personnel are allowed on board, the master, shipowner, operator and company should take into account the possible escalation of violence and other risks. However, the use of privately contracted armed security personnel on board merchant ships and fishing vessels is a matter for flag State to determine in consultation with shipowners, operators and companies. Masters, shipowners, operators and companies should contact the flag State and seek clarity of the national policy with respect to the carriage of armed security personnel. All legal requirements of flag, port and coastal States should be met.

Military Teams or Law Enforcement Officers Duly Authorized by Government

64 The use of military teams or law enforcement officers duly authorized by the Government of the flag State to carry firearms for the security of merchant ships or fishing vessels is a matter for the flag State to authorize in consultation with shipowners, operators and companies. The carriage of such teams may be required or recommended when the ship is transiting or operating in areas if high risk. Due to rules of engagement defined by their Government, or in coalition with other Governments, boarding conditions should

> be defined by the States involved, including the flag State. The shipowner, operator and company should always consult the flag State prior to embarking such teams.

G. Preenforcement Challenge to the U.S. Marshals Threat of Arrest for Exercising Constitutional and Statutory Rights.

This COMPLAINT includes a preenforcement challenge of the U.S. Marshals threat of arrest for 18 U.S.C. § 111, *ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES*; 18 U.S.C. § 1201(a)(1) and (2) *KIDNAPPING*; and 18 U.S.C. § 1203(a) HOSTAGE TAKING in an ***ACT OF COERCION AND RETALIATION*** for exercising the *COMMON LAW RIGHT* and the *STATUTORY RIGHT OF CITIZEN'S ARREST* under D.C. Code § 23-582(b)(1)(A) *ARRESTS WITHOUT WARRANT BY OTHER PERSONS* and D.C. Code § 23-582(c) (*Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay*) of federal judges for probable cause evidence of felony *EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES* (18 U.S.C. § 872) in violation of the *SEAMEN'S SUIT LAW*, (28 U.S.C. § 1916).

H. Facial and As Applied Constitutional Challenge against the TRANSPORTATION WORKER IDENTIFICATION CREDENTIAL (TWIC) and the MERCHANT MARINER CREDENTIAL (MMC) as Badges and Incidences of Slavery as Unconstitutional Conditions for their Indirect Burden on the Second Amendment Rights of Seamen

Both the TWIC card and the MMC neglected and omitted the Second Amendment rights of American seamen (MMC) and American truck drivers and seamen alike (TWIC card) throughout their regulatory stage and their enactments. Any efforts I made to directly and purposely add my opinion on the Second Amendment rights of seamen in the regulatory process through my First Amendment right to petition the Government for redress of grievances, beit through my application for National Open Carry Handgun where I was treated to a criminal investigation thorugh NCIS Europe Field Office for emailing a Second Amendment essay to the U.S. Coast Guard in Washington, DC or was treated to questioning on suspicion have having a gun on Mass Maritime Academy property while attending the U.S. Coast Guard's *MERCHANT MARINE PERSONNEL ADVISORY COMMITTEE* meeting of March 16-17, 2009. These two events constitute Racketeering Activities under the RICO Act against the Second Amendment rights of seamen and 18 U.S.C. § 241 *CONSPIRACIES AGAINST RIGHTS* and 18 U.S.C. § 242 *DEPRIVATION OF RIGHTS UNDER COLOR OF LAW*. Without the free exercise of First Amendment rights to free speech and the right to petition the Government for redress of grievance in the development of the TWIC Card and the MMC in regard to the recognition and acknowledge of Second Amendment rights of seamen by including indicators that a seaman is not a prohibited person from owning or possessing a firearm in intrastate or interstate travel (18 U.S.C. § 922(g) UNLAWFUL ACTS WITH FIREARMS) then the TWIC Card and the MMC are actual badges and incidences of slavery and involuntary servitude in violation of the Thirteenth and Fourteenth Amendments for their indirect burden to the exercise of Second Amendment rights of seamen as evidenced by the U.S. Coast Guard's retaliatory and harassing behavior against advocacy for Second Amendment rights of seaman.

Citing from Michael Anthony Lawrence, Reviving *A NATURAL RIGHT: THE FREEDOM OF AUTONOMY*, 42 Willamette L. Rev. 123, at 185 (Winter, 2006):

> America has fallen far short of the promise made in the Declaration of Independence and Bill of Rights for protecting individual liberties of equality and free choice on matters of natural private concern - rights considered to be natural and virtually inviolable from early pre-Revolutionary years at least into the early decades of the nation. These principles, representing the very core of the revolutionary-era and

founding ideology, have been lost over the decades to an overbearing government guided by majorities that are allowed to impose their beliefs and morality on others.

If the freedom of autonomy is to be revived from its current slumber in modern-day America, Americans must develop a greater understanding of the nature and rich history of this most basic natural right. Greater awareness can lead to a shift in thinking away from the current status quo of government as paternalistic overseer, and back toward the original intent of government subservient to the individual. They may look again to the inspirational words of the Declaration, knowing that from the beginning, our forebears knew it would not be easy. When freedom was on the line, "*the colonists knew ... what would in fact happen [next] ... would be the result ... of the degree of vigilance and the strength of purpose the people could exert. For they believed ... the preservation of liberty would continue to be what it had been in the past, a bitter struggle with adversity... .*"[72] And so preservation of liberty continues to be what it has been in the past - a bitter struggle with adversity - and only time will tell whether modern-day Americans have what it takes to make the necessary changes to ensure its survival.

The aggregate effect of State and Federal gun control laws imposes unconstitutional prohibitions on the right to intrastate, interstate, nautical, and maritime travel while *openly* armed under the *BILL OF RIGHTS* and the *THIRTEENTH AND FOURTEENTH AMENDMENTS*. The States and the United States are conducting racketeering activities against the Second Amendment rights of the American people by imposing conditions that violate the *DOCTRINE OF UNCONSTITUTIONAL CONDITIONS*. Citing Kathleen M. Sullivan's, *UNCONSTITUTIONAL CONDITIONS*, 10 Harv. L. Rev. 1413 (May 1989):

Basic constitutional jurisprudence dictates that courts subject most government benefit decisions to minimal scrutiny, but scrutinize government actions that directly burden preferred liberties more closely. Unconstitutional conditions problems arise at the boundary between these two directives: when government conditions a benefit on the recipient's waiver of a preferred liberty, should courts review the conditioned benefit deferentially, as a benefit, or strictly, as a burden on a preferred liberty? . . . Professor Sullivan criticizes traditional analyses of unconstitutional conditions for focusing wrongly on whether conditions coerce individuals, distort legislative process, or permit alienation of constitutional rights. She articulates an alternative defense of close scrutiny, arguing that rights pressuring conditions on government benefits skew distribution of power between government and rightholders, as well as among rightholders themselves. Professor Sullivan then develops this systemic approach, detailing both the circumstances in which courts should apply close scrutiny, and those in which government justifications may be strong enough to survive such scrutiny.[73]

The doctrine of unconstitutional conditions holds that government may not grant a benefit on the condition that the beneficiary surrender a constitutional right, even if the government may withhold that benefit altogether. It reflects the triumph of the view that government may not do indirectly what it may not do directly over the view that the

[72] Bernard Bailyn, *THE IDEOLOGICAL ORIGINS OF THE AMERICAN REVOLUTION* at 85 (Enl. ed 1992 (1967)) (winner of Bancroft and Pulitzer Prizes).

[73] Kathleen M. Sullivan, *UNCONSTITUTIONAL CONDITIONS*, 102 Harv.158 L.Rev. 1413 (May 1989), introduction. Italics in original.

greater power to deny a benefit includes the lesser power to impose a condition on its receipt. (Id. at 1415)

[A]ssuming that some set of constitutionally preferred liberties has been agreed upon, and that burdens on those liberties require especially strong justification, unconstitutional conditions doctrine performs an important function. It identifies a characteristic technique by which government appears not to, but in fact does burden those liberties, triggering a demand for especially strong justification by the state. Part I of this Article defines the basic elements of the technique. (Id. at 1419)

The central challenge for a theory of unconstitutional conditions is to explain why conditions on government benefits that indirectly pressure preferred liberties should be as suspect as direct burdens on those same rights, such as the threat of criminal punishment. (Id. at 1419)

IV. Unconstitutional Conditions as Commodification

Unconstitutional conditions doctrine has a third possible theoretical explanation: that some constitutional rights are inalienable, and therefore may not be surrendered even through voluntary exchange. This approach identifies the harm in unconstitutional conditions as the commodification of rights the treatment of rights as transferable objects. (Id. at 1477)

1. Paternalism.

Making constitutional rights inalienable because citizens may undervalue the worth of those rights to themselves would be classic paternalism overruling individuals' choices for their own good. Individuals' choices may diverge from their best interests for many reasons: for example, because they under assess risk or under-value their long-term interests. Choices to waive constitutional rights are no exceptions; invalidating such choices, even if perfectly voluntary, compels citizens to hang onto their rights for their own good. (Id. at 1480)

. . . The very existence of constitutional rights, however, unlike consumer tastes or preferences, results from the prior paternalistic act of enacting a Constitution. The framers' decision to place constitutional rights beyond majority decisionmaking reflects the prediction that citizens will undervalue those rights in the ordinary course of politics. Constitutional rights thus represent commitments by a constitutional majority to override the acts of future political majorities' political version of Ulysses and the Sirens. If the Constitution overrides the legislative choices of improvident future political majorities, why not the trading choices of improvident future individual rightholders? This approach would conceive unconstitutional conditions doctrine as a mere backstop to constitutionalism itself, which among other things, places rights beyond the reach of politics because citizens, if left to their own devices, will squander them. (Id. at 1480-81)

4. *Personhood.*

Another sort of argument defends inalienability not because it promotes efficiency or equality, but because some things ought not to be traded on markets at all. Such wholesale anti-commodification arguments rest on various theories. Some, for example, view market boundaries as essential to a distinction between the sacred and the profane. On such a view, reverence, mystery, and awe for something depend on its

freedom from the pollution of trade. A second variant argues that noncommodificiation can help preserve social norms of altruism or donation. (Id. at 1484)

Such a personhood approach would hold that the opportunity to exchange rights for benefits wrongly commodifies rights. . . . Inalienability here would follow from the view that constitutional rights, like body parts and love, but unlike clothes or mass-market consumer goods, are essential attributes of personal identity. The metaphor of constitutionally protected liberties as a birthright captures this view. Free transfer of such rights is a form of dismemberment. If citizens could purchase and sell constitutional rights, they would have a different and inferior conception both of those constitutional rights and of themselves. (Id. at 1485)

V. A Systemic Account of Unconstitutional Conditions

Neither coercion, corruption, nor commodification theories satisfactorily explain why conditions on benefits that pressure preferred liberties should receive the same strict scrutiny as direct constraints. . . . None of these three approaches suffices: coercion theory focuses too narrowly on the individual beneficiary, germaneness theory focuses wrongly on [the corruption of the] legislative process, and inalienability theory focuses too generally on problems with exchange. (Id. at 1489-90)

This Part argues for an alternative approach grounded in the systemic effects that conditions on benefits have on the exercise of constitutional rights. Such an approach starts from the proposition that the preferred constitutional liberties at stake in unconstitutional conditions cases do not simply protect individual rightholders piecemeal. Instead, they also help determine the overall distribution of power between government and rightholders generally, and among classes of rightholders. (Id. at 1490)

Unconstitutional conditions, no less than direct infringements, can skew this distribution in three ways.

First they can alter the constitutional liberties generally declare desirable some realm of autonomy that should remain free from government encroachment. Government freedom to redistribute power over presumptively autonomous decisions from the citizenry to itself through the leverage of permissible spending or regulation would jeopardize that realm. Second, an unconstitutional condition can skew the distribution of constitutional rights among rightholders because it necessarily discriminates facially between those who do and those who do not comply with the condition. If government has an obligation of evenhandedness or neutrality with regard to a right, this sort of redistribution is inappropriate. Third, to the extent that a condition discriminates de facto between those who do and do not depend on a government benefit, it can create an undesirable caste hierarchy in the enjoyment of constitutional rights. (Id. at 1490)

A. Constitutional Liberty as Distribution

A systemic approach to unconstitutional conditions problems recognizes that constitutional liberties regulate three relationships: the relationship between government and rightholders, horizontal relationships among classes of right holders, and vertical relationships among rightholders. . . . rights-pressuring conditions on government benefits potentially skew all three. (Id. at 1491)

Such an approach has important advantages over coercion, germaneness, and inalienability theories in illuminating unconstitutional conditions problems. Unlike

coercion and unalienability theories, a systemic approach emphasizes the distinctive role of government: citizens' transactions with government require different analysis than interpersonal transactions, an analysis that focuses not on individuals but on the balance of power and freedom in the polity as a whole. (Id. at 1491)

Traveling the various states with a lawfully owned handgun for personal security places one in jeopardy to State and Federal laws due to the severe complexity of the laws of the various states as the following tables convey.

8. THE U.S. COAST GUARD'S OATH OF OFFICE AS AN AFFIRMATIVE PERFECT AND POSITIVE DUTY TO ACT; A DUTY OF GOOD FAITH AND FAIR DEALING; AS A STRICTLY MINISTERIAL DUTY TO ACT; AS A DUTY OF CARE UNDER TORT LIABILITY

A. De Novo Judicial Review of the U.S. Coast Guard's Final Agency Action

The first part of this case is the demand for de novo review of the U.S. Coast Guard's *FINAL AGENCY ACTION* denying my Second Amendment application for the *NATIONAL OPEN CARRY HANDGUN* or the *NATIONAL OPEN CARRY SMALL ARMS AND LIGHT WEAPONS* endorsement on the (then in 2002) *MERCHANT MARINER'S DOCUMENT* (MMD) now made obsolete and replace by the new Soviet Union Passport looking *MERCHANT MARINER'S CREDENTIAL*.

The second part part of this case is for damages for the various acts of the U.S. Coast Guard violating my First Amendment right to petition the Government for redress of Grievances and for violating my Seventh Amendment right to a civil jury trial compounded by subsequent acts of judicial extortion, obstructions of justice, and public corruption by federal judges and their court personnel; for obstructions of justice by the U.S. Marshals Service; and for other obstructions by other federal agencies.

My case presents the flip-side to *Heller* and *McDonald* firearms in the home. I present a Second Amendment case for the right to keep and bear arms in intrastate and interstate travel outside the home, known as National Open Carry Handgun and the maritime equivalent to U.S. seamen's Second Amendment right to ready access to defensive Small Arms and Light Weapons aboard U.S. flag vessels for defense against pirates on the high seas.

B. De Novo Judicial Review of *Hamrick* v. *President Bush*, U.S. District Court for DC, No. 02-1435 and *Hamrick* v. *Admiral Thomas H. Collins, USCG, et al*, U.S. District Court for the District of Columbia, No. 02-1434.

The original cases, *Hamrick* v. *President Bush*, U.S. District Court for DC, No. 02-1435 and *Hamrick* v. *Admiral Thomas H. Collins, USCG, et al*, U.S. District Court for the District of Columbia, No. 02-1434 were overturned by *District of Columbia* v. *Heller*, No. 07-290, 554 U.S. 290; 478 F. 3D 370 (2008), McDonald v. Chicago, U.S. Supreme Court, No. 08-1521, (June 28, 2010). Therefore I am demanding *de novo* review of these two cases.

C. Res Judicata Does Not Apply to this Civil Complaint

Because the original cases were overturned by the U.S. Supreme Court *res judicata* does not appy to this Amended Complaint.

9. STATEMENT OF THE FACTS

A. Background

The first 4 years of my 20 years as a civilian U.S. merchant seaman were served in the U.S. Government's TAGOS program of ocean surveillance vessels (submarine hunters) in the defense of the United States. The remaining 16 years were spent between U.S. Government vessels of the Pre-Position Fleet and the Ready Reserve Fleet in further defense of the United States and the U.S. flag commercial vessels for the economic strength of the United States.

In 2002 I accepted employment aboard a U.S. Government ammunition vessel coming out of the shipyard in New Port News, Virginia. As a pre-requisite to that employment I was required to have Small Arms training under Military Sealift Command (MSC) policy and regulations and OPNAVINST 3591.1C *WATCH STANDER SMALL ARMS RE-CERTIFICATION COURSE*, dated May 13, 1992 which fell under 46 U.S.C. § 7306(a)(3), *GENERAL REQUIREMENTS AND CLASSIFICATIONS FOR ABLE SEAMEN IS QUALIFIED PROFESSIONALLY AS DEMONSTRATED BY AN APPLICABLE EXAMINATION OR EDUCATIONAL REQUIREMENTS*.

OPNAVINST 3591.1F *SMALL ARMS TRAINING AND QUALIFICATION*, dated August 12, 2009 is the current guidelines used by Military Sealift Command and the U.S. merchant marine industry.

Because I did not have the requisite Small Arms training the vessel's operating company sent me to a local MSC-approved shooting range where I qualified in the 9mm Baretta, the 12ga shotgun, and the M14 rifle.

After my allotted time of employment aboard that U.S. Government vessel and realizing the fact that the U.S. Coast Guard has ignored the Second Amendment rights of U.S. seamen under 46 U.S.C. § 7306(a)(3) I submitted my application to the U.S. Coast Guard to have my *MERCHANT MARINER'S DOCUMENT* [74] endorsed with "*NATIONAL OPEN CARRY HANDGUN*" for *Second* Amendment rights of U.S. seamen in intrastate and interstate travel and optionally with "*NATIONAL OPEN CARRY SMALL ARMS AND LIGHT WEAPONS*" for Second Amendment rights of U.S. seaman aboard U.S. flag vessels under maritime law in defense against United Nations attack on the human right to life through the human right of armed self-defense embodied in the following treaties and conventions:

- OAS, *INTER-AMERICAN CONVENTION AGAINST ILLICIT MANUFACTURING OF AND TRAFFICKING IN FIREARMS, AMMUNITION, EXPLOSIVES, AND OTHER RELATED MATERIALS OF NOVEMBER 14, 1997.*[75]
- UNITED NATIONS, *PROGRAMME OF ACTION TO PREVENT, COMBAT AND ERADICATE THE ILLICIT TRADE IN SMALL ARMS AND LIGHT WEAPONS IN ALL ITS ASPECTS* (UN Document A/CONF.192/15);
- IMO, *PIRACY AND ARMED ROBBERY AGAINST SHIPS: RECOMMENDATIONS TO GOVERNMENTS FOR PREVENTING AND SUPPRESSING PIRACY AND ARMED ROBBERY*

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[74] The *MERCHANT MARINER'S DOCUMENT* (MMD) has since been made obsolete with the issuance of the *MERCHANT MARINER'S CREDENTIAL* looking more like a red-covered Soviet Union passport than a traditional identification card for of a seaman — given the fact that color *red* has symbolic significance for communism and tyranny in international political affairs.

[75] For an analysis of this treaty *see* Gun Owners of America's *CIFTA TREATY ANALYSIS* at: http://gunowners.org/fs0901.htm

AGAINST SHIPS, MSC.1/Circ.1333, 26 June 2009 and the "*no firearms*" recommendation in ¶¶ 59–61.[76]

● IMO, *PIRACY AND ARMED ROBBERY AGAINST SHIPS: GUIDANCE TO SHIPOWNERS AND SHIP OPERATORS, SHIPMASTERS AND CREWS ON PREVENTING AND SUPPRESSING ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS*, MSC.1/Circ.1334, 23 June 2009.[77]

Therefore, in the essence of ultimate truths, the *NATIONAL OPEN CARRY HANDGUN* endorsement under the Second Amendment on today's *MERCHANT MARINER CREDENTIAL* (MMC) would, in fact and law, be in the best interest of marine sasfety or security.

However, I also bring into this Amended Complaint my facial challenge on the constitutionality of the *TRANSPORTATION WORKER'S IDENTIFICATION CREDENTIAL* (TWIC) for the regulatory neglect to recognize and include the Second Amendment rights of TWIC holders in intrastate and interstate travel. My complaint on the constitutionality of TWIC is presented in more detail in Part 3.

B. Judicial Extortion, Corruption, and Obstructions of Justice

All of my civil complaints from 2002 to the present were dismissed, some with prejudice, others without prejudice, for the alleged failure to state a claim. (Suspicious dismissals as based on bias and anti-Second Amendment political ideology because this Court and the DC Circuit are reputed to be hostile not only to the Second Amendment but also to *pro se* civil plaintifes, especially those with Second Amendment cases. Hince the double-whammy dismissals I have suffered.)

I am supposed to have the right to rely on my statutory right as a seamen under 28 U.S.C. § 1916 to be exempt from filing fees and costs of the federal courts. However, even on the presentment of full documentation as a seaman to the U.S. Court of Appeals and to the U.S. Supreme Court on appeals these two federa courts ignored my credentials as a seaman and ignored the Seamen's Suit law, 28 U.S.C. § 1916 and issued Court Orders compelling me to pay their respective filing fees and constitutional rights without fear of judicial bias or corruption. Singling out the Chief Justice of the U.S. Supreme Court as a defendant in this civil Complaint is justified because he was a party to two Court Orders when he was a judge at the DC Circuit unlawfully compelling me to pay the filing fees of that Court.

Part 3 of this Complaint contains the detailed claims against the Chief Justice of the U.S. Supreme Court, John G. Roberts.

10. DEFINITION OF SEAWORTHY

Seaworthy — *adj*. (Of a vessel) properly equipped and sufficiently strong and tight to resist the perils reasonably incident to the voyage for which the vessel is insured. An implied condition of marine-insurance policies, unless otherwise stated, is that the vessel will be seaworthy. — seaworthiness. *n.*

For the purpose of this Complaint the definition of *seaworthy* and *seaworthiness* include the ability of a vessel and its crew (excluding contract security or other external security services) to defend against pirate attacks on the high seas (*perils reasonably incident to the voyage for which the vessel is insured*) with the availability and ready access to small arms and light weapons.

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[76] Online at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D25884/1333.pdf

[77] Online at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D25885/1334.pdf

11. DEFINITIONS OF VARIOUS TYPES OF NEGLIGENCE

Culpable Negligence Negligent conduct that, while not intentional, involves a disregard of the consequences likely to result from one's actions.

Hazardous Negligence Careless or reckless conduct that exposes someone to extreme danger or injury or to imminent peril.

Joint Negligence The negligence of two or more persons acting together to cause an accident.

Negligence In Law Failure to observe a duty imposed by law

Negligence Per Se Negligence established as a matter of law, so that breach of duty is not a jury question. Negligence per se usually termed *legal negligence*.

Passive Negligence Negligence resulting from a person's failure or omission in acting, such as failing to remove hazardous conditions from public property. Cf. *active negligence*.

Professional Negligence *malpractice*: (An instance of negligence or incompetence on the part of a professional.) To succeed in a malpractice claim, a plaintiff must also prove proximate cause and damages. — Also termed *professional negligence*.

12. DEFINITIONS OF VARIOUS TYPES OF DUTY

Duty (1). A legal obligation that is owed or due to another and that needs to be satisfied; an obligation for which somebody else has a corresponding right.

"While courts frequently say that establishing 'duty' is the first prerequisite in an individual tort case, courts commonly go on to say that there is a 'general duty' to '*exercise reasonable care*,' to avoid subjecting others to '*an unreasonable risk of harm*,' or to comply with the '*legal standard of reasonable conduct*.' Though cast in the language of duty, these formulations merely give the expression to the point that negligence is the standard of liability." *RESTATEMENT (THIRD) OF TORTS* § 6 cmt. A (Discussion Draft 1999).

(2). Any action, performance, task, or observance owed by a person in an official or fiduciary capacity

(3). *Torts*. Legal relationship arising from a standard of care, the violation of which subjects the actor to liability. — Also termed duty of care.

Absolute Duty A duty to which no corresponding right attaches. According to John Austin's legal philosophy, there are four kinds of absolute duties:

(1) duties not regarding persons (such as those owed to God and to lower animals),

(2) duties owed to persons indefinitely (i.e., to the community as a whole),[78]

(3) self-regarding duties (such as the duty not to commit suicide),[79] and

(4) duties owed to the sovereign.[80]

[78] As in an absolute duty to obey the Oath of Office to support and defend the Constitution of the United States when no federal law or regulation addresses a particular subject matter, i.e., the contested *NATIONAL OPEN CARRY HANDGUN* or *NATIONAL OPEN CARRY SMALL ARMS AND LIGHT WEAPONS* endorsement for a *MERCHANT MARINER'S DOCUMENT* (MMD) or *MERCHANT MARINER'S CREDENTIAL* (MMC) or even the *TRANSPORTATION WORKER'S IDENTIFICATION CREDENTIAL* (TWIC).

[79] As in the absolute duty not to commit treason or violate the common law rights, statutory rights, constitutional rights, or human rights of a U.S. citizen/seaman as applied to the U.S. Coast Guard and the other Defendants.

[80] The prime example in regard to this Complaint is the duty of the U.S. Coast Guard Defendant's absolute duty to the sovereign United States and its Constitution is to support and defend the Constitution's Common Defense

Affirmative Duty A duty to take a positive step to do something.

Duty to Act A duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances. Example, **ministerial**, *adj.* [**duty**]. Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill.

Duty to Speak A duty to say something to correct another's false impression.

Moral Duty A duty the breach of which would be a moral wrong. — Also termed *natural duty*

Negative Duty A duty that forbids someone to do something; a duty that requires someone to abstain from something.

Perfect Duty A duty that is not merely recognized by the law but is actually enforceable.

Positive Duty A duty that requires a person either to do some definite action or to engage in a continued course of action.

Preexisting Duty A duty that one is already legally bound to perform. See preexisting duty rule.

Duty of Good Faith and Fair Dealing — A duty that is implied in some contractual relationships, requiring the parties to deal with each other fairly, so that neither prohibits the other from realizing the agreement's benefits.

Strictly Ministerial Duty A duty that is absolute and imperative, requiring neither the exercise of official discretion nor judgment.

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clause in the Preamble by exercising the ministerial duty requisite to the Oath of Office to support and defend the Second Amendment rights of U.S. seamen in federal laws, legislation, and regulatory matters such as the *MERCHANT MARINER'S DOCUMENT* (MMD) or *MERCHANT MARINER'S CREDENTIAL* (MMC) or even the *TRANSPORTATION WORKER'S IDENTIFICATION CREDENTIAL* (TWIC).

PART 1. FIRST CAUSE OF ACTION: DEMAND FOR DE NOVO JUDICIAL REVIEW OF THE U.S. COAST GUARD'S FINAL AGENCY ACTION AS A MATTER OF RIGHT UNDER 5 U.S.C. § 702, 704, 706 (CANNOT BE DISMISSED)

Admiral Papp is charged with imputed negligence of his predecessor and gross negligence of his own for failure to perform one of their Primary Duties under 14 U.S.C. § 2 PRIMARY DUTIES OF THE U.S. COAST GUARD (The Coast Guard shall enforce or assist in the enforcement of **all applicable Federal laws on**, under, and over **the high seas** and waters subject to the jurisdiction of the United States; ...); the duty of protecting the U.S. merchant marine and merchant marine from pirate attacks on the high seas by failing to enact regulations or to encourage Congress to pass legislation respecting the Second Amendment rights of U.S. seamen to protect themselves from pirates on the high seas and for wrongfully denying my application for Second Amendment rights in the form of an endorsement for National Open Carry Handgun and/or Small Arms and Light Weapons in response to federally required Small Arms Training as a prerequisite for employment aboard a U.S. Government ammunition vessel in 2002.

Admiral Robert Papp is also charge with failure to inspect U.S. flag vessels of the merchant marine for seaworthiness in their capacity to defend against pirates on the high seas despite any omission of such inspections in the Title 46 of the Code of Federal Regulations; Safety of Life at Sea (SOLAS) Regulations; ISPS, or STCW. This inspection includes the Second Amendment rights of U.S. seamen aboard U.S. flag vessels.

It is therefore demanded a de novo judicial review of the U.S. Coast Guard's Final Agency Action, dated April 19, 2002 as noted on the next page.

1. The U.S. Coast Guard's Final Agency Action, a Breach of the Oath of Office, and an Act of Treason against the Common Defence and the National Defense of this Country

U.S. COAST GUARD'S FORM CG-9556, ACCEPTANCE AND OATH OF OFFICE

> I accept this appointment in the United States Coast Guard/Coast Guard Reserve (strikeoutone) in the grade of _______________ with rank as such from (date of ___________. This information was transmitted by Commandant's letter/message (ssic/dtg) __________/ dated __________. Having accepted this appointment, I, __________, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

USCG clarifies role of masters in arms debate - By Rajesh Joshi

"Use of arms to defend US-flag ships from piracy remains the prerogative of the shipmaster, and masters retain control over and responsibility for the actions of even embarked security teams, the US Coast Guard has said. The federal agency has released two port security advisories that clarify how existing US laws apply to armed self-defence and carriage of firearms on ships. A third advisory lays down standards for contracted security teams placed on ships. The self-defence advisory says the master has a legal right to protect his ship and crew from damage or loss."

LLOYD'S LIST, 7 July 2009, p 2

U.S. COAST GUARD'S FINAL AGENCY ACTION

U.S. Department of Transportation
United States Coast Guard

Commandant
United States Coast Guard

2100 Second Street, S.W.
Washington, DC 20593-0001
Staff Symbol: G-MO
Phone: (202) 267-2201
Fax: (202) 267-4839

16713

APR 19 2002

Mr. Don Hamrick
5860 Wilburn Road
Wilburn, AR 72179

And 7 YEARS LATER in 2009 pirates hijacked MAERSK ALABAMA

Dear Mr. Hamrick:

This is to address your appeal of a decision by the Commanding Officer, Coast Guard National Maritime Center concerning your Merchant Mariner's Document.

In your letter of 19 January 2002, you applied to have your Merchant Mariner's Document endorsed "National Open Carry Handgun." The Commanding Officer, Coast Guard National Maritime Center replied to you in his letter of 22 February, denying your application. You appealed that decision in your letter of 16 March to Secretary of Transportation Norman Y. Mineta, and supplemented your appeal with your letter of 29 March, also to Secretary Mineta. Your appeal was forwarded to me for final agency action as outlined in 46 CFR 1.03-15(j).

I am impressed with your scholarship and zeal in formulating arguments in support of your application for a "National Open Carry Handgun" endorsement on your Merchant Mariner's Document, but I am not persuaded to agree with you. As you have noted, the laws and regulations do not provide for such an endorsement nor do they prohibit it. Instead, the matter is left to my judgment. My decision, after considering all the material you have submitted, is that it would not be in the best interest of marine safety or security to initiate the endorsement you have applied for. Your appeal is therefore denied and the Commanding Officer, National Maritime Center is directed not to place any endorsements regarding firearms on any merchant mariner's licenses or documents.

This decision constitutes final agency action as cited above.

Sincerely,

J. P. Brusseau
Captain, U.S. Coast Guard
Director of Field Activities
Marine Safety, Security and Environmental Protection

PLAINTIFF'S NOTE: April 19 is commonly known as "Patriots' Day" in remembrance of the start of the American Revolution with the "shot heard 'round the world." Even though the date of this letter is coincedental to Patriots' Day it nevertheless represents another historical event in the American People's struggle for actual freedom. This Coast Guard letter vindications the Plaintiff as an American Patriot litigiously fighting for freedom and for the Common Defence.

A WORD ON CIVIL DEFENSE: THE FEDERAL CIVIL DEFENSE ACT OF 1950 was repealed in 1994. And 7 YEARS LATER the came 9/11 terrorists attacks.

Capt. Brusseau violated his Oath of Office to support and defend the Constitution of the United States, including the Second Amendment rights of seamen.

LESSON LEARNED? NEVER DROP YOUR GUARD!

REVIVE THE PRIVILEGES AND IMMUNITIES OF THE 14TH AMENDMENT AND THE FULL SCOPE OF 2ND AMENDMENT RIGHTS TO NATIONAL OPEN CARRY

2. Does the *NATIONAL OPEN CARRY HANDGUN* Endorsement for the *MERCHANT MARINER'S CREDENTIAL* (formerly the *MERCHANT MARINER'S DOCUMENT*) under the *SECOND AMENDMENT* Promote or Defeat the Common Defence?

U.S. SENATE DOCUMENT NO. 108-17, THE CONSTITUTION OF THE UNITED STATES OF AMERICA ANALYSIS AND INTERPRETATION — ANALYSIS OF CASES DECIDED BY THE SUPREME COURT OF THE UNITED STATES TO JUNE 28, 2002, 108th Congress, 2d Session (2004); The Preamble, p. 53:

PURPOSE AND EFFECT OF THE PREAMBLE

> Although the preamble is not a source of power for any department of the Federal Government,[1] the Supreme Court has often referred to it as evidence of the origin, scope, and purpose of the Constitution.[2] "*Its true office*,'' wrote Joseph Story in his COMMENTARIES, ''*is to expound the nature and extent and application of the powers actually conferred by the Constitution, and not substantively to create them. For example, the preamble declares one object to be*, '***to provide for the common defense***.' *No one can doubt that this does not enlarge the powers of Congress to pass any measures which they deem useful for the common defence.* ***But suppose the terms of a given power admit of two constructions, the one more restrictive, the other more liberal, and each of them is consistent with the words, but is, and ought to be, governed by the intent of the power; if one could promote and the other defeat the common defence, ought not the former, upon the soundest principles of interpretation, to be adopted?***"[3]

The federal laws and regulations facially challenged and challenged for constitutionality as applied to U.S. merchant seamen in this Complaint are to be so challenged on the basis on whether they promote or defeat the *Common Defence*.

FEDERALIST No. 8, The Consequences of Hostilities Between the States, November 20, 1787.

> The perpetual menacings of danger oblige the government to be always prepared to repel it; its armies must be numerous enough for instant defense. The continual necessity for their services enhances the importance of the soldier, and proportionably degrades the condition of the citizen. The military state becomes elevated above the civil. The inhabitants of territories, often the theatre of war, are unavoidably subjected to frequent infringements on their rights, which serve to weaken their sense of those rights; and by degrees the people are brought to consider the soldiery not only as their protectors, but as their superiors. The transition from this disposition to that of considering them masters, is neither remote nor difficult; but it is very difficult to prevail upon a people under such impressions, to make a bold or effectual resistance to usurpations supported by the military power.

[1] *Jacobson* v. *Massachusetts*, 197 U.S. 11, 22 (1905).

[2] E.g., the Court has read the preamble as bearing witness to the fact that the Constitution emanated from the people and was not the act of sovereign and independent States, *McCulloch* v. *Maryland*, 4 Wheat. (17 U.S.) 316, 403 (1819) *Chisholm* v. *Georgia*, 2 Dall. (2 U.S.) 419, 471 (1793); *Martin* v. *Hunter's Lessee*, 1 Wheat. (14 U.S.) 304, 324 (1816), and that it was made for, and is binding only in, the United States of America. *Downes* v. *Bidwell*, 182 U.S. 244, 251 (1901); *In re Ross*, 140 U.S. 453, 464 (1891).

[3] 1 *J. STORY, COMMENTARIES ON THE CONSTITUTION OF THE UNITED STATES* (Boston: 1833), 462. For a lengthy exegesis of the preamble phrase by phrase, *see* M. Adler & W. Gorman, *THE AMERICAN TESTAMENT* (New York: 1975), 63–118.

2. Would the *NATIONAL OPEN CARRY HANDGUN* Endorsement for the *MERCHANT MARINER'S CREDENTIAL* (formerly the *MERCHANT MARINER'S DOCUMENT*) Provide a benefit to Marine Safety or Security or Not?

The U.S. Coast Guard in 2002 acknowledged my observation that there were no federal laws or regulations for or against my requested endorsement even though the requested endorsement did not exist nor do they exist today. The U.S. Coast Guard issued their *FINAL AGENCY ACTION* on April 19, 2002,[4] affirming their denial of my application for the endorsements which provided me the grounds for a civil suit in 2002 on the basis that National Open Carry was a right of U.S. citizenship as defined by the U.S. Supreme Court pro-slavery case in *Dred Scott* v. *Sanford*, 60 U.S. (19 How.) 393, 416-417 (1857)(four years before the start of the Civil War):

> [Citizenship] would give to persons of the negro race, who were recognised as citizens in any one State of the Union, the right to enter every other State whenever they pleased, singly or in companies, without pass or passport, and without obstruction, to sojourn there as long as they pleased, to go where they pleased at every hour of the day or night without molestation, unless they committed some violation of law for which a white man would be punished; and it would give them the full liberty of speech in public and in private upon all subjects upon which its own citizens might speak; to hold public meetings upon political affairs, **<u>and to keep and carry arms wherever they went</u>**.

Dred Scott v. *Sanford*, 60 U.S. (19 How.) 393, 416-417 (1857)

The Thirteenth and Fourteenth Amendments are the congressional response to *Dred Scott* v. *Sanford*. As a consequence to pursuing my Second Amendment rights for *actual freedom* under the Thirteenth and Fourteenth Amendments in the U.S. District Court for the District of Columbia in 2002, eight years before *McDonald* v. *Chicago*, U.S. Supreme Court, No. 08-1521, (June 28, 2010), the federal courts, the U.S. Coast Guard, the U.S. Department of Transportation, the U.S. Marshals Service, the U.S. Supreme Court Police, and the FBI, to varying degrees of complicity, conspired amongst themselves and/or with each other to obstruct justice by excessively hindering my right to due process with criminal investigations, bar notices, harassment through escorted access to federal courts and by other means designed to wrongfully deny my Seventh Amendment right to a civil jury trial.

The U.S. Coast Guard's Final Agency Action dated April 19, 2002 stated:

> I am impressed with your scholarship and zeal in formulating arguments in support of your application for a "National Open Carry Handgun" endorsement on your Merchant Mariner's Document, but I am not persuaded to agree with

[4] April 19 is Patriots' Day. It commemorates the battles of Lexington and Concord, Massachusetts which were fought near Boston in 1775. The U.S. Coast Guard is a <u>*naval authority*</u>. The Second Amendment and the Ninth Amendment right to openly keep and bear arms in intrastate and interstate travel is <u>*actual freedom*</u>. The Coast Guard's Final Agency Action denying my Second Amendment right violated Abraham Lincoln's *EMANCIPATION PROCLAMATION OF JANUARY 1, 1863*:

> "The Executive Government of the United States, including the military and **<u>naval authority</u>** thereof, will recognize and maintain the freedom of such persons, and will do no act or acts to repress such persons, or any of them, in any efforts they may make for their **<u>actual freedom</u>**."

> you. As you have noted, the laws and regulations do not provide for such an endorsement nor do they prohibit it. Instead, the matter is left to my judgment. My decision, after considering all the material you have submitted, is that it would not be in the best interest of marine safety or security to initiate the endorsement your have applied for. Your appeal is therefore denied and the Commanding Officer, National Maritime Center is directed not to place any endorsements regarding firearms on any merchant mariner's license or documents.

In 2002 that *FINAL AGENCY ACTION* the U.S. Coast Guard admitted the fact that there were (and still are) no federal laws or regulations for or against the National Open Carry Handgun endorsement. In this situation, since the requested and contested endorsement as based on the Second Amendment to the Bill of Rights the Coast Guard's Oath of Office *DEMANDED* that the Coast Guard officer rely on the Second Amendment as applicable to American seamen aboard U.S. flag vessels (a ministerial duty) and *NOT* rely on his own judgment to deny my application for the endorsement.

In 2007, the M/V Maersk Alabama was attacked by Somali pirates twice. The first attack caughter the vessels without defensive firearms. The crew was captured and held hostage until rescued by U.S. Navy Seal snipers killing three Somali pirates. M/V Maersk Alabama was prepared for the second attack by having armed contract security onboard. The second attack is thwarted by a show of armed resistance.

> **May 2009** **<u>The U.S. State Department</u>** sent a démarche on behalf of the United States commercial shipping industry to determine port state laws and restrictions of other nations on the carriage of self-defense weapons for vessels operating in high risk waters in relation to piracy on the high seas.
>
> **October 19, 2009** **<u>The U.S. Coast Guard</u>** International Port Security Program issued their U.S. Coast Guard *PORT SECURITY ADVISORY* (PSA) (8-09) *PORT STATE RESPONSE TO REQUEST FOR INFORMATION REGARDING CARRIAGE AND TRANSPORT OF SELF-DEFENSE WEAPONS ABOARD U.S. COMMERCIAL VESSELS*.
>
> **August 10, 2010** **<u>The U.S. Coast Guard</u>** updated their *PORT MATRIX INFORMATION* to PSA (8-09).[5] The U.S. Coast Guard's *PORT INFORMATION MATRIX* to PSA (8-09) provides the basis for the U.S. Coast Guard and the U.S. State Department to negotiate a treaty with all maritime nations through the *INTERNATIONAL MARITIME ORGANIZATION* (IMO) securing the human right to armed self-defense of the crew and vessels of each maritime nation. The United States has a choice whether to legistatively and through federal regulations to secure the Second Amendment rights of U.S. seamen to openly keep and bear arms in intrastate and interstate travel. The United States *CONGRESS*, the *BUREAU OF ALCHOHOL, TOBACCO, FIREARMS, AND EXPLOSIVES*, the *U.S. COAST*

[5] http://homeport.uscg.mil/mycg/portal/ep/home.do. Click "Counter Piracy" in the panel on the right side of the page. Scroll down to Port Security Advisories section and click on "PSA (8-09): Port State Response to Request for Information Regarding Carriage and Transport of Self-Defense Weapons Aboard U.S. Commercial Vessels and Port Information document." Then click on the PDF link for the Port Information Matrix 8-9-10 - 226 KB for the list of foreign ports that have responded to the U.S. State Department's demarche.

GUARD, the *U.S. MILITARY SEALIFT COMMAND*, and perhaps other federal agencies can preempt state and local laws that infringe or prohibit the right to intrastate and interstate travel while openly armed as a U.S. citizen and as a U.S. seaman.

The new information above (obstructively denied to me by Judge John D. Bates' *sua sponte* dismissal denying my right to discover this information) invalidates the U.S. Coast Guard's *FINAL AGENCY ACTION* dated April 19, 2002 claiming that a *NATIONAL OPEN CARRY HANDGUN* or a *NATIONAL OPEN CARRY SMALL ARMS AND LIGHT WEAPONS* endorsement on a *MERCHANT MARINER'S DOCUMENT* (now known as the *MERCHANT MARINER'S CREDENTIAL* "*would not be in the best interest of marine safety or security*." The actions of the U.S. Coast Guard and the U.S. State Department as noted above invalidates the U.S. Coast Guard's *FINAL AGENCY ACTION* proving that firearms or small arms and light weapons aboard U.S. flag vessels are, in fact and law, are in the best interest of marine safety and security as implied by the Common Defence clause of the Preamble to the Constitution of the United States. To say otherwise is treason. It is just a matter of how strict we are to enforce the law and constitutional rights as a nation based on individual rights and freedom, even against federal judges who ignore our rights and the Constitution.

The U.S. Coast Guard's *PORT INFORMATION MATRIX* to PSA (8-09) provides the basis for the the U.S. Coast Guard and the U.S. State Department to negotiate a treaty with all maritime nations through the *INTERNATIONAL MARITIME ORGANIZATION* (IMO) securing the human right to armed self-defense of the crew and vessels of each maritime nation. The United States has a choice whether to legistatively and through federal regulations to secure the Second Amendment rights of U.S. seamen to *openly* keep and bear arms in intrastate and interstate travel. The United States Congress, the Bureau of Alchohol, Tobacco, Firearms, and Explosives, the U.S. Coast Guard, the U.S. Military Sealift Command, and perhaps other federal agencies can preempt state and local laws that infringe or prohibit the right to intrastate and interstate travel while openly armed as a U.S. citizen and as a U.S. seaman.

Therefore, the U.S. Coast Guard's *Final Agency Action* of April 19, 2002 is a fraudulent document (18 U.S.C. § 1001 FRAUD AND FALSE STATEMENTS) that violated not only my Second Amendment rights but my First Amendment rights to petition the Government for Redress of Grievances but criminally violated 18 U.S.C. § 241 CONSPIRACY AGAINST RIGHTS (*Commanding Officer, National Maritime Center is directed not to place any endorsements regarding firearms on any merchant mariner's license or documents*); and 18 U.S.C. § 242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW, hence my criminal complaint to the FBI.

PART 2. SECOND CAUSE OF ACTION: DEMAND FOR DE NOVO JUDICIAL REVIEW OF ORIGINAL COMPLAINTS FROM 2002 (RES JUDICATA DOES NOT APPLY TO CASES OVERRULED BY THE U.S. SUPREME COURT)

A. Rus Judicata Does Not Apply to this Overruled Cased: *Hamrick* v. *President George W. Bush, et al,* U.S. District Court for the District of Columbia, No. 02-1435 (2002) Judge Ellen Segal Huvelle, October 9, 2002, Wrongfully Denied with Prejudice

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

DON HAMRICK,)
Plaintiff,)
v.) Civil Action **No. 02-1435** (ESH)
PRESIDENT GEORGE BUSH, *et al.*,)
Defendants.)
____________________________)

OVERRULED BY U.S. SUPREME COURT

District of Columbia v. *Heller*, No. 07-290; 554 US ____ (June 26, 2008), and
McDonald v. *Chicago*, No. 08-1521; 561 U.S. ___ (June 28, 2010),

Res Judicata Does Not Apply to this Overruled Case

MEMORANDUM

On July 18, 2002, petitioner filed a pro se Petition for a Writ of Mandamus, requesting this Court, *inter alia,* to compel the President of the United States to protect the constitutional rights of sailors in the U.S. Merchant Marine to carry handguns while ashore in the United States, to strike various federal statutes and regulations restricting individuals' right to transport firearms across state lines on the grounds that they violate the Second, Ninth, and Thirteenth Amendments of the U.S. Constitution, and to compel the U.S. Coast Guard to approve petitioner's application for National Open Carry Handgun endorsement on his Merchant Marine document. Petitioner has not served a complaint and summons on any of the parties he has named as respondents, seeking instead to use a petition-show cause order approach for the resolution of his grievances. Regardless of whether such an approach is appropriate in light of Rule 81(b) of the Federal Rules of Civil Procedure, it is clear that petitioner cannot satisfy the stringent standards for mandamus relief and therefore that his petition must be dismissed.

The remedy of mandamus is an extraordinary one, and is reserved for extraordinary situations. *See Gulfstream Aerospace Corp*. v. *Mayacamas Corp*., 485 U.S. 271, 289 (1988). Under well-established Circuit law, **mandamus relief is available only if three conditions are met**:

(1) the plaintiff has a clear right to relief;

(2) the defendant has a clear duty to act; and

(3) there is no other adequate remedy available to the plaintiff.

Power v. *Barnhart*, 292 F.3d 781, 784 (D.C. Cir. 2002); *see also In re Bluewater Network*, 234 F.3d 1305, 1315 (D.C. Cir. 2000) (mandamus issued only for the most

transparent violations of a clear duty to act). The present petition falls far short of satisfying these stringent requirements.

The asserted legal bases for the relief sought by petitioner are the Second, Ninth, and Thirteenth Amendments of the Constitution, which, he claims, guarantee the right to carry firearms openly and without a license in interstate and intrastate travel. **Petitioner argues that the Second Amendment's right of the people to keep and bear arms renders invalid any federal or state law restricting what he calls National Open Carry Handgun** and requires the President and the Coast Guard to take the actions he has demanded. **Moreover, according to petitioner, federal and state gun control laws create a form of legislated slavery in violation of the Thirteenth Amendment**.

Taking the latter claim first, no court has ever so much as suggested that the Thirteenth Amendment confers any right to bear arms, and it is entirely fanciful to suggest that its prohibition of involuntary servitude somehow unambiguously requires the overturning of a whole variety of gun control legislation. As for the Second Amendment, while it is true that the precise meaning of this provision continues to be in dispute in both judicial and academic circles, *c.f. United States* v. *Emerson*, 270 F.3d 203 (5th Cir. 2001), the very existence and intensity of that controversy make mandamus relief a decidedly inappropriate vehicle for fulfilling petitioner's demands.

Mandamus is reserved for circumstances in which the claimant's entitlement to relief and the defendant's obligation to provide such relief are unambiguous and undebatable. The Second Amendment simply offers no such clarity.

Moreover, the established law on this subject hardly supports petitioner's cause. In *United States* v. *Miller*, 307 U.S. 174, 178 (1939), the Supreme Court found that absent some reasonable relationship to the preservation or efficiency of a well regulated militia, the possession of a weapon (a short-barreled shotgun) could be proscribed without running afoul of the Second Amendment. Miller remains the most, authoritative modern pronouncement on the amendment's meaning and its conclusion that the right to bear arms is limited by the needs of an organized militia has subsequently been echoed by the Supreme Court and followed in this and other circuits. *See United States* v. *Lewis*, 445 U.S. 55, 65 n.8 (1980); *Fraternal Order of Police* v. *United States*, 173 F.3d 898, 905-06 (D.C. Cir. 1999); accord *United States* v. *Haney*, 264 F.3d 1161, 1165 (10th Cir. 2001) (holding that a federal criminal gun control law does not violate the Second Amendment unless it impairs the state's ability to maintain a well-regulated militia). Under this interpretation, petitioner's claims appear largely without merit.

In sum, given the breadth of petitioner's demands and the narrowness of the constitutional provision that he relies on to justify those demands – **more specifically, the lack of apparent connection between his right to keep and bear an unlicenced firearm and the needs of any organized militia** – petitioner can establish neither that he has a clear right to relief nor that any of the named respondents has a clear duty to act. **However the Second Amendment may ultimately come to be interpreted, the current understanding of that text certainly provides no obvious basis either for the wholesale negation of federal and state gun laws or for the open carry endorsement that petitioner seeks**.

Since mandamus is clearly unavailable here, **the Court must dismiss the petition with prejudice**. Therefore, the Court need not address petitioner's claims for declaratory judgment or for injunctive relief. But if petitioner wishes pursue these claims, he is required to use the ordinary procedures of complaint and summons described in Rules 3 and 4 of the Federal Rules of Civil Procedure. See Flatow v. Islamic Republic of Iran, 2002 WL 31245261, at *2 (D.C. Cir. Oct. 8, 2002) (The Federal Rules of Civil Procedure provide that there shall be one form of action to be known as 'civil action' and such an action shall be commenced by filing a complaint with the court, with related service, answer, and motions obligations thereafter.) (internal quotation marks omitted).

ELLEN SEGAL HUVELLE
United States District Judge

DATE: October 9, 2002

Cases and Controversies Clause of Article III, Section 2, demands a Seventh Amendment civil jury trial. Judge Ellen Segal Huvelle committed treason against the Constitution. *Cf. Cohens* v. *Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821):

> It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. **The one or the other would be treason to the Constitution**. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty. In doing this on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and laws of the United States. We find no exception to this grant, and we cannot insert one.

Cohens v. *Virginia*, 19 U.S. (6 Wheat) 264, 404, 5 L.Ed 257 (1821).

Judge Huvelle ruled in favor of the anti-gun rights of the Miller interpretation my claim that the Second Amendment protects the right to openly keep and bear arms in intrastate, interstate, nautical and maritime travel appear largely without merit because there was no reasonable relationship to the preservation or efficiency of a well regulated militia. But the U.S. Supreme Court overruled that interpretation. Logic then dictates that my claim that the Second Amendment protects the right to openly keep and bear arms in intrastate, interstate, nautical and maritime travel does have merit for a civil jury trial. But the District Courts still continue to dismiss my case.

THOSE DISMISSALS BECOME PRIMA FACIE EVIDENCE OF JUDICIAL BIAS CORROBORATED BY THE INFORMATION IN THE SYNOPSIS OF THE COMPLAINT AGAINST THE FEDERAL JUDICIARY IN PART 1 – THE COMPLAINT AGAINST THE FEDERAL JUDICIARY OF THIS COMPLAINT.

B. Rus Judicata Does Not Apply to this Overruled Cased: *Hamrick* v. *Admiral Thomas H. Collins, USCG, et al*, U.S. District Court for the District of Columbia, No. 02-1434, Judge Ellen Segal Huvelle, December 26, 2002, Wrongfully Denied with Prejudice

COMPLAINT FOR DEFAMATION AND DAMAGES,

LIBEL AS A MATTER OF PRIVATE CONCERN, INJURY TO REPUTATION, UNLAWFUL INTERFERENCE WITH THE LAWFUL OPERATION OF A MERCHANT VESSEL, UNLAWFUL INTERFERENCE WITH A SEAMAN'S EMPLOYMENT ABOARD A MERCHANT VESSEL, WRONGFUL DETENTION/FALSE IMPRISONMENT OF A U.S. MERCHANT SEAMAN IN A FOREIGN COUNTRY, HARASSMENT, EMOTIONAL DISTRESS, AND SUBJECTION TO A MALICIOUS CRIMINAL INVESTIGATION EXTENDING FROM PETITIONER'S EXERCISE OF FIRST AMENDMENT RIGHTS TO FREE SPEECH AND TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES PURSUING SECOND AMENDMENT RIGHTS

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

DON HAMRICK,)
Plaintiff,)
v.) Civil Action **No. 02-1434** (ESH)
ADM. THOMAS COLLINS, *et al.*,)
Defendants.)
)

OVERRULED BY U.S. SUPREME COURT

District of Columbia v. *Heller*, No. 07-290; 554 US ____ (June 26, 2008), and *McDonald* v. *Chicago*, No. 08-1521; 561 U.S. ___ (June 28, 2010)

Res Judicata Does Not Apply to this Overrulled Case

MEMORANDUM OPINION

Plaintiff is a United States Merchant Mariner who wants to carry a handgun whenever he is ashore in the United States. After his application for a National Open Carry Handgun endorsement on his Merchant Marine Document was denied by the United States Coast Guard, plaintiff filed a petition for writ of mandamus to compel the President to issue him endorsement, which was denied by this Court. *Hamrick v. Bush*, Civil Action No. 02-1435 (ESH) (D.D.C. Oct. 10, 2002), *appeal pending*, C.A. No. 02-5334. Plaintiff filed the instant action against three Coast Guard officials for claims arising out of the Coast Guard's investigation of him for statements he made in administrative proceedings seeking this endorsement. Defendants move to dismiss for lack of jurisdiction and for failure to state a claim. Plaintiff filed an opposition to the motion to dismiss and seeks appointment of counsel, assignment of this case to a different judge and an order compelling defendants to respond to his discovery. Having reviewed the entire file, plaintiff's motions will be denied and defendants' motion will be granted in part.

BACKGROUND

The plaintiff, Don Hamrick, is an able-bodied seaman of the United States Merchant Marine. Mr. Hamrick applied to the United States Coast Guard for a National Open Carry Handgun endorsement on his Merchant Mariner's identification card to authorize him to carry a weapon anywhere in the United States. According to the parties, such an endorsement is not provided in, nor precluded by, any federal regulation. Hamrick's application was denied by the Commanding Officer of the National Maritime Center on February 22, 2002. Hamrick appealed this denial to the United States Coast Guard pursuant to 46 C.F.R. § 1.03-15(j). On April 19, 2002, **Capt. J. P. Brusseau, Director of Field Activities, Marine Safety, Security and Environmental Protection, affirmed the denial of Hamrick's application on appeal**. [*Plaintiff's emphasis*].

FRAUD, PERJURY, JUDICIAL USE OF INADMISSIBLE EVIDENCE, CRIMINALLY FALSIFYING THE RECORD, AND OBSTRUCTION OF JUSTICE, & THE FBI AND THE U.S. DEPARTMENT OF JUSTICE REFUSE TO PROSECUTE BECAUSE I AM A NOBODY WITH ACOMPLAINT AGAINST A FEDERAL JUDGE !

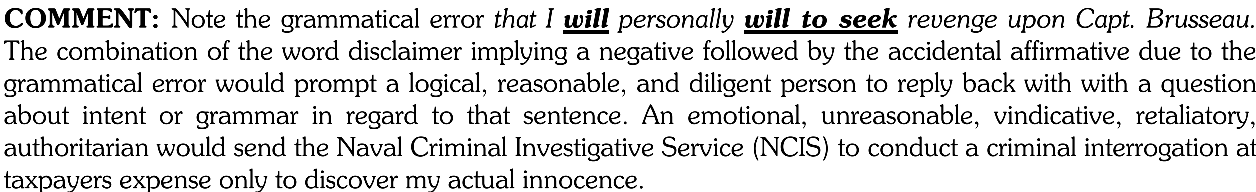
Capt. Brusseau did NOT email me but mailed the May 24, 2002 letter affirming the April 19, 2002 Final Agency Action. Capt. Brusseau failed to account for the fact that I was not aware of his May 24, 2002 letter when he responded to my May 25, 2002 email with the NCIS criminal investigation. The quoted text below was *NOT!* part of the email I sent on May 25, 2002. The NCIS 2-hour criminal interrogation was Sunday, June 9, 2002. The email containing the quoted text below was sent the following day, Monday, June 10, 2002, 16 days (just over 2 weeks) after May 25, 2002. And that particular June 10th email was a CORRECTED COPY of one sent just 1 hour, 22 minutes earlier from that one. It is a criminally fraudulent miscarriage of justice to use an email that occurred 16 days after the email Capt. Brusseau was offended by as justification for the NCIS criminal investigation. By implication my allegation that the Coast Guard retaliated for the exercise of the First Amendment right to petition the Government for redress of grievances has increased merit. Note Judge Huvelle's participation in this fraudulent obstruction of justice in her own Memorandum Opinion below. See the text marked by 🡐 on page 151. This is corroborating evidence confirming Charles W. Heckman, Dr. Sci., *COMMENTS ON THE NINTH CIRCUIT PRO SE TASK FORCE REPORT*, A Matter of Justice Coalition (AMOJ) Committee for the Ninth Circuit at http://victimsoflaw.net/9thcircuit1.htm.t In that commentary are list the following problems with federal court judges: perjury is tolerated by federal judges; judges' opinions fail to address the issues of the lawsuit; that the Government must always win against unrepresented civil plaintiffs; that different standards are applied to different litigants (my own experience at the DC Circuit refusing to answer a procedural question because it would be considered legal advice; court orders go unheeded (my experience with U.S. District Court in Charlotte recognizing Seamen's Suit law, 28 U.S.C. § 1916 in a Court Order that the DC Circuit, and U.S. Supreme Court refuse to recognize), Judges give orders contrary to law and accepted standards of behavior (8th Circuit, DC Circuit, U.S. Supreme Court, District Court in Little Rock, Arkansas Court Orders in violation of Seamen's Suit, 28 U.S.C. § 1916); Judges refuse to take actions required by law (Seamen's Suit, 28 U.S.C. § 1916); Courts have become inconsistent and arbitrary; Federalism theory interferes with practical justice.

May 25, 2002, Hamrick sought reconsideration of this denial by an e-mail while aboard the *SS Maj. Stephen W. Pless* en route from Rota, Spain to Klaipėda, Lithuania. **An addendum to that e-mail sent to Captain Brusseau included a photograph of a person holding a gun aimed directly at the viewer. The addendum included a disclaimer to his introductory paragraph that read**:

> Where it says, WILL NOT COME FROM ME was intended to be a **disclaimer** that I **will** personally **will to seek revenge upon Capt. Brusseau**, the Coast Guard or the United States Government.

See Complaint, Appendix A (printed e-mails).

Hamrick was ordered off of the ship when it reached Lithuania. He was given a room at the Hotel Klaipėda and told to wait for further contact. On June 9, 2002, two agents of the Naval Criminal Investigative Service interviewed Hamrick in his hotel room to determine whether Hamrick constituted a threat to Capt. Brusseau or others in the Coast Guard. Although the complaint contains no report or statement of conclusions, **Hamrick apparently satisfied the Navy investigators that his e-mail included typographical errors and that he posed no threat to Capt. Brusseau. Hamrick was returned to the *SS Pless* after spending 12 days at the Hotel Klaipėda**.



COMMENT: Note the grammatical error *that I* ***will*** *personally* ***will to seek*** *revenge upon Capt. Brusseau.* The combination of the word disclaimer implying a negative followed by the accidental affirmative due to the grammatical error would prompt a logical, reasonable, and diligent person to reply back with with a question about intent or grammar in regard to that sentence. An emotional, unreasonable, vindicative, retaliatory, authoritarian would send the Naval Criminal Investigative Service (NCIS) to conduct a criminal interrogation at taxpayers expense only to discover my actual innocence.

FURTHER NOTE: The Email excerpt above is from Email #22. That and Email #20 are included in this Complaint with their substantive text (superfluous text omitted) following this Memorandum Opinion with my discussion on why Judge Ellen Segal Huvelle should NOT have even considered the above email text as admissible evidence to base her judgment for this dismissive Memorandum Opinion. My discussion will prove, or imply judicial bias, perhaps even political prejudice. See the text in Email #22 marked by ⌫ on page 136.

DISCUSSION

Plaintiff filed this action against Captain Brusseau, Admiral Thomas H. Collins, the current Commandant of the United States Coast Guard, and Rear Admiral Paul J. Pluta, Assistant Commandant for Marine Safety and Environmental Protection. **He seeks damages from defendants for defamation, unlawful interference with his employment, wrongful detention and false imprisonment for his 12-day stay at the Hotel Klaipėda, and harassment and malicious investigation due to his exercise of his First Amendment rights**. Defendants move to dismiss this case for lack of subject matter jurisdiction and for failure to state a claim upon which relief may be granted. Before addressing defendants' motion, the Court will address two preliminary motions filed by plaintiff.

I. Plaintiff's Motions

A. *Motion for Assignment of Case to a Different Judge*

Plaintiff moves to have this case assigned to a judge from another District pursuant to 28 U.S.C. § 455(a) DISQUALIFICATION OF JUDGE BECAUSE IMPARTIALITY IS REASONABLY QUESTIONED on the ground that the undersigned has a personal bias or prejudice against him. A federal judge is required to disqualify [herself] in any proceeding in which [her] impartiality might reasonably be questioned. 28 U.S.C. § 455(a). Plaintiff asserts that my dismissal of his other case, *Hamrick v. Bush*, Civ. Action No. 02-1435, shows that the Court is prejudiced against him because the dismissal was with prejudice. This is a specious argument. The term with prejudice means only that plaintiff cannot bring the same claim against the same parties in a new case. *See* FED. R. CIV. P. 41(b); *see Burns v. Finke*, 197 F.2d 165, 166 (D.C. Cir. 1952) (a dismissal with prejudice is a final judgment on the merits which bars further litigation between the same parties). It has nothing to do with the undersigned's personal predilection to rule against any particular litigant.

Plaintiff also argues that the Court has personal knowledge of disputed evidentiary facts based upon knowledge gained in his other case. However, to serve as the basis for recusal, impartiality must typically result from knowledge acquired outside judicial proceedings. *See Liteky v. United States*, 510 U.S. 540, 554 (1994) (judicial rulings alone almost never constitute valid basis for a bias or partiality motion). Indeed, the local rules of this court require that cases filed by the same *pro se* plaintiff be assigned to the same judge. LOCAL CIV. R. 40.5(a)(3). This rule promotes efficiency by having a judge with knowledge of plaintiff's other pending cases resolve all other potentially related claims. Finding no basis for a reasonable person to question the Court's impartiality, the motion for reassignment to another judge will be denied.

B. *Motion for Appointment of Counsel*

In moving for appointment of counsel, plaintiff faces a heavy burden. Plaintiffs in civil cases generally do not have a constitutional or statutory right to counsel. *See Willis v. FBI*, 274 F.3d 531, 532-33 (D.C. Cir. 2001); *Ray v. Robinson*, 640 F.2d 474, 477 (3d Cir. 1981). Therefore, the Court is not obliged to appoint counsel unless the plaintiff demonstrates the existence of such exceptional circumstances that the denial of counsel would result in fundamental unfairness. *See Cookish v. Cunningham*, 787 F.2d 1, 2 (1st Cir. 1986). Whether exceptional circumstances exist requires an evaluation of the type and complexity of each case, and the abilities of the individual bringing it. *Id*.

Although plaintiff has asserted numerous claims in his lengthy filings, this case is not of a type or complexity that requires appointed counsel to adequately address its merits. At this stage of the proceedings, it would not be fundamentally unfair for plaintiff to respond to defendants' motion given his demonstrated ability to articulate his arguments and the lack of any factual disputes in defendants' motion. *See Ficken v. Alvarez*, 146 F.3d 978 (D.C. Cir. 1998). Moreover, although plaintiff's motion alleges that he has not been able to find counsel on a contingency basis for this case, he does not describe the efforts he has made to retain counsel. *See* LOCAL CIV. R. 83.11(b)(3). Consequently, plaintiff's motion for appointment of counsel will be denied without prejudice to renewal at a later time.

2. **Defendants' Motion to Dismiss**

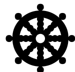
Defendants argue that this action is barred by sovereign immunity. In support of their motion, defendants offer a certification from the Chief of the Civil Division of the Office of the United States Attorney for the District of Columbia that defendants were acting within the scope of their employment as employees of the United States at the time of such alleged incident. **Certification of Mark E. Nagle** (attached to defendants' motion to dismiss). Citing 28 U.S.C. § 2679(d), defendants argue that upon such certification the United States must be substituted for the named defendants. And of course, the United States is absolutely shielded from tort actions for damages unless sovereign immunity has been waived. *Cox v. Secretary of Labor*, 739 F. Supp. 29, 30 (D.D.C. 1990).

CERTIFICATION WAS NOT PROPER: FTCA is *NOT* my only waiver. **The U.S. Coast Guard had a duty to advise Mark E. Nagle, Chief of the Civil Division of the Office of the United States Attorney for the District of Columbia of the regulatory waiver of sovereign immunity under 46 C.F.R. § 1.01–30 *JUDICIAL REVIEW***. *Suppressio very, suggestion falsi.* (The suppression of truth is equivalent to the suggestion of what is false). *Fictio legis inique operator alieni damnum vel injuriam.* (Ficition of law is wrongful if it works loss or harm to anyone). **Capt. Brusseau did *NOT* have a discretionary duty under 28 U.S.C. Sec. 2680(a).** He had a ministerial duty under his oath of office to support and defend the Constitution and the Second Amendment when there were no federal laws or regulations available to use as a basis for his Final Agency Action. ***NOT* OVERSEAS**: The cause of action did *NOT* occur overseas as a point of origin but originated with Capt. Brusseau at U.S. Coast Guard Headquarters in Washington, DC and the consummated with my removal from a U.S. Government vessel (U.S. sovereign territory under maritime law) and taken to a foreign country **(kidnapping? 18 U.S.C. § 1201(a)(1) and (2); hostage taking? 18 U.S.C. § 1203(a))**

Linking 28 U.S.C. Sec. 2680(h) with (k) clearly indicates Judge Huvelle's understanding of 28 U.S.C. Sec. 2680(h) was *pre-1974 amendment* implying ignorance of the law.

FULL CASE REFUTING JUDGE HUVELLE INCLUDED: *See Andrew Nguyen, MD* v. *United States*, 11th Cir. No. 07-12874 (February 4, 2009) and *Compton* v. *Ide*, C.A.9 (Cal.) 1984, 732 F.2d 1429, clarifying the Relationship Between 28 U.S.C. § 2680(a) & (h) included here in starting at page 42.

ANOTHER CASE LAW: The district court held that the claims by the Comptons under the FTCA for false arrest, false imprisonment, malicious prosecution and abuse of process were barred by the 'exclusions' of 28 U.S.C. Sec. 2680. This was error, because 28 U.S.C. Sec. 2680(h) specifically allows such claims when they arise from acts or omissions by federal law enforcement officers. *Compton* v. *Ide*, C.A.9 (Cal.) 1984, 732 F.2d 1429.



In turn, the only waiver of sovereign immunity applicable to plaintiff's claim for damages is the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b). However, the waiver of immunity authorized by the FTCA expressly exempts claims arising out of libel or slander, and those claims arising in a foreign country. ***See* 28 U.S.C. § 2680(h), (k). Thus, as long as the certification is proper, plaintiff's common law claims – all of which either sound in defamation or took place overseas – are**

barred against both the United States and the individual Coast Guard officers originally named as defendants. *See Gutierrez de Martinez v. Lamagno*, 515 U.S. 417, 422 (1995); *United States v. Smith*, 499 U.S. 160 (1991).

In opposition to defendants' motion to dismiss, plaintiff initially states that he does not oppose the substitution of the United States as the defendant in this case because he intended to name defendants in their official capacity only. *See Kentucky v. Graham*, 473 U.S. 159, 166 (1985) (an official-capacity suit is, in all respects other than name, to be treated as a suit against the entity). Elsewhere, however, he seems to object to the United States Attorney's certification regarding Capt. Brusseau. (Pl.'s Objection to Def.'s Mot. to Dismiss Compl. at 11.) While the Court does have the power to review the correctness of scope-of-employment certifications, *see Lamagno*, 515 U.S. at 420, **plaintiff has offered absolutely no basis for concluding that the certification is erroneous**.[1] **Indeed, the Coast Guard has the statutory authority to request that the Naval Criminal Investigative Service investigate what it perceives to be threats of physical violence against its officers**. *See* 10 U.S.C. § 7480 (authority of special agents of the Naval Criminal Investigative Service). Making and carrying out such requests would therefore seem to be within Capt. Brusseau's official duties and thus within the scope of his employment. Accordingly, the Court accepts the certification and holds that sovereign immunity precludes plaintiff's common law claims.

In contrast, the above rules regarding certification do not apply to plaintiff's constitutional claims. *See* 28 U.S.C. § 2679(b)(2)(A). However, defendants argue that qualified immunity protects them from plaintiff's claims for violations of his Second, Ninth, Tenth and Thirteenth Amendment rights, because plaintiff cannot demonstrate that any of these provisions confer on him any constitutional right to National Open Carry Handgun, much less that any such right was clearly established. *Saucier v. Katz*, 533 U.S. 194, 201 (2001). The Court agrees, but notes that the government has not addressed the First Amendment claim to which both the Complaint and plaintiff's opposition allude. To be sure, this claim is not stated clearly, and its exact contours are somewhat unclear, but given the generous standard by which *pro se* filings must be read, the Court will not dismiss plaintiff's apparent First Amendment claim for lack of clarity. Instead, the Court will give plaintiff an opportunity to amend his complaint to state a First Amendment claim, to which defendants will then be able to file a responsive pleading.[2]

For these reasons, defendants' motion to dismiss will be granted with respect to all of plaintiff's constitutional claims except for those alleging a violation of the First Amendment. Plaintiff's motion to compel discovery will be denied because it is

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[1] Patently false statement. My claims that Capt. Brusseau did not have discretionary authority to deny my application for the disputed endorsement and thereby failed to exercise due care, (28 U.S.C. § 2680(a)), constituting an *abuse of process*, (28 U.S.C. § 2680(h) *Priviso*), which lead to my *false imprisonment*, (28 U.S.C. § 2680(h) *Priviso*), overrides the bar to my constitutional claims. (28 U.S.C. § 2679(b)(2)(A)). These circumstances mean that the Defendant's Motion to Dismiss must be denied!

[2] [*Footnote in original*] If plaintiff chooses to amend his complaint to allege a First Amendment claim, he may *not* reassert those constitutional and tort claims that the Court has dismissed for failure to state a claim by virtue of this Memorandum Opinion.

premature at this time to engage in discovery until it is known which claims, if any, remain to be litigated.

SO ORDERED.

ELLEN SEGAL HUVELLE,
United States District Judge,
DATE: December 26, 2002

JUDGE ELLEN SEGAL HUVELLE MADE 18 U.S.C. § 1001 FALSE STATEMENTS AND INCOMPETENTLY MISINTERPRETED THE RELATIONSHIP BETWEEN 28 U.S.C. § 2680(h) AND (k)

THE TRUE FACTS ARE STATED HERE!

In turn, the waivers of sovereign immunity applicable to my claims for damages are 46 C.F.R. § 1.01–30(a) Judicial Review; 46 C.F.R. § 1.03–15(a) General; 5 U.S.C. § 702 Right of Review; and the Federal Tort Claims Act (FTCA), 28 U.S.C. § 1346(b) UNITED STATES AS DEFENDANT to which the 28 U.S.C. § 2680(a) DISCRETIONARY EXCEPTION does not apply because the duty of the U.S. Coast Guard under litigation was a MINISTERIAL DUTY and the proviso in 28 U.S.C. § 2680(h) EXCEPTIONS TO THE FEDERAL TORT CLAIMS ACT removed the exception for FALSE IMPRISONMENT and ABUSE OF PROCESS to which are included as claims both my original Complaint and in this Complaint. My Claims of False Imprisonment cannot be barred under 28 U.S.C. § 2680(k) EXCEPTION TO FTCA ON ANY CLAIM ARISING IN A FOREIGN COUNTRY because my claims do not rise solely in a foreign country as Judge Ellen Segal Huvelle fraudulently claimed with a presumed intent to obstruct justice by Abuse of Process under 28 U.S.C. § 2680(h). Thus, 28 U.S.C. § 2679(d) CERTIFICATION ON SCOPE OF OFFICE OR EMPLOYMENT by Mark E. Nagle, Assistant U.S. Attorney, Chief of the Civil Division of the United States Attorney's Office in Washington, D.C in 2002 certifying that then Defendant Capt. J. P. Brusseau acted within the scope of his employment as a U.S. Coast Guard officer at the Washington, DC headquarters of the U.S. Coast Guard. However, because the NCIS Europe Division (based in Italy) found that I was innocent of all charges and allegations made by Capt. Brusseau when he initiated the criminal investigation of me through NCIS Europe Division resulting in the Master of the U.S. Government vessel ordering me from the vessel and placed in Hotel Klaipėda where I waited two days for the two civilian NCIS agents from NCIS Europe Division, Italy to arrive for the 2-hour interview where they found me innocent of all charges and allegations. Therefore Capt. Brusseau was NOT acting within the scope of his employment. Consequently Mark E. Nagle illegally conspired with Capt. Brusseau to issue the fraudulent 28 U.S.C. § 2679(d)(1) certification to remove personal liability for Capt. Brusseau and replacing him with the United States as the named defendant. Hence, my claim of 28 U.S.C. § 2680(h) proviso on ABUSE OF PROCESS which became an Obstruction of Justice and Racketeering under the RICO Act with the culmination of 8-years of subsequent litigation in the pursuit of justice.

The judicial obstruction of justice protecting the original improper certification was the cover-up of the fact that my original claim of false imprisonment (wrongful detention) did not solely occur in Lithuania but it was ordered by the U.S. Coast Guard in Washington, DC and the actual taking into custody and removal from the U.S. Government vessel anchored off the coast of Lithuania was done by the master and Chief Mate of the U.S. Government vessel, the vessel itself being the sovereign territory of the United States and property of the U.S. Government, even though the detention was a 12-day

stay in Hotel Klaipėda in Lithuania, it was nevertheless, against my will and under orders by the U.S. Coast Guard on allegations that were proven false by NCIS Europe Division based in Italy. This constitutes harassment and retaliation for exercising the First Amendment right to petition. It also constitutes a violation of the 46 U.S.C. § 2114(b) SEAMEN'S WHISTLE BLOWER LAW,

C. The Mathews Test for Due Process was ***NOT*** Applied to Any of my Previous Cases (Judicial Bias Indicated)

The Court failed to apply the Matthews Test my to evaluated my rights to procedural and substantive due process under the Fourteenth Amendment.

Citing Andrew Blair-Stanek, *UNDERSTANDING BELL ATLANTIC V. TWOMBLY AS MATHEWS V. ELDRIDGE APPLIED TO DISCOVERY*, forthcoming in Florida Law Review, Volume 62 (2010): [3]

> II. GROWING EXPANSE OF MATHEWS V. ELDRIDGE
>
> In contrast with *Twombly*, the 1976 case *Mathews* v. *Eldridge*, 424 U.S. 319 (1976), has met with nearly-universal acclaim and acceptance as the standard for determining the requirements of **procedural due process**. Despite its humble beginnings in a case involving termination of disability benefits, the *Mathews* test has grown into a core tenet of American jurisprudence.
>
> A. Overview of Mathews
>
> The Supreme Court handed down *Mathews* six years into the **procedural due process revolution** launched by the 1970 watershed decision *Goldberg* v. *Kelly* 397 U.S. 254 (1970).[4] In *Goldberg*, the Court found that the New York City Social Services Department had denied welfare recipients procedural due process by not providing a hearing before terminating their benefits.[5] But *Goldberg* provided insufficient guidance to make procedural due process determinations in other areas.
>
> With *Mathews* v. *Eldridge*, the Court supplied this guidance, **with a three-factor test** that remains hornbook law. George Eldridge's Social Security disability benefits had been **terminated without a pretermination hearing**.[6] Eldridge brought suit against David Mathews, the Secretary of Health, Education, and Welfare, challenging the lack of pretermination hearings as violating procedural due process.
>
> The Court reemphasized that procedural due process is not not a technical conception with a fixed content unrelated to time, place and circumstances and is flexible and calls

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[3] Law Clerk to Hon. Paul V. Niemeyer, United States Court of Appeals for the Fourth Circuit. Yale Law School, J.D. 2008. Article available online at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1395057

[4] See also Jerry L. Mashaw, The Supreme Court's Due Process Calculus for Administrative Adjudication in Mathews v. Eldridge: Three Factors in Search of a Theory of Value, 44 U. CHI. L. REV. 28, 28-29 (1976) (calling Goldberg a landmark case).

[5] 397 U.S. at 266; see also Charles Reich, The New Property, 73 YALE L.J. 733 (1964).

[6] PLAINTIFF'S NOTE: terminated without a pretermination hearing applies to the U.S. Coast Guard denying my application for the National Open Carry Handgun without any notice or opportunity for procedural due process, as in denying me the opportunity to attend a hearing before the Coast Guard issued their Final Agency Action on April 19, 2002.

for such procedural protections as the particular situation demands.[7] The Court then enunciated the three factors now known as the ***Mathews* test:**

> [1] **the private interest** that will be affected by the official action;
>
> [2] the **risk of an erroneous deprivation** of such interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards; and
>
> [3] **the Government's interest**, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.[8]

The Mathews test is a way to compare two sets of procedures:

It compares the baseline of **procedures used** – which is the **first set of procedures** – against **additional or substitute procedural safeguards**, which constitutes the second set of procedures. In Mathews itself, the baseline was the existing Social Security procedures, including pre-termination written communications and a post-termination evidentiary hearing. And the additional or substitute procedural safeguards were mainly the **pretermination evidentiary hearing** that Eldridge argued was necessary.

The Court then set out to analyze the three factors. Considering the first factor, private interest, the Court found that **a disabled worker had a significant interest in continued benefits**,[9] albeit less than a poor welfare recipient's interest in continued benefits.[10]

For the Usecond factorU, the Court then considered **the existing procedural system**, [11] which **involved pre-termination written communication** [12] and provided post-termination evidentiary hearings. Against this, it considered the additional or substitute procedural safeguards that Eldridge argued were necessitated by due process: **Pre-termination evidentiary hearings**.[13] On the second factor, comparing the change in the **risk of an erroneous deprivation**,[14] the Court concluded that **pre-termination evidentiary hearings** would provide little additional value in reducing erroneous terminations of benefits.[15] Specifically, assessments of a worker's condition depended largely on written medical documentation, which was already considered

[7] 424 U.S. at 334.

[8] *Id*. at 335.

[9] Equating to a seaman's (citizen's) interest in exercising a Second Amendment right.

[10] 424 U.S. at 339-343.

[11] The Final Agency Action.

[12] The Final Agency Action in my case was not a pre-termination written communication. It is the actual termination of my application for the disputed endorsement on my Merchant Mariner's Document.

[13] 424 U.S. at 343-349.

[14] 424 U.S. at 335.

[15] 424 U.S. at 343-347

extensively prior to termination, meaning that in-person pretermination hearings would likely not improve accuracy.[16]

The Court then considered the **third factor**, of the **fiscal and administrative burdens of the alternative procedure**, which it determined would have a high cost.[17] The increased number of hearings, with the full opportunity to present evidence, would be burdensome on the administrative judges who handle hearings.[18] And benefits would continue to flow to potentially undeserving recipients during this time, thereby diminishing the resources available to deserving recipients.[19] Balancing the three factors, the Court thereby determined the alternative procedure of pretermination hearings was not required by due process, and upheld the existing procedures.

B. Increasing Favor

The *Mathews* v. *Eldridge* **three-factor test** has become a staple of jurisprudence, **touching many areas far afield from administrative law or benefits terminations**. As Judge Richard Posner notes, **the three-factor test is the orthodox approach to determining procedural due process**.[20] It incorporates ideas of cost-benefit analysis beloved by scholars of law and economics, while also providing a benchmark for **justice**.[21]

The Supreme Court has applied the *Mathews* test in a surprising variety of areas. For example, in *Connecticut* v. *Doehr*,[22] **the Court made clear that the Mathews test applies to determining the constitutionality of procedural tools available to private civil litigants**, and struck down Connecticut's prejudgment attachment statute.[23] The Court has also used the Mathews test as a benchmark for criminal procedure, using it to evaluate everything from moving prisoners into supermax facilities[24] to forfeitures of real property.[25]

The Court has even employed the Mathews test in deciding several terrorism-related cases. For example, in *Hamdi* v. *Rumsfeld*,[26] the plurality applied the Mathews test to determine that an alleged enemy combatant with U.S. citizenship, captured in Afghanistan but detained in a brig in South Carolina, was entitled to habeas corpus.[27]

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[16] *Id.*

[17] *Id.* at 347-49.

[18] *Id.* at 347-48.

[19] *Id.* at 348-49.

[20] *Van Harken* v. *City of Chicago*, 103 F.3d 1346, 1351 (7th Cir. 1997) (evaluating procedure for handling parking tickets).

[21] *Id.*

[22] 501 U.S. 1 (1991).

[23] *Id.* at 8-9.

[24] *Wilkinson* v. *Austin*, 545 U.S. 209 (2005).

[25] United States v. James Daniel Good Real Property, 510 U.S. 43 (1993).

[26] 542 U.S. 507 (2004).

[27] *Id.* at 528-29.

The plurality began its analysis by stating that The ordinary mechanism that we use for balancing such serious competing interests, and for determining the procedures that are necessary to ensure that a citizen is not 'deprived of life, liberty, or property, without due process of law,' is the test that we articulated in Mathews v. Eldridge.[28] And further, in the recent case *Boumediene* v. *Bush*,[29] the Supreme Court again deployed the *Mathews* test, striking down the Military Commissions Act of 2006 as providing insufficient process to detainees at Guantanamo Naval Base.[30]

The Mathews test was, of course, created by the Burger Court and has no direct textual basis in the Constitution. But even Justice Scalia, dedicated to an originalist understanding of the Constitution, accepts the applicability of Mathews, at least whenever the common law does not already provide a relevant procedure,[31] as for example in cases where the common law would have provided a jury trial.[32] This is a testament to Mathews' place at the core of American jurisprudence.

In light of the Supreme Court's deep – and growing – attachment to the Mathews test, it is not surprising that the lower federal and state courts have deployed it in evaluating alternative procedures ranging from domestic relation TROs,[33] to sex offender commitment,[34] to parking tickets.[35]

[28] *Id.* (citations omitted).

[29] 128 S. Ct. 2229 (2008).

[30] *Id.* at 2268.

[31] *Connecticut* v. *Doehr*, 501 U.S. 1, 30-31 (1991) (Scalia, J., concurring); Hamdi v. Rumsfeld, 542 U.S. 507, 575-76 (2004) (Scalia, J., dissenting); see also Pacific Mut. Life Ins. Co. v. Haslip, 499 U.S. 1, 36 (1991) (Scalia, J., concurring).

[32] *Hamdi* v. *Rumsfeld*, 542 U.S. 507, 575-76 (2004) (Scalia, J., dissenting).

[33] *Blazel* v. *Bradley*, 698 F. Supp. 756, 763-64 (W.D. Wis. 1988).

[34] *People* v. *Litmon*, 162 Cal.App.4th 383 (2008).

[35] *Van Harken* v. *City of Chicago*, 103 F.3d 1346, 1351 (7th Cir. 1997).

D. My Case Meets the 3-Prong Test for Mandamus

In 2002 Judge Ellen Segal Huvelle dismissed my Second Amendment case, No. 02-1435, claiming my case did not meet the three conditions for mandamus:

> *Power* v. *Barnhart*, 292 F.3d 781, 784 **(D.C. Cir. 2002)** (Under well-established Circuit law, mandamus relief is available only if three conditions are met: (1) the plaintiff has a clear right to relief; (2) the defendant has a clear duty to act; and (3) there is no other adequate remedy available to the plaintiff.); see also *In re Bluewater Network*, 234 F.3d 1305, 1315 (**D.C. Cir. 2000**) (mandamus issued only for the most transparent violations of a clear duty to act).

Bias can clearly be seen in Judge Ellen Segal Huvelle's choice of case law on mandamus. Therefore, I counter her judicial bias with more favorable and recent case law on mandamus. Citing *In re: Medicare Reimbursement Litigation, Baystate Health Systems, d/b/a Baystate Medical Center, et al*., v. *Michael O. Leavitt, Secretary, Department of Health & Human Services*, No. 04-5203. DC Circuit (**July 1, 2005**):

> Under the Mandamus Act, [t]he **district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff**. 28 U.S.C. § 1361. Pursuant to this act, a district court may grant mandamus relief if
>
> (1) the plaintiff has a clear right to relief;
>
> (2) the defendant has a clear duty to act; and
>
> (3) there is no other adequate remedy available to the plaintiff.
>
> *Power* v. *Barnhart*, 292 F.3d 781, 784 (D.C.Cir.2002) (quoting Northern States Power Co. v. U.S. Dep't of Energy, 128 F.3d 754, 758 (D.C.Cir. 1997)). **A district court's determination that a plaintiff has met these standards** [for mandamus] **is reviewed de novo**. *See Am. Cetacean Soc'y* v. *Baldrige*, 768 F.2d 426, 432 (D.C.Cir.1985) (**reviewing de novo district court's conclusion that claim passed three-prong test for mandamus jurisdiction**), rev'd on other grounds sub nom. *Japan Whaling Ass'n* v. *Am. Cetacean Soc'y*, 478 U.S. 221, 106 S.Ct. 2860, 92 L.Ed.2d 166 (U1986U). **Even when the legal requirements for mandamus jurisdiction have been satisfied, however, a court may grant relief only when it finds compelling … equitable grounds**. *13th Reg'l Corp*. v. *U.S. Dep't of the Interior*, 654 F.2d 758, 760 (UD.C.Cir.1980U) to **the equities, we review for abuse of discretion**. See Am. Cetacean Soc'y, 768 F.2d at 444 (**reviewing for abuse of discretion district court's determination that granting mandamus relief comports with equity**).

PART 3. THIRD CAUSE OF ACTION: DEFENDANT JOHN G. ROBERTS, CHIEF JUSTICE COMMITTED ACTS EXTORTION OF FIULING FEES UNDER COLOR OF LAW IN VIOLATION OF 28 U.S.C. § 1916 AND OBSTRUCTIONS OF JUSTICE AT THE DC CIRCUIT AND AT THE U.S. SUPREME COURT

CLAIM 1: John G. Roberts, Chief Justice of the U.S. Supreme Court is with imputed negligence for the extortive acts of various federal judges and 18 U.S.C. § 1513(d), (e), (f), and (g) OBSTRUCTION OF JUSTICE (RETALIATING AGAINST A WITNESS, VICTIM OR AN INFORMANT); 18 U.S.C. § 1001 FRAUD AND FALSE STATES and several counts of 18 U.S.C. § 872 EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES of exempted filing fees from a seaman in violation of 28 U.S.C. § 1916 SEAMEN'S SUIT LAW as predicate acts of 18 U.S.C. § 1961(1)(A) RACKETEERING ACTIVITY and under 18 U.S.C. § 1951(a) and § 1951(b)(2) EXTORTION UNDER COLOR OF OFFICIAL RIGHT under the RICO Act:

Unlawful extortion of the DC Circuit's filing fee by Court Order when Justice Roberts was a judge at the DC Circuit in clear and undisputable violation of the Seamen's Suit law, 28 U.S.C. § 1916, on the basis that the I was a fully documented seaman and the *safety clause* includes the Second Amendment as a cause of action. As the Chief Justice of the Supreme Court of the United States John G. Roberts is charged with imputed negligence for twice extorting their filing fee of $300 (=$600) under the Rehnquist Court, a matter that remains unresolved

PROOF OF EXEMPTION
28 U.S.C. § 1916. SEAMEN'S SUIT

"In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the enforcement of laws enacted for their health or safety without prepaying fees or costs or furnishing security therefor."

PROOF OF SEAMAN IDENTIFY

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
CHARLOTTE DIVISION

CIVIL NO. 3:04-CV-344-W

DON HAMRICK, **Plaintiff,** **vs.** **DAVID MICHAEL GEORGE, DRAGAN SAMARDZIC, PATRICK O'LEARY, JOHN WILLIAMSON, and JON AHLIN,** **Defendants.**	)	**ORDER**

Plaintiff's motion for relief from judgment and motion to recuse (Doc. No. 39) is DENIED. If Plaintiff believes that the Court's decision is in error, his attention is directed to Rules 3 and 4 of the Federal Rules of Appellate Procedure for guidance on filing an appeal to the United States Court of Appeals for the Fourth Circuit. If Plaintiff elects to exercise his appeal rights, the Court finds that 28 U.S.C. § 1916 waives the requirement of prepayment of docket fees or furnishing security therefor, and the Clerk of Court is so instructed.

IT IS SO ORDERED.

Signed: November 9, 2006

Frank D. Whitney
United States District Judge

EXTORTION & CONSPIRACY TO OBSTRUCT JUSTICE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 02-5334 **September Term, 2003**

02cv01435

Filed On: February 3, 2004 [800878]

Don Hamrick,
Appellant

v.

George W. Bush, Jr., et al.,
Appellees

BEFORE: Ginsburg, Chief Judge, and Edwards, Sentelle, Henderson, Randolph, Rogers, Tatel, and Roberts, Circuit Judges

ORDER

Upon consideration of the petition for rehearing en banc, the absence of a request by any member of the court for a vote, and the motion for reimbursement of appellate filing fees, it is

ORDERED that the motion for reimbursement of appellate filing fees be denied. It is

FURTHER ORDERED that the petition for rehearing en banc be denied. The Clerk is directed to accept no further submissions from appellant in this closed case.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

By:
Michael C. McGrail
Deputy Clerk/LD

* Circuit Judge Garland did not participate in this matter

EXTORTION & CONSPIRACY TO OBSTRUCT JUSTICE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 03-5021 **September Term, 2003**

02cv01434

Filed On: January 28, 2004 [799642]

Don Hamrick, U.S. Merchant Seaman,
Appellant

v.

J. P. Brusseau, Capt., U.S. Coast Guard, Director Field Activities, Marine Safety, Sec, & Environmental Protection, et al.,
Appellees

BEFORE: Henderson, Garland, and Roberts, Circuit Judges

O R D E R

Upon consideration of appellant's motion for reimbursement of appellate filing fees, it is

ORDERED that the motion be denied.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY:
Michael C. McGrail
Deputy Clerk

* Circuit Judge Garland did not participate in this matter.

EXTORTION & CONSPIRACY TO OBSTRUCT JUSTICE

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 04-5316 **September Term, 2004**

03cv02160

Filed On: March 11, 2005 [883266]

Don Hamrick,
Appellant

v.

George W. Bush, President, et al.,
Appellees

BEFORE: Henderson and Roberts, Circuit Judges

O R D E R

Upon consideration of the court's October 7, 2004 order to show cause, and the response and supplement thereto, it is

ORDERED, on the court's own motion, that the order to show cause be discharged. It is

FURTHER ORDERED, on the court's own motion, that within 60 days of the date of this order, appellant must either pay the $255 appellate filing and docketing fee to the Clerk of the District Court, see Fed. R. App. P. 3(e); 28 U.S.C. § 1917, or file a motion in the District Court for leave to proceed on appeal in forma pauperis, see Fed. R. App. P. 24(a)(1). Appellant is not exempt from payment because he has not demonstrated that this appeal is one for "wages or salvage or the enforcement of laws enacted for [his] health or safety" as a seaman. See 28 U.S.C. § 1916. Failure to comply with this order will result in dismissal of the appeal for lack of prosecution. See D.C. Circuit Rule 38. It is

FURTHER ORDERED that consideration of appellant's brief and any pending motions be deferred pending further order of the court.

The Clerk is directed to send a copy of this order to appellant both by certified mail, return receipt requested, and by first class mail.

Per Curiam

CONSPIRACY TO OBSTRUCT JUSTICE

Supreme Court of the United States
Washington, D. C. 20543

August 30, 2007

Mr. Don Hamrick
Seafarers International Union
115 Third Street
Norfolk, VA 23510

Dear Mr. Hamrick:

The purpose of this letter is to advise why you have not received reimbursement from the Supreme Court of the United States for your filings.

In No. 03-145 (Hamrick v. Bush, et al.), you submitted the docket fee of $300.00. The petition for a writ of certiorari was denied October 6, 2003. In No. 04-1150 (Hamrick v. Bush, et al.), the motion for leave to proceed as a seaman was denied. The docket fee of $300.00 was also submitted in this case, and the petition for a writ of certiorari was subsequently denied on April 4. 2005. When a petition for a writ of certiorari is denied by this Court, the petitioner is not reimbursed the docket fee.

If I can be of further assistance, please let me know.

Sincerely,

Krista Jaffe
Supreme Court of the United States Police

CLAIM 2: Obstructing the Due Administration of Justice as Predicate Acts of Racketeering Activities in Violation of the RICO Act (18 U.S.C. § 1503(a); § 1509)

CLAIM 3: Fraud as a matter of particularity and as a Predicate act of Racteering

THE DEFENDANT JOHN G. ROBERTS, Chief Justice of the U.S. Supreme Court (when he was a judge at the *DC CIRCUIT* and presently as the Chief Justice of the *U.S. SUPREME COURT* and as the presiding judge over the *JUDICIAL CONFERENCE OF THE UNITED STATES*), as did several other unnamed judges at the DC Circuit (*identifiable through court records of my previous cases*), knowingly and willfully, either through willful gross negligence and/or fraud directly or indirectly engaged in a criminal conspiracy to obstruct justice; to violate my statutory right to the, 28 U.S.C. § 1916 SEAMEN'S SUIT LAW, providing an exemption from *prepaying fees or costs or furnishing security therefor* on their absurd claim that my Second Amendment case for the rights of seamen to personal security and safety does not qualify under the *safety* clause of the Seamen's Suit Law; to unconstitutionally deny my Seventh Amendment right to a civil jury trial.

CLAIM 4 Extortion and Racketeering to Obstruct Justice for the Second Amendment

THE DEFENDANT JOHN G. ROBERTS, Chief Justice of the U.S. Supreme Court (when he was a judge at the *DC CIRCUIT* and presently as the Chief Justice of the *U.S. SUPREME COURT* and as the presiding judge over the *JUDICIAL CONFERENCE OF THE UNITED STATES*), as did several other unnamed judges at the DC Circuit (*identifiable through court records of my previous cases*), did knowingly and willfully and directly or indirectly extort under color or pretense of office (18 U.S.C. § 872 EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES) and did knowingly and willfully and directly or indirectly extort through racketeering activity either against the Plaintiff as a seamen or against the Plaintiff's case for the Second Amendment under color of official right through coercion racketeering activity either against the Plaintiff as a seamen or against the Plaintiff's case for the Second Amendment under color of official right, the filing fees of the DC Circuit Court of Appeals in the amount of approximately $465 total, and approximately $2,258.00 in the collective amount amount the various other Courts, including the U.S. Supreme Court in violation of the 28 U.S.C. § 1916 SEAMEN'S SUIT LAW; and 18 U.S.C. § 1951(b)(2), §1962(a), §1961(1)(A); 18 U.S.C. § 1961(1)(B) and § 1503 *Racketeering Relating to Obstruction of Justice*, and *Racketeering Activities against the Second Amendment* through the Commerce Clause and/or the Due Process Clause of the Fourteenth Amendment).

CLAIM 5 John G. Roberts Committed Fraud, Extortion, Obstructions of Justice, and Racketeering Against the Seamen's Suit 28 U.S.C. § 1916, and Abandoned Seamen as Wards of the Admiralty Doctrine, and the Rule 3(e) of the Federal Rules of Appellate Procedure Violate the Seventh Amendment rights of Seamen

The federal law on filing fees of federal courts and those who cannot afford to pay those filing fees (*in forma pauperis*) is 28 U.S.C. § 1915. That law applies only to prisoners. This is confirmed by 28 U.S.C. § 1915A(c) which defines the term "*prisoner*" as "*any person incarcerated or detained in any facility who is accused of, convicted of, sentenced for, or adjudicated delinquent for, violations of criminal law or the terms and conditions of parole, probation, pretrial release, or diversionary program*." Neither 28 U.S.C. § 1915 nor 1915A applies to seamen. The federal law exempting seamen from paying filing fees and court costs is 28 U.S.C. § 1916 SEAMEN'S SUITS is a substantive right under 28 U.S.C. § 2072(b) in that "*[s]uch rules shall not abridge, enlarge or modify any substantive right. All laws in conflict with such rules shall be of no further force or effect after such rules have taken effect.*"

However, the DC Circuit, the 8th Circuit, the U.S. District Court in Little Rock, Arkansas, and the U.S. Supreme Court all violated the Seamen's Suit law by compelling me to file *in forma paupers* as a prisoner under 28 U.S.C. § 1915 even when I presented my identification as a seaman, the Merchant Mariner's Document and explained that my previous cases qualified under the "safety" clause of 28 U.S.C. § 1916. The Court Clerks of the above noted courts refused to acknowledge the accuracy of my interpretation of the law and insisted that I comply with their interpretation of the law. I perceived their behavior as occupational arrogance and bias against an unrepresented civil plaintiff defending his rights under the Seamen's Suit law.

> ***Substantive right.*** A right that can be protected or enforced by law; a right of substance rather than form. Cf. *procedural right.*
>
> ***Procedural right.*** A right that derives from legal or administrative procedure; a right that helps in the protection or enforcement of a substantive right. Cf. *substantive right.*

BLACK'S LAW DICTIONARY, 8th Ed.

Schlagenhauf v. *Holder*, 379 U.S. 104 (1964) (Mandamus may be appropriately issued to confine an inferior court to a lawful exercise of prescribed jurisdiction, or when there is an usurpation of judicial power.)

On January 30, 2009 Judge Emmet G. Sullivan dismissed *Hamrick* v. *United States*, Civil Action No. 08-1698, Docket Item No. 15 (memorandum and opinion) with comments reflecting personal bias and prejudice against my right to file as a seaman even in the face of ample evidence in the Court's own records that that the Court itself has accepted my Complaints from 2002 to the present without payment of the Court's filing fee. In Footnote 1 on the first page of Judge Sullivan's dismissive Memorandum Opinion he states very prejudicially:

> The Court seriously doubts whether the Complaint filed by Plaintiff qualifies as a Seaman's Suit under 28 U.S.C. § 1916. *See id*. (permitting seamen to file suit without prepaying fees or costs where the action seeks wages or salvage or the enforcement of laws enacted for their health or safety). But because the Court concludes that the case should be dismissed *sua sponte* pursuant to Federal Rule of Civil Procedure 8(a)(2), the issue of prepayment need not be addressed at this time.

Hamrick v. *United States*, No. 08-cv-1698-EGS

See also Footnote 2 on page 3 of that same dismissive Memorandum Opinion:

> The Complaint's repeated references to – in plaintiff's own words – plaintiff's litigious history these past six years make clear that he is not new to litigation. He should therefore be well-acquainted with the pleading requirements of the Federal Rules of Civil Procedure. Indeed, at least two prior complaints filed by plaintiff in this court have been dismissed for the same reason that the instant Complaint fails. *See Hamrick* v. *United Nations*, No. 07-1616, 2007 WL 3054817 (D.D.C. Oct. 19, 2007); *Hamrick* v. *Bremer*, No. 05-1993 (D.D.C. Oct. 20, 2005).

Id.

Also note that judicial prejudice is evidenced not only by Judge Sullivan, but by every judge who presided over my previous cases failed or refused to provide me with suggestive instructions or the opportunity to file an amended complaint as an Admiralty Quasi In Rem Complaint in light of the fact that I am a U.S. merchant seaman. This denial of information on Rule 9(h) of the Federal Rules of Civil Procedure and the *SUPPLEMENTAL RULES FOR ADMIRALTY OR MARITIME CLAIMS AND ASSET*

FORFEITURE ACTIONS in the last 7-years of litigation is clear and convincing evidence of *HABIT AND ROUTINE PRACTICE*, *RULE 406, FEDERAL RULES OF EVIDENCE*, of prejudice against unrepresented civil plaintiff's and seamen under 28 U.S.C. § 1916 SEAMEN'S SUIT.

Also note that Judge Sullivan went off the deep end with emotional and libelous rhetoric:

> **Federal Rule of Civil Procedure 8(a)(2) states that a complaint must contain a short and plain statement showing that the pleader is entitled to relief**. The purpose of Rule 8(a)(2) is to give fair notice of the claim being asserted so that the defendant will have an opportunity to file a responsive answer, prepare an adequate defense, and determine whether the doctrine of res judicata applies. ***See Conley* v. *Gibson***, 355 U.S. 41, 47 (1957); *Brown* v. *Califano*, 75 F.R.D. 497, 498 (D.D.C. 1977). The Complaint here does not comply with the requirements of Rule 8(a)(2). **It is unreasonably long-winded and illogical, and presents the type of fantastic or delusional scenarios found to justify immediate dismissal of a complaint as frivolous in the related context of 28 U.S.C. § 1915(d)**. *See Neitzke* v. *Williams*, 490 U.S. 319, 328 (1989) (explaining that a litigant whose filing fees and court costs are assumed by the public, unlike a paying litigant, lacks an economic incentive to refrain from filing frivolous, malicious, or repetitive lawsuits). **Defendants should not be forced to spend time and energy in attempting to decipher plaintiff's utterly confusing and lengthy pleading**.

Judge Sullivan exposed his personal prejudice in my following observations:

(1) Apparently Judge Sullivan does not like an unrepresented civil plaintiff/seaman to combine Rule 8(d)(2) Alternative Statements of Claims with Rule 8(a)(2) Short and Plain Statements of Claims. What good is Rule 8(d)(2) if an unrepresented civil plaintiff/seaman can't use it? I say that is indicate of judicial bias based of the subject matter of the case: the Second Amendment!

(2) Judge Sullivan prejudicialy attacked my mental state because he apparently does not like the idea of expanding Second Amendment rights to its full scope: National Open Carry Handgun. Why else would he describe my case as *unreasonably long-winded and illogical, and presents the type of fantastic or delusional scenarios found to justify immediate dismissal of a complaint as frivolous*. My admiralty complaint herein presents my rebuttal to Judge Sullivan's libelous remarks.

(3) Ignoring my statutory right as a seaman to the Seamen's Suit exemption of fees and costs under 28 U.S.C. § 1916 SEAMEN'S SUIT Judge Sullivan invoke the *In Forma Pauperis* statute 28 U.S.C. § 1915 *et seq.*

(4) Judge Sullivan cited *Conley* v. *Gibson*, 355 U.S. 41, 47 (1957) on page 2 of his Memorandum Opinion referring to Rule 8(a)(2). However, in that same paragraph Judge Sullivan cited I cite the the following:

> Such simplified notice pleading is made possible by the **liberal opportunity for discovery and the other pretrial procedures** established by the Rules to disclose more precisely the basis of both claim and defense and to define more narrowly the disputed facts and issues. Following the simple guide of **Rule 8(f)** that ***all pleadings shall be so construed as to do substantial justice***, we have no doubt that petitioners' complaint adequately set forth a claim and gave the respondents fair notice of its basis. **The Federal Rules**

> **reject the approach that pleading is a game of skill in which one misstep by counsel may be decisive to the outcome and accept the principle that the purpose of pleading is to facilitate a proper decision on the merits**. *Cf. Maty* v. *Grasselli Chemical Co*., 303 U.S. 197

Conley v. *Gibson*, 355 U.S. 41, 47-48 (1957). But note *Bell Atlantic Corp. et al*. v. *Twombly et al*. 550 US 544, 127 S. Ct. 1955 (May 21, 2007) (The Plausible Standard of Pleading) overruled *Conley* in and his Memorandum Opinion, dated January 30, 2009, is subject to *de novo* review by a different judge. If Rule 8(a)(2) is referred to as Notice Pleading then it stands to reason that Rule 8(d)(2) is referred to as Issue Pleading where pleading is *NOT* required to be short and plain statements of claims but more lengthy with more detailed claims and perhaps even supporting evidence and background information to support the claims; especially with I have never been afforded the opportunity to conduct discovery before dismissal. The new Plausible Standard under Twombly is reputed to benefit defendants with greater use of dismissals, a disadvantage for unrepresented civil plaintiffs. Again, judicial bias in favor of a bigger broom to sweep cases off the Docket that contravenes a judge's political ideology and the ultimate goal of social reengineering of society (i.e., *delusional* left-wing liberal judges with an agenda for a gun-free society, an impossible dream by the standards of natural law).

My reliance on the U.S. Code as legal evidence of the laws for all the courts of the United States that the DC Circuit cannot apply Rule 3(e) of the *FEDERAL RULES OF APPELLATE PROCEDURE* or 28 U.S.C. § 1917 DISTRICT COURTS; FEE ON FILING NOTICE OF OR PETITION FOR APPEAL in defiance of the exemption from fees and costs provided for seamen in accordance with 28 U.S.C. § 1916 SEAMEN'S SUITS.

The DC Circuit cannot *abridge, enlarge or modify* the stand-alone exemption. *See* 28 U.S.C. § 2072 RULES OF PROCEDURE AND EVIDENCE. The exemption from fees and costs in all courts of the United States afforded to seaman under the law, 28 U.S.C. § 1916 SEAMEN'S SUIT is a substantive right that the DC Circuit nor the U.S. Supreme Court can ignore without committing *FELONY EXTORTION*, 18 U.S.C. § 872, and *FELONY EXTORTION UNDER COLOR OF OFFICIAL RIGHT* under the RICO Act, 18 U.S.C. § 1951(a) INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE and 18 U.S.C. § 1951(b)(2) EXTORTION.

On their face FEDERAL RULES OF APPELLATE PROCEDURE *RULE 3(e)* and 28 U.S.C. § 1917 *DISTRICT COURTS; FEE ON FILING NOTICE OF OR PETITION FOR APPEAL* ignore the seamen's exemption under 28 U.S.C. § 1916 *SEAMEN'S SUIT* as does Mark J. Langer, Clerk for the DC Circuit.

THEREFORE, I refuse to give up my rights as a seaman and I refuse to commit perjury by filing the *in forma pauperis* form to be in compliance with Mark J. Langer's motive to collect illegal filing fees.

THE SEAMEN'S SUIT IS A STAND-ALONE ENFORCEABLE SUBSTANTIVE RIGHT

U.S. CODE:

28 U.S.C. § 1916. SEAMEN'S SUIT

In all courts of the United States, seamen may institute and prosecute suits and appeals in their own names and for their own benefit for wages or salvage or the **enforcement of laws enacted for their** health or **safety** without prepaying **fees or costs or furnishing security therefor**.

28 U.S.C. § 1917 IGNORES 28 U.S.C. § 1916

DISTRICT COURTS; FEE ON FILING NOTICE OF OR PETITION FOR APPEAL

Upon the filing of any separate or joint notice of appeal or application for appeal or upon the receipt of any order allowing, or notice of the allowance of, an appeal or of a writ of certiorari $5 shall be paid to the clerk of the district court, by the appellant or petitioner.

RULE 3(e) WRONGFULLY IGNORES 28 U.S.C. § 1916

FEDERAL RULES OF APPELLATE PROCEDURE

RULE 3(e) PAYMENT OF FEES.

Upon filing a notice of appeal, **the appellant must pay the district clerk all required fees**. The district clerk receives the appellate docket fee on behalf of the court of appeals.

PLAINTIFF'S NOTE: No recognition for the seaman's exemption under 28 U.S.C. § 1916.

28 U.S.C. § 2072 Defends 28 U.S.C. § 1916

28 U.S.C. § 2072. RULES OF PROCEDURE AND EVIDENCE; POWER TO PRESCRIBE

(b) Such rules shall not abridge, enlarge or modify any **substantive right**.

RULE 24(a)(3)(B) RECOGNIZES THE SEAMEN'S SUIT, 28 U.S.C. § 1916
FEDERAL RULES OF APPELLATE PROCEDURE RULE 24. PROCEEDING IN FORMA PAUPERIS (a) LEAVE TO PROCEED IN FORMA PAUPERIS. (3) Prior Approval. A party who was , or who was determined to be financially unable to obtain an adequate defense in a criminal case, may proceed on appeal in forma pauperis without further authorization, unless: (A) the district court—before or after the notice of appeal is filed—certifies that the appeal is not taken in good faith or finds that the party is not otherwise entitled to proceed in forma pauperis and states in writing its reasons for the certification or finding; or (B) a statute provides otherwise.
Is Mark J. Langer committing prosecutable misconduct by displaying bias against a seaman who is an unrepresented civil plaintiff by ignoring Rule 24(a)(3)(B) and its relationship to the Seamen's Suit, 28 U.S.C. § 1916? It is impossible to believe Mark J. Langer is not aware of Rule 24(a)(3)(B)!

THE U.S. CODE IS LEGAL EVIDENCE OF THE LAW ENFORCEABLE UPON THE COURTS OF THE UNITED STATES

1 U.S.C. § 204. CODES AND SUPPLEMENTS AS EVIDENCE OF THE LAWS OF UNITED STATES AND DISTRICT OF COLUMBIA; CITATION OF CODES AND SUPPLEMENTS

In all courts, tribunals, and public offices **of the United States**, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—

(a) United States Code. — The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, **establish prima facie the laws of the United States**, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, **That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States**.

DC CIRCUIT'S FRAUDULENT DOCUMENT AS APPLIED TO SEAMEN

I would be Committing *PERJURY*, 28 U.S.C. § 1621, if I were to complete the form below because I would be making a *FALSE DECLARATION BEFORE … COURT*, 28 U.S.C. § 1623 as applied to the *SEAMEN'S SUIT*, 28 U.S.C. § 1916. (See next page.):

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

______________________________ USCA No. ____________________

v.

______________________________ USDC No. ____________________

MOTION FOR LEAVE TO PROCEED ON APPEAL IN FORMA PAUPERIS

I, ____, declare that I am the 9 appellant/petitioner 9 appellee/respondent in the above-entitled proceeding. In support of this motion to proceed on appeal without being required to prepay fees, costs or give security therefor, I state that because of my poverty I am unable to prepay the costs of said proceeding or to give security therefor. My affidavit or sworn statement is attached.

I believe I am entitled to relief. The issues that I desire to present on appeal/review are as follows: (*Provide a statement of the issues you will present to the court. You may continue on the other side of this sheet if necessary.*)

Signature ____

Name of *Pro Se* Litigant (PRINT) ____

Address ____

____

Submit original with a certificate of service to:

Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
E. Barrett Prettyman U.S. Courthouse, Room 5523
333 Constitution Avenue, N.W.
Washington, DC 20001

[USCADC Form 53 (Jul 2007)]

PART 4. FOURTH CAUSE OF ACTION: JOHN F. CLARK IS CHARGED WITH IMPUTED NEGLIGENCE, OBSTRUCTING JUSTICE, AND CONSPIRACIES TO OBSTRUCT JUSTICE AS PREDICATE ACTS OF RACKETEERING ACTIVITIES UNDER THE RICO ACT AGAINST ALL DEFENDANTS

CLAIM 1. AIDING AND ABETTING OBSTRUCTION OF JUSTICE: John F. Clark is charged with imputed negligence for the conspiracies and obstruction of justice of Deputy U.S. Marshal Anthony Campos and U.S. Marshal William Jessup and contributory negligence for John F. Clark's failure or refusal to correct the obstructions of justice and conspiracies to obstruct justice of Campos and Jessup for violations of my First Amendment right to petition the Government for redress of grievances through the Administrative Procedures Act on the premise that federal judges cannot act above the law by issuing illegal Court Orders.

CLAIM 2. GROSS NEGLIGENCE EQUATING TO FRAUD: John F. Clark is charged with imputed and gross negligence equating to *FRAUD AND FALSE STATEMENTS* under 18 U.S.C. 1001 rising to the level of racketeering activities under the RICO Act through *CONSPIRACIES* and *OBSTRUCTIONS OF JUSTICE* against the Plaintiff's common law right to make *CITIZEN'S ARREST* of federal judges and court personnel in accordance with D.C. Code § 23-582(b) and (c) for *FELONY EXTORTION* filing fees from the Plaintiff as a seaman based on probable cause evidence (unlawful Court Orders) in violation of 28 U.S.C. § 1916 and 18 U.S.C. § 872.

CLAIM 3. RACKETEERING ACTIVITIES AGAINST SEAMAN'S RIGHTS UNDER THE SEVENTH AMENDMENT: John F. Clark is charged with *RACKETEERING ACTIVITIES* as a *PRINCIPAL* (18 U.S.C. § 2), and as an *ACCESSORY AFTER THE FACT* (18 U.S.C. § 3), for *MISPRISION OF FELONY* (18 U.S.C. § 4) of *EXTORTION* (18 U.S.C. § 1964(1)(A)) of filing fees from a seaman-plainitff by federal judges, where extortion is a predicate act of racketeering activities under the RICO Act by failing or refusing to notifiy the U.S. Attorney General for a criminal investigation and prosecution for *FELONY EXTORTION* under 18 U.S.C. § 1964(1)(A) or even a *CIVIL INVESTIGATIVE DEMAND* (18 U.S.C. § 1968) in defense of my statutory right as a seaman under 28 U.S.C. § 1916.

1. DEPUTY MARSHAL ANTHONY CAMPOS' INSULTING & INTIMIDATING EMAIL (SEPTEMBER 8, 2005)

Deputy Marshal Anthony Campos' font selection for his email message to me, named *Comic Sans MS* is duly noted as a message that Deputy Marshal Campos was NOT taking my complaint seriously, but as a joke, in deliberate indifference to the Rule of Law and probable cause evidence that I had presented. Hence, my allegations of Professional Negligence (incompetence and malpractice of law) and willful and active negligence[1] in his *duty of good faith and fair dealing*[2] with

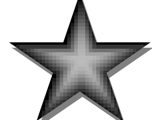
[1] BLACK'S LAW DICTIONARY: *Active Negligence* — Negligence resulting from an affirmative or positive act, such as driving through a barrier.

[2] BLACK'S LAW DICTIONARY: *Duty of good faith and fair dealing* — A duty that is implied in some contractual relationships, requiring the parties to deal with each other fairly, so that neither prohibits the other from realizing the agreement's benefits.

his affirmative duty[3] to investigate my complaint against federal judges and court personnel or to forward such complaint to the FBI or to the U.S. Attorney General. The email from Deputy Marshal Anthony Campos below constitutes not only obstructions of justice under the RICO Act but also Wire Fraud under 18 U.S.C. § 1341 FRAUDS AND SWINDLES and 18 U.S.C. § 1343 FRAUD BY WIRE, RADIO through a *scheme or artifice to defraud* [4] my from exercising common law rights, statutory rights, and constitutional rights from the very act of selecting *Comic Sans MS* as a font and the condescending nature on tone of the emails to ridicule, embarrass, harass, and intimidate the Plaintiff from exercising his rights.

EXHIBIT 1. Insulting Email Message from Deputy Marshals Anthony Campos

Date: Sep 8, 2005 7:35 PM



From: Campos, Anthony (USMS) <Anthony.Campos@usdoj.gov>
To: Don Hamrick<donhamrick@gmail.com>[5]

**Subject: RE: READY FOR ROUND TWO?
THE QUESTION ON CITIZEN'S ARREST AGAIN!**

Mr. Hamrick,

Glad to hear from you. I will answer your question for you again…

1. **You may not** now, or ever, **lawfully** perform a citizen's arrest on any judicial officer for acts resulting from the performance of their duties as such.[6] To do so would be a commission of a criminal offense under the U.S. Federal Code and will result in your arrest.[7] When we spoke in Richmond, VA, I told you as much.[8] I would caution you at this point to not continue to

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[3] BLACK'S LAW DICTIONARY: *Affirmative Duty* — A duty to take a positive step to do something.

[4] 18 U.S.C. § 1346. Definition of "scheme or artifice to defraud" means: "For the purposes of this chapter, the term "scheme or artifice to defraud" includes a scheme or artifice to deprive another of the intangible right of honest services."

[5] PLAINTIFF'S SUSPICION: My Gmail Account, "donhamrick@gmail" was block and subsequently canceled by Google without notice or explanation. I created another Gmail account, "4donhamrick@gmail" when lasted a few months or a year (can recall the duration) when Google canceled that email account without notice or explanation. Based upon my interaction with the U.S. Marshals Service by email through my Gooble Email Account it is my suspicion that Deputy Marshals Anthony Campos caused Google to cancel my email accounts. Distrusting Google I resumed using my Yahoo Email Account, "ki5ss@yahoo.com."

[6] A false statement under 18 U.S.C. 1001. And an unlawful denial of Tenth Amendment powers reserved to the People, i.e. the power to make citizen's arrest of federal judges and court personnel for felony extortion. A similar Tenth Amendment dispute over powers reserved to the States is presently ongoing between the Federal Government and Arizona and Pennsylvania over the Federal Government failure or refusal to enforce immigration laws.

[7] The exercise of constitutional rights cannot be made a crime.

[8] Confessing of a conspiracy to obstruct justice.

speak of such things.[9] Your determination is not in question here;[10] I believe that you feel as though you were wronged…the court system is where American citizens seek redress…not by taking the law into their own hands.[11] As I suggested before, keep your battle in the courts and rely on them for assistance…we do not always like the answers that we get from them, but we must all obey them.[12]

2. I will ask you this question again as well…what did you intend to do with the judge after you arrested him?[13] As I pointed out sir, it is the responsibility of the law enforcement officials of this great country[14] to carry out the laws that have been established by this country and it's

[9] Threat and intimidating a victim from exercising First Amendment right to free speech and to petition the Government for redress of grievances.

[10] Condescending deflection of my duty to act as a citizen of the United States under the Fourteenth Amendment. BLACK'S LAW DICTIONARY: *Duty to Act* — A duty to take some action to prevent harm to another, and for the failure of which one may be liable depending on the relationship of the parties and the circumstances. Example, **ministerial**, *adj.* [**duty**]. Of or relating to an act that involves obedience to instructions or laws instead of discretion, judgment, or skill.

[11] A deliberate attempt to obfuscate and conceal the lawful right to make a citizen's arrest under D.C. Code § 23-582(b)(1)(A), *ARRESTS WITHOUT WARRANT BY OTHER PERSONS* and D.C. Code § 23-582(c) (*Any person making an arrest pursuant to this section shall deliver the person arrested to a law enforcement officer without unreasonable delay*). On it's face D.C. Code § 23-582(c) implies the right for a victim of extortion by a federal judge to actually take a federal judge into physical custody and deliver that federal judge to the nearest law enforcement officer. However, since federal judges are located in a federal building with ample federal law enforcement officials in the federal building it is common sense that I need not take a federal judge into physical custody but need only to deliver my Citizen's Arrest Warrant with the probable cause evidence of felony extortion in violation of federal law sufficient to obligate the federal law enforcement officer, such as Deputy Marshal Anthony Campos, to take the federal judge into physical custody on my behalf, provided, of course, Deputuy Marshal Anthony Campos understood the true meaning of the Rule of law.

[12] The Nuremberg Defense, "following orders."

[13] Evidence that Anthony Campos acting our to ignorance and/or deliberate indifference. I have repeatedly explained that I would simply present my "Citizen's Arrest Warrant" with probable cause evidence (illegal Court Orders violating 28 U.S.C. § 1916 and 18 U.S.C. § 872) to the U.S. Marshals Service for them to perform the physical taking into custody. Yet, Anthony Campos repeatingly asks the same question attempting to induce an incriminating answer. But Anthony Campos refuses to accept my "within the law" answers. Hence the reason he could not arrest me when he intercepted the Greyhound bus at the Richmond, Virginia terminal. All he could do was to threaten me with arrest if I showed up in Washington, DC which is a violation of my constitutional right to travel interstate and my First Amendment right to free speech and to petition the Government for redress of grievances. The classic definition of tyranny and despotism in the defense of the principle that federal judges are above the law and their illegal Court Orders of extortion must be obeyed!

[14] Anthony Campos' apparent political belief that defending common law rights, statutory rights, and constitutional rights is somehow un-American and un-patriotic suggesting incompetence in law enforcement matters in regard to the rights of citizens, especial when government officials, such as federal judges, facially violate federal laws and federal law enforcement agencies such as the U.S. Marshals Service, the FBI, and the U.S. Department of Justice fail or refuse to take complaints from a private citizen seriously.

individual states, not the public…there are exceptions to that rule, this is not one of them, do not take the law into your own hands.[15]

3. I would ask you to take a look at United States Code, title 18, section 1201, (a)(5).[16]

4. Again, I appreciate the open dialog,[17] if you have concerns or any further questions, please feel free to contact me anytime. I hope that I have satisfied your request for information.[18]

Anthony D. Campos
Deputy U.S. Marshal
District of Columbia
202-353-0655/0600
202-359-7468

[15] "Do not take the law into your own hands" is a double-edge sword freedom and slavery. The unenumerated rights of the People under the Ninth Amendment and the powers delegated to the States and reserved to the People under the Tenth Amendment protects the States and People in "lawfully" taking the law into their hands (States and the People) when the Federal Government fails or refuses to enforce federal laws. It is an act of tyranny and despotism to sling about the cliché of "taking the law into ones hands" as an obfuscating deflecting to the truthful meaning of the Rule of Law to confuse the difference between lawfully and unlawfully taking the law into one's own hands.

[16] Deputy Marshal Anthony Campos referred to the crime of Kidnapping of "Officers and Employees of the United States (18 U.S.C. § 1114) while the person is engaged in, or on account of, the performance of official duties. Later on at would be Deputy Marshal Anthony Campos' superior, William Jessup, Senior Inspector of Judicial Security who would add Hostage Taking (18 U.S.C. § 1203) and Assaulting, Resisting, or Impeding Certain Officers or Employees (18 U.S.C. § 111) to threaten and intimidate me from exercising the lawful duty and common law right of citizen's arrest as authorized by D.C. Code § 23-582(b) and (c) for *FELONY EXTORTION* by federal judges and court personnel of filing fees from the Plaintiff as a seaman based on probable cause evidence (unlawful Court Orders) in violation of 28 U.S.C. § 1916 and 18 U.S.C. § 872.

[17] The opportunity to entrap me into incriminating myself. But my every response and answer reflect intent and actions that are within the Rule of Law, thus frustrating Deputy Marshal Anthony Campos' finding no cause to arrest me.

[18] Translated: He hopes that he has deterred me from pursuing my right to make citizen's arrest.

EXHIBIT 2: Emails between Don Hamrick and William Jessup, Senior Inspector U.S. Marshals Service, Washington, DC FROM OCTOBER 9, 2008 TO JANUARY 28, 2009

EMAIL NO. 1.

From:Don Hamrick

To: William Jessup

Thursday, October 9, 2008 at 12:08 PM

SUBJECT: William Jessup, are you obstructing justice?

Re: Cafeteria Meeting, Monday, October 6, 2008

You picked one of the Court Orders stating that I did not demonstrate my case qualified for the Seamen's Suit Law (exemption from filing fees). You took that Court Order at face value even though I submitted allegations that the Court Order and others in that Notice of Citizen's Arrest fraudulently misrepresented the facts about my case. You exhibited a double standard to which I construe as "obstruction of justice."

A Secret Service agent would not take a $100 bill at face value if a citizen presented it to him/her on suspicion of it being counterfeit. Why would you take a court order at face value when I present evidence that the court order is based on a fraudulent misrepresentation of the facts about my case?

If 18 U.S.C. 872 and 18 U.S.C. 1951(b)(2) can be proven against federal judges violating the, 28 U.S.C. § 1916 SEAMEN'S SUIT, and I intend to prove that judges are held accountable for criminal acts in the "administrative" capacity (and collection of filing fees is an administrative function of the court, not a judicial function, then you have be facing sanctions for obstruction of justice for blocking my complaints and notices of citizen's arrest.

APPLICABLE FEDERAL LAWS YOU REFUSE TO ENFORCE:

1 U.S.C. § 204. CODES AND SUPPLEMENTS AS EVIDENCE OF THE LAWS OF UNITED STATES AND DISTRICT OF COLUMBIA; CITATION OF CODES AND SUPPLEMENTS

> In all courts, tribunals, and public offices of the United States, at home or abroad, of the District of Columbia, and of each State, Territory, or insular possession of the United States—
>
> (a) United States Code.— The matter set forth in the edition of the Code of Laws of the United States current at any time shall, together with the then current supplement, if any, establish prima facie the laws of the United States, general and permanent in their nature, in force on the day preceding the commencement of the session following the last session the legislation of which is included: Provided, however, That whenever titles of such Code shall have been enacted into positive law the text thereof shall be legal evidence of the laws therein contained, in all the courts of the United States, the several States, and the Territories and insular possessions of the United States.

(b) District of Columbia Code.— The matter set forth in the edition of the Code of the District of Columbia current at any time shall, together with the then current supplement, if any, establish prima facie the laws, general and permanent in their nature, relating to or in force in the District of Columbiaon the day preceding the commencement of the session following the last session the legislation of which is included, except such laws as are of application in the District of Columbia by reason of being laws of the United States general and permanent in their nature.

(c) District of Columbia Code; citation.— The Code of the District of Columbia may be cited as "D.C. Code".

(d) Supplements to Codes; citation.— Supplements to the Code of Laws of the United States and to the Code of the District of Columbia may be cited, respectively, as "U.S.C., Sup. ", and "D.C. Code, Sup. ", the blank in each case being filled with Roman figures denoting the number of the supplement.

(e) New edition of Codes; citation.— New editions of each of such codes may be cited, respectively, as "U.S.C., ___ ed.", and "D.C. Code, ____ ed.", the blank in each case being filled with figures denoting the last year the legislation of which is included in whole or in part.

18 U.S.C. § 872. Extortion by officers or employees of the United States

Whoever, being an officer, or employee of the United States or any department or agency thereof, or representing himself to be or assuming to act as such, under color or pretense of office or employment commits or attempts an act of extortion, shall be fined under this title or imprisoned not more than three years, or both; but if the amount so extorted or demanded does not exceed $1,000, he shall be fined under this title or imprisoned not more than one year, or both.

18 U.S.C. § 1951. Interference with commerce by threats or violence (Racketeering)

(b)(2) The term "extortion" means the obtaining of property from another, with his consent, induced by wrongful use of actual or threatened force, violence, or fear, or under color of official right.

18 U.S.C. § 1001. Statements or entries generally

(a) Except as otherwise provided in this section, whoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully—

(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact;

(2) makes any materially false, fictitious, or fraudulent statement or representation; or

> > (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry;
>
> shall be fined under this title, imprisoned not more than 5 years or, if the offense involves international or domestic terrorism (as defined in section 2331), imprisoned not more than 8 years, or both. If the matter relates to an offense under chapter 109A, 109B, 110, or 117, or section 1591, then the term of imprisonment imposed under this section shall be not more than 8 years.
>
> (b) Subsection (a) does not apply to a party to a judicial proceeding, or that party's counsel, for statements, representations, writings or documents submitted by such party or counsel to a judge or magistrate in that proceeding.

28 U.S.C. § 566. Powers and duties [U.S. Marshals Service]

> (d) Each United States marshal, deputy marshal, and any other official of the Service as may be designated by the Director may carry firearms and make arrests without warrant for any offense against the United States committed in his or her presence, or for any felony cognizable under the laws of the United States if he or she has reasonable grounds to believe that the person to be arrested has committed or is committing such felony. [i.e., 18 U.S.C. § 872 and 18 U.S.C. § 1951(b)(2)]

EMAIL NO. 2.

From: Don Hamrick

To: William Jessup

Tuesday, October 14, 2008 at 5:13 PM

SUBJECT: UPDATE: William Jessup, are you obstructing justice?

See attached PDF file for TODAY'S SCOTUS OPINION (OCT 14)!

TRADITIONAL PROVERB: "All good things come to those who wait."

SUPREME COURT DEFINITION OF "PROBABLE CAUSE" IN DISSENTING OPINION BY CHIEF JUSTICE JOHN G. ROBERTS AND JUSTICE KENNEDY!

Pennsylvania v. *Nathan Dunlap*, U.S. Supreme Court, No. 07-1486, 555 U.S. ___ (October 14, 2008). (A drug bust case.)

> The probable-cause standard is a "nontechnical conception that deals with the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act." Maryland v. Pringle, 540 U. S. 366, 370 (2003) (internal quotation

> marks omitted). What is required is simply "a reasonable ground for belief of guilt," id., at 371 (same)—a "probability, and not a prima facie showing, of criminal activity," Illinois v. Gates, 462 U. S. 213, 235 (1983) (same). "[A] police officer may draw inferences based on his own experience in deciding whether probable cause exists," Ornelas v. United States, 517 U. S. 690, 700 (1996), including inferences "that might well elude an untrained person," United States v. Cortez, 449 U. S. 411, 418 (1981).

Chief Justice John G. Roberts will be hoisted by his own words on what the probable-cause standard is if there is any true justice in the federal judicial system. I will use that definition against him and the other DC Circuit judges in my forthcoming Motion for a Special Grand Jury investigation on my "probable cause" evidence of extortion of DC Circuit and U.S. Supreme Court filing fees from a seaman in violation of the Seaman's Suit Law.

ADDED REASON TO WAIT JUST A BIT LONGER:

The 133rd Session of the Inter-American Commission on Human Rights (IACHR) may rule on my human rights complaint against the United States (Petition No. 1142-06) between October 16 and 31, 2008, (beginning this Thursday). To see if the IACHR has accepted or denied my human rights complaint during their Oct. 16-31 Session go to this link: http://www.iachr.org/casos/08.eng.htm

If no ruling then it will carry over to their next Session, March 16-27, 2009.

EMAIL NO. 3.

From: Don Hamrick

Bcc: William Jessup (And My Contact List)

Saturday, January 17, 2009 at 1:08 AM

SUBJECT: Assessing the Risk of Collapse of the United States
RANDOM GOOGLE SEARCH ON COLLAPSE OF THE UNITED STATES:

[**As if Things Weren't Bad Enough, Russian Professor Predicts End of U.S.**

In Moscow, Igor Panarin's Forecasts Are All the Rage; America 'Disintegrates' in 2010]
[By Andrew Osborn]
[Wall Street Journal]
December 29, 2008
http://online.wsj.com/article/SB123051100709638419.html

Intelligence Briefing for Military and Police Forces
By Greg Evensen
December 20, 2008
http://www.newswithviews.com/Evensen/greg135.htm

The Five Stages of Collapse

by Dmitry Orlov
Energy Bulletin
Nov 11 2008
http://www.energybulletin.net/node/47157

Stage 1: Financial Collapse

> Faith in "business as usual" is lost. The future can no longer be assumed to resemble the past. Risk can no longer be assessed and financial assets to be guaranteed. Financial institutions become insolvent. Savings are wiped out, and access to capital is lost.

Stage 2: Commercial Collapse

> Faith that "the market shall provide" is lost. Commodities are hoarded. Import and retail chains break down. Widespread shortages of survival necessities become the norm.

Stage 3: Political Collapse

> Faith that "your government will take care of you" is lost. Government interventions fail to make a difference4. Political establishment loses legitimacy and relevance.

Stage 4: Social Collapse

> Faith that "your people will lake care of you" is lost. Local social institutions, be they charities or other groups that rush in to fill the power vacuum, run out of resources or fail through internal conflict.

Stage 5: Cultural Collapse

> Faith in the goodness of humanity is lost. People lose their capacity for "kindness, generosity, consideration, affection, honesty, hospitality, compassion, charity."

Council On Foreign Relations Warns Of United States Collapse By Summer 2009

> Russian Foreign Ministry sources are reporting today that the United States Council on Foreign Relations organization has presented to its Western allies attending this weeks contentious European Climate Summit a secret report that summarizes that the American Nation, indeed all of North America, will 'totally collapse' by the Summer of 2009.

http://www.cherada.com/articulos/council-on-foreign-relations-warns-of-united-states-collapse-by-summer-2009

The coming financial collapse of the U.S. government:
Fed papers reveal what's in store for Americans
Monday, July 17, 2006 by: Mike Adams, NaturalNews Editor
http://www.naturalnews.com/019659.html

COLLAPSE OF CONSTITUTIONAL GOVERNMENT OF THE UNITED STATES OF AMERICA
Geral W. Sosbee
05/29/2008
http://forums.insidebayarea.com/topic/collapse-of-constitutional-government-of-the-united-states-of-america

NEWS:U.S. military report warns 'sudden collapse' of Mexico is possible
By Diana Washington Valdez / El Paso Times
Posted: 01/13/2009 03:49:34 PM MST
http://www.elpasotimes.com/newupdated/ci_11444354

> Mexico is one of two countries that "bear consideration for a rapid and sudden collapse," according to a report by the U.S. Joint Forces Command on worldwide security threats.
>
> The command's "Joint Operating Environment (JOE 2008)" report, which contains projections of global threats and potential next wars, puts Pakistan on the same level as Mexico. "In terms of worse-case scenarios for the Joint Force and indeed the world, two large and important states bear consideration for a rapid and sudden collapse: Pakistan and Mexico.
>
> "The Mexican possibility may seem less likely, but the government, its politicians, police and judicial infrastructure are all under sustained assault and press by criminal gangs and drug cartels. How that internal conflict turns out over the next several years will have a major impact on the stability of the Mexican state. Any descent by Mexico into chaos would demand an American response based on the serious implications for homeland security alone."
>
> The U.S. Joint Forces Command, based in Norfolk, Va., is one of the Defense Departments combat commands that includes members of the different military service branches, active and reserves, as well as civilian and contract employees. One of its key roles is to help transform the U.S. military's capabilities.
>
> In the foreword, Marine Gen. J.N. Mattis, the USJFC commander, said "Predictions about the future are always risky ... Regardless, if we do not try to forecast the future, there is no doubt that we will be caught off guard as we strive to protect this experiment in democracy that we call America."
>
> The report is one in a series focusing on Mexico's internal security problems, mostly stemming from drug violence and drug corruption. In recent weeks, the

Department of Homeland Security and former U.S. drug czar Barry McCaffrey issued similar alerts about Mexico.

Despite such reports, El Pasoan Veronica Callaghan, a border business leader, said she keeps running into people in the region who "are in denial about what is happening in Mexico."

Last week, Mexican President Felipe Calderon instructed his embassy and consular officials to promote a positive image of Mexico.

The U.S. military report, which also analyzed economic situations in other countries, also noted that China has increased its influence in places where oil fields are present.

United States Could Collapse
Antwort an: haroldmandel@yahoo.com [?]
Datum: 2008-12-09, 2:47PM CET
http://berlin.de.craigslist.org/com/950909817.html

As the United States settles into the realization of a serious recession hysteria is setting into the hearts and minds of people across the country. Unemployment rates are rising daily as homelessness becomes a way of life for more American families than ever before in recent history. Literal starvation is on the rise across the country as many families hanging onto their homes and apartments by the skin of their teeth nevetheless also freeze to death in the winter months due to lack of money to pay for heating costs. Homes and cars are being repossessed around the clock as families are also being thrown out in the streets when they can not pay their apartment rents. All along the government and wealthiest private concerns in the country appear to be psychotically removed from the hardships of most of the people in an America on the skids as we near a dark Christmas season. The all could someday lead to the total collapse of the United States.

Dr Harold Mandel
Reporter
H Mandel Enterprises News Service
http://www.mandelnews.com

H Mandel Enterprises LLC
http://www.hmenterprises.org

Can the United States Collapse? Readings in Complexity
By J.B. Ruhl
Post 4
September 06, 2006
Jurisdynamics (blog)
Dedicated to the subjects and methodological tools that most vividly depict the law's interaction with societal and technological change.

http://jurisdynamics.blogspot.com/2006/09/can-united-states-collapse_06.html

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EMAIL NO. 4.

From: Don Hamrick

To: William Jessup

Thursday, January 22, 2009 at 1:09 AM

SUBJECT: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

In light of the U.S. Supreme Court's role in treason against the United States over Obama's election are you still holding to your threat of arrest over my attempt to make citizen's arrest of federal judges over extortion of exempted filing fees? Even if a civil war may be on the horizon because of the U.S. Supreme Court and other causes?

The deeper I dig into the affairs of the U.S. Government (Google searches) the more I [find] that the United States is doomed to collapse internally.

EMAIL NO. 5.

From: William Jessup

To: Don Hamrick

Thursday, **January 22, 2009** at 8:03 AM

SUBJECT: Re: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

Don, first of all, no "treason" has been committed by the Supreme Court with regards to the President,[19] nor is our government on the verge of internal collapse.[20]

19

20 In my Email No. 3 to all in my Contact List which includes William Jessup it warns by citing authoritative souces that at least (1) Council On Foreign Relations Warns Of United States Collapse By Summer 2009, According to the CFR 'master plan' their destruction [due to climate change?] has already begun and the summer of 2009 will be more horrible than any of them can realize; (2) Russian Professor Igor Panarin predicting the [economic] collapse on the United States by 2010. "There's a 55-45% chance right now that disintegration will occur;" and (3) The conclusion in Laurence J. Kotlikoff, IS THE UNITED STATES BANKRUPT? Federal Reserve Bank of St. Louis Review, July/August 2006, 88(4), pp. 235-49, stated that: "*Countries can and do go bankrupt. The United States, with its $65.9 trillion fiscal gap, seems clearly headed down that path.*" My perception of William Jessup changed from "no opinion" to "his is a complete idiot" to ignore and disregard the information I emailed to him. His remark is the typical dumb-head federal bureaucratic stuffed shirt who cannot see past federal regulation let alone observe what is going on in the world. Hence my Email No. 10.

Second, as I've tried to relate on many occasions, no "extortion" has taken place.

Third, if I "google" long and hard enough, I can even come to believe, through "evidence" I find, that **unicorns** are real, **Atlantis** exists, and all Presidents since Truman have made secret agreements with **aliens from another planet**.

Forth, the "outcome" of your "case" before the courts and your pleadings with other governmental bodies and NGA's, both foreign and domestic, will not be a catalyst for "civil war".

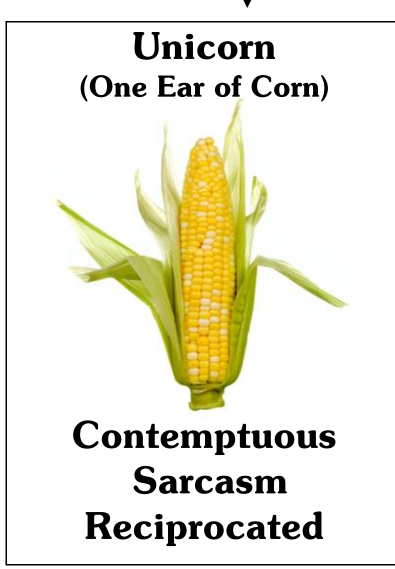
Fifth, I have never "threatened" you. I have merely stated **factual outcomes** to **proposed actions** - those of which still hold true.

Regards,

-Bill Jessup

From my bbry...

Unicorn
(One Ear of Corn)



Contemptuous Sarcasm Reciprocated

MARSHAL WILLIAM JESSUP'S CONTEMPT FOR THE RULE OF LAW AND MY RIGHTS

The Investigative Operations Division of the U.S. Marshals Service is the custodian of all federal arrest warrants until execution or dismissal.[21] Where **Deputy Marshal Anthony Campos used Comic Sans Font as a sublime insult in his email reply** to me (see Exhibit 1, page 138) it was Marshal William Jessup who continued the insulting répertoire with unicorns, Atlantis, and aliens from another planet impugning my intelligence in Email No. 5. above. The U.S. Marshals Service has a duty of good faith and fair dealing under 28 U.S.C. § 566(c) POWERS AND DUTIES OF THE U.S. MARSHALS SERVICE and D.C. Code § 23-582(b) & (c) to examine my Citizen's Arrest Warrant with its probable cause evidence of felony extortion of filing fees of the DC Circuit and the U.S. Supreme Court from a seaman in violation of 28 U.S.C. § 1916 and 18 U.S.C. § 872. Refusal of the U.S. Marshals Service to act on the Rule of Law governing Citizen's Arrest Warrants when applied against federal judges breeds contempt. Hence the contemptuously sarcastic photo of a Unicorn (Ear of Corn) representing my contempt for the U.S. Marshals Service in response to their contempt for my rights as a citizen of the United States. A standoff of mutual anomisity.

The mere fact that a U.S. Marshal states a "**factual outcome**" of 18 U.S.C. § 111 ASSAULTING, RESISTING, OR IMPEDING CERTAIN OFFICERS OR EMPLOYEES, 18 U.S.C. § 1201 KIDNAPPING, and 18 U.S.C. § 1203 HOSTAGE TAKING in response to a "**proposed action**" from a citizen's inquiry into making a citizen's arrest of federal judges and federal court clerks based on probable cause evidence of felony extortion becomes several crimes committed by the U.S. Marshal: 18 U.S.C. § 1001(a)(1), (2), and (3) FRAUD AND FALSE STATEMENTS; 18 U.S.C. § 1341 FRAUDS AND SWINDLES;

[21] Fact Sheets: http://www.usmarshals.gov/duties/factsheets/iod-1209.html. Rule

18 U.S.C. § 1343 FRAUD BY WIRE, RADIO; 18 U.S.C. § 1512 TAMPERING WITH A VICTIM; 18 U.S.C. § 1513(E), (F), & (G) RETALIATING AGAINST A VICTIM; 18 U.S.C. § 1951(A) INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE; 18 U.S.C. § 1951(B)(2) INTERFERENCE WITH COMMERCE BY THREATS OR VIOLENCE; 18 U.S.C. § 1961(1)(A) DEFINITION OF RACKETEERING ACTIVITY (INCLUDES EXTORTION); 18 U.S.C. § 1961(1)(B) DEFINITION OF RACKETEERING ACTIVITY; 18 U.S.C. § 241 CONSPIRACIES AGAINST RIGHTS; 18 U.S.C. § 241 CONSPIRACY AGAINST RIGHTS; 18 U.S.C. § 242 DEPRIVATION OF RIGHTS UNDER COLOR OF LAW; 18 U.S.C. § 872 EXTORTION BY OFFICERS OR EMPLOYEES OF THE UNITED STATES

In essence the mere exercising of the First Amendment right to petition the U.S. Marshals Service for help and advice becomes a crime as if federal judges and court personnel are above the law. This, by definition, is a **threat** from an agent of the U.S. Government to a citizen. It is a **deliberate indifference** to constitutional and statutory rights. It is **Obstruction of Justice**.

If the U.S. Marshals Service upheld their ***Oath of Office***, the **Rule of Law**, and the ideal that **federal judges or federal court personnel are *NOT* above the law** then there would be different "**factual outcome**" — one where the U.S. Marshals Service would assist me by taking the accused federal judges into physical custody on my behalf, thus averting the need to arrest me for kidnapping, hostage taking and interference. It all depends on the federal law enforcement officers' view of a private citizen exercising common law rights, statutory rights, and constitutional rights as applied against federal judges. However, the U.S. Marshals Service is telling me that federal judges above the law, untouchable by private citizen's with even with probable cause evidence of felony crimes.

[NOT PART OF THE EMAILS BUT INSERTED HERE TO PROVIDE EVIDENCE THAT MARSHAL WILLIAM JESSUP KNOWINGLY, WILLFULLY, AND MAILICIOUSLY MADE A FALSE STATEMENT OF WHICH THE INTENT AND PURPOSE WAS TO OBSTRUCT JUSTICE]

High Treason at U.S. Supreme Court!

Justice Clarence Thomas Admitted U.S. Supreme Court is Evading President Obama Eligibilitiy Issue!

HEARING — FY 2011 BUDGET REQUEST FOR THE U.S. SUPREME COURT

HOUSE SUBCOMMITTEE ON FINANCIAL SERVICES AND GENERAL GOVERNMENT

April 15, 2010, 10:00 A.M.

Room 2358A, Rayburn House Office Building

REP. JOSE SERRANO (D-NY): I'm glad to hear that you don't think there has to be a judge on the Court because I'm not a judge.

JUSTICE THOMAS:	Well, [*Smiling chuckle*] and you don't have to be born in the United States so you never have to answer that question.
REP. JOSE SERRANO (D-NY):	Oh, really?
JUSTICE THOMAS:	Yeah.
REP. JOSE SERRANO (D-NY):	So you haven't answered the one about whether I can serve as president but you answered this one.
JUSTICE THOMAS:	**We're evading that one.** [*Laughter*] We're giving you another option.
REP. JOSE SERRANO (D-NY):	Thanks alot.
JUSTICE THOMAS:	Thank you Mr. Chairman. [*Justice Thomas having the last laugh*]

All nine Justices of the U.S. Supreme Court are now impeachable for TREASON

Compare

Cohens v. *Virginia*, 19 U.S. 264, at 404 (6 Wheaton 264) (1821) (It is most true that this Court will not take jurisdiction if it should not; but it is equally true that it must take jurisdiction if it should. The judiciary cannot, as the legislature may, avoid a measure because it approaches the confines of the Constitution. We cannot pass it by because it is doubtful. With whatever doubts, with whatever difficulties, a case may be attended, we must decide it if it be brought before us. We have no more right to decline the exercise of jurisdiction which is given than to usurp that which is not given. The one or the other would be **treason to the Constitution**. Questions may occur which we would gladly avoid, but we cannot avoid them. All we can do is to exercise our best judgment and conscientiously to perform our duty. In doing this on the present occasion, we find this tribunal invested with appellate jurisdiction in all cases arising under the Constitution and laws of the United States. We find no exception to this grant, and we cannot insert one.) [Emphasis is mine.]

The U.S. Supreme Court's refusal to address Obama's eligibility is treason under *Cohen* v. *Virginia* (above); under 16A CORPUS JURIS SECUNDUM § 634 *Function of Court to Protect Rights*.

EMAIL NO. 6.

From: Don Hamrick

To: William Jessup

Thursday, January 22, 2009 at 10:58 AM

SUBJECT: Re: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

Isaiah 5:20 Woe unto them that call evil good, and good evil; that put darkness for light, and light for darkness; that put bitter for sweet, and sweet for bitter![22]

How do civil wars begin but by a bullshitting government? My "Google Search" must have struck a nerve for you to respond so defensively. Evidence does exist that "enemies of the United States, foreign and domestic" are eager to see the United States collapse or do you believe the United States is loved by all nations of the world? You must also believe there is a Yellow Brick Road to peace on Earth.

[22] I had discovered the Isaiah 5:20 verse in an online Op-Ed but neglect to document my finding. I would later email documentation (see Email No. 6) of its use in political Op-Eds to William Jessup to avert the possibility of William Jessup getting the impression of me as a religious zealot.

EMAIL NO. 7.

From: Don Hamrick

To: William Jessup

Wednesday, Jan 28, 2009 at 11:42 AM

SUBJECT: Re: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

UPDATE ON MY USE OF A BIBLE VERSE: ISAIAH 5:20

Now before you go and add "religious nut case" to my profile I must tell you that I only "stumbled" on Isaiah 5:20 doing a Google News search on Obama.

See:

http://www.onenewsnow.com/Blog/Default.aspx?id=398522

http://www.venturacountystar.com/news/2009/jan/21/ob9fcletters21/

http://www.virtueonline.org/portal/modules/news/article.php?storyid=9748

http://media.www.tcudailyskiff.com/media/storage/paper792/news/2009/01/28/Opinion/Proposed.Abortion.Law.Attests.To.Loose.Morals-3599546.shtml

A Google Web search on "Isaiah" "5:20" and "obama" had 13,200 returns.

I find interesting pieces of information. I then search on that piece of information to get more information. Did you find anything in Title 18 of the U.S. Code that makes my internet news and information activities a crime?

EMAIL NO. 8.

From: Don Hamrick

To: William Jessup

Thursday, January 22, 2009 at 11:19 AM

SUBJECT: Re: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

I never go by what I think or believe because I am not an expert at anything. I rely on what I find in the media and Op-Eds from those who know more than I do. I build suppositions through an accumulation of information to form possibilities of conclusion. I think that is what news analysts do. I let others decide whether I am right or wrong for themselves. Just like what the American public will think and say about Obama re-taking the Oath of Office without the Bible!

http://www.courierpostonline.com/article/20090122/NEWS01/90122015/1006

http://www.washingtonpost.com/wp-dyn/content/article/2009/01/21/AR2009012103685_pf.html

A con man[23] is best when he gives himself a way out of any legal dispute. Obama gave himself a legal defense first by flubbing up the Oath with the help of the Chief Justice (by accident or by conspiracy, doesn't matter) and again at the re-swearing with no Bible.

It is the accumulation of these breaches of protocol (procedure) that will become suspicious with a growing number of the American people. But, I am just a noboby. I could be wrong. What do I know. Right?

EMAIL NO. 9.

From: Don Hamrick

Bcc: William Jessup (And My Contact List)

Sun, Jan 25, 2009 at 10:12 PM

SUBJECT: Chaos Theory and Civil War

I have been seeing references to "Chaos Theory" in my random cable/satellite TV viewing these past few weeks but never made a connection to anything relevant until I saw the movie "Chaos" starring Jason Statham (Transporter 1, 2, and 3; Crank 1 in 2006 and Crank 2 in post-production 2009) on the USA Network (released in the United States on February 19, 2008 as a DVD premiere).

In my previous email I noted that Russian Professor Igor Panarin is predicting the collapse of the United States in 2010. Russian Foreign Ministry sources are reporting today that the United States Council on Foreign Relations organization has presented to its Western allies attending this weeks contentious European Climate Summit a secret report that summarizes that the American Nation, indeed all of North America, will 'totally collapse' by the Summer of 2009.

I did a brief Google and SSRN search on "chaos theory" applicable to a future civil in the United States.

If a president can be elected without proving his eligibility under the "natural born citizen" clause and Congress can ignore that particular constitutional fraud by unanimously confirming the Electoral College vote for that alleged impostor of a president then it is my presumption that the United States has introduced "Chaos Theory" into the Rule of Law where everything is turned upside down so that Government will now be acting above the law and outside the law. From this chaos it is my theory that there is a chance, albeit a remote chance, that civil unrest, riots, or even a civil war may occur in the next 4 years, based on the prevalence of an

[23] PLAINTIFF'S NOTE: *See* EXHIBIT 7. Mark S. McGrew, columnist, "Barry Soetoro aka Barack Obama vs World Leaders," Pravda, Russia, January 19, 2009 and EXHIBIT 8. Mark S. McGrew, columnist, "Obama: Deceiver, Cheat, Swindler, Liar, Fraudster, Con Artist," Pravda. Russia, January 9, 2009. I did not discover McGrew's online articles until the evening of January 28, 2009. Upon discovering them I dispatched an email (bcc'd) to all on my Contact List to which William Jessup is included. My impression of President Obama as a "con man" in my email to William Jessup was instinctive based on my Internet research as of the date of that email, January 22, 2009. I was at that time unaware of McGrew's online articles. My instincts are corroborated by EXHIBITS 7 and 8.

educated public with political awareness. Can it be lawfully stated that the United States has become a rogue nation under The Law of Nations?[24]

The following is what I found as my recommended reading. There may be other sources far more applicable to the topic here. I just haven't found them yet:

L. Douglas Kiel, *MANAGING CHAOS AND COMPLEXITY IN GOVERNMENT: A NEW PARADIGM FOR MANAGING CHANGE, INNOVATION AND ORGANIZATIONAL RENEWAL*, Publisher: Jossey-Bass, San Francisco, CA, Hardcover: 246 pages, 1st edition (September 20, 1994), ISBN-10: 0787900230; ISBN-13: 978-0787900236

> In a recent article on chaos theory in the PA Times (November 1, 1994), L. Douglas Kiel asserts that since 1989, researchers in public administration have viewed system behavior from a different angle to better understand the challoenges involved in managing government organizations. this angle, sometimes called "chaos theory" or "the science of complexity," is now more accepted in public management literature. The effort to use the science of complexity often results in new insights for managers who question old management traditions.
>
> In his view, chaos theory or the science of complexity is such a profound paradigmatic shift that all public managers need to be familiar with its new vision of public management, adopt its new credo, and begin implementing its ideas. ...
>
> Product Description
>
> In this book, L. Douglas Kiel presents a framework that addresses the new chaotic reality of public management and the need for responsive change and innovation. By acknowledging the potential for positive change and renewal that can arise from uncertainty and instability, Kiel offers managers a paradigm for transforming government performance.
>
> From the Inside Flap
>
> To keep government operating smoothly, changes in public management policy and strategy usually follow the old rule of change--that it must evolve in a systematic and incremental fashion. But in today's unpredictable world of shrinking budgets, demands for better service, and greater accountability, playing by the old rules just doesn't make sense.In this book, L. Douglas Kiel presents a framework that addresses the new chaotic reality of public management and the need for responsive change and innovation. By acknowledging the potential for positive change and renewal that can arise from uncertainty and instability, Kiel offers managers a paradigm for transforming government performance.In easy to understand terms, the author offers an overview of the concepts of chaos theory and the science of complexity and he demonstrates how public administrators can apply these concepts to create a new

[24] Corrected paragraph from subsequent email.

> vision of organizational change. The book presents a range of both traditional and innovative management techniquesshaping organizational cultures, flattening hierarchies, and re-engineering work--and evaluates their capacity to allow organizational systems to respond to change.Written for public administrators and the faculty and students of public management, this book describes the importance of disorder, instability, and change and examines how new chaos theories are applied to public management. Drawing on data from the author's case studies, the book is filled with charts, graphs, and practical computer spreadsheet exercises designed to give public managers and students of public management hands-on experience to meet the challenges of organizational change.

See also, *CHAOS THEORY AND ITS APPLICATION IN POLITICAL SCIENCE*, by Joan Pere Plaza i Font, UAB – Universitat Autònoma de Barcelona – Spain and Dandoy Régis, UCL – University of Louvain – Belgium, (First Draft – Work in Progress); IPSA – AISP Congress, Fukuoka, 9 – 13 July 2006; *SESSION: BEYOND LINEARITY: RESEARCH METHODS AND COMPLEX SOCIAL PHENOMENA*

http://dev.ulb.ac.be/sciencespo/dossiers_membres/dandoy-regis/fichiers/dandoy-regis-publication18.pdf

Jim Chen, *THE SOUND OF LEGAL THUNDER: THE CHAOTIC CONSEQUENCES OF CRUSHING CONSTITUTIONAL BUTTERFLIES*, University of Louisville - Louis D. Brandeis School of Law, Constitutional Commentary, Vol. 16, 1999; Minnesota Legal Studies Research Paper Series, http://papers.ssrn.com/sol3/papers.cfm?abstract_id=939969

Mark J. Roe, *CHAOS AND EVOLUTION IN LAW AND ECONOMICS*; Harvard Law School; European Corporate Governance Institute (ECGI); Harvard Law Review, Vol. 109, p. 641, 1996. http://papers.ssrn.com/sol3/papers.cfm?abstract_id=10018

See also,

http://whatis.techtarget.com/definition/0,,sid9_gci759332,00.html

http://fistfulofeuros.net/afoe/science-and-research/war-international-dynamics-and-chaos-theory/

This upheaval includes turning the Article 1 of the Fourteenth Amendment upside down. No longer will we have:

> "No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

That will be turned upside down to read:

> "The United States shall make and enforce any law which shall abridge the privileges or immunities of citizens of the United States; shall deprive any person of life, liberty, or property, without due process of law; and deny to any person within its jurisdiction the

> equal protection of the laws; but the States shall not do any of these acts.";

The American people will or should compare the actions of the Obama Administration during the next 4 years with The Fourteen Characteristics of Fascism" by Dr. Lawrence Brit, May 11, 2003, Source Free Inquiry.com.

EMAIL NO. 10.

From: Don Hamrick

To: William Jessup

Wednesday, Jan 28, 2009 at 10:55 AM

SUBJECT: Re: Citizen's Arrest or Civil War (Even if I sit and do nothing(!))? Your Choice!

Jessup,

With all due respect, you're an idiot.

"The claim and exercise of a constitutional right cannot be converted into a crime." *Miller* v. *United States*, 230 F 486 at 489.

PLUS

The collapse of the nation's financial markets and the faltering economy are linked to increases in criminal offenses. See the USA Today story below. Extrapolating that statistical fact to a total collapse of the economy and a possible cascading collapse of the United States it is logical conclusion that civil unrest, rioting, and maybe even a civil war could be triggered by such an event.

Police report crime spikes related to economy

By Kevin Johnson, USA TODAY

http://www.usatoday.com/news/nation/2009-01-26-econcrime_N.htm

> Nearly half of the 233 police agencies surveyed since the collapse of the nation's financial markets link increases in criminal offenses to the faltering economy, a new review by a law enforcement research group shows.
>
> In a comprehensive survey of possible links between crime and the economy, the Police Executive Research Forum found that 44% of agencies reported spikes in crime linked to the economy. Of those, 39% reported increases in robberies, 32% in burglaries and 40% in thefts. The report also found that 63% of the 233 agencies were bracing for funding cuts during the upcoming year.
>
> The survey, conducted over a five-week period starting in late December, asked for information on all of 2008 but emphasized the past six months to account for the economic crash.

The combination of declining resources and increases in some offenses represents the "first wave" of bad news for communities and police officials, says Chuck Wexler, the research forum's executive director.

"When departments saw increases in violent crime (in 2005 and 2006), they were able to flood the problem areas using overtime for additional patrols. Now, that overtime is drying up," he says. He adds that 62% of police departments said they were cutting overtime spending.

Crime dropped in 2007 and during the first half of 2008, according to the FBI. The FBI's full report on 2008 won't be completed until later this year.

Among cities reporting increases in crimes linked to the sagging economy:

• Atlanta Police Chief Richard Pennington blames the economy for increases of 14% in burglary in 2008 and of 17% in auto theft. Many of those offenses spiked as the economy soured, he says.

Instead of taking jewelry and other valuables, he says, burglars are stripping homes of flat-screen TVs and computers. Both items can easily be resold.

"I haven't seen stuff like this in a long time," Pennington says.

• Austin Police Chief Art Acevedo says financial woes are pushing people to violence. He says aggravated assaults rose 10% last year. Many involved family having to money disputes, he says.

"The state of the economy is putting tremendous pressure on the American family," Acevedo says. "There are homes the cops all know where there has been a pattern of problems. Now, we're going to homes that haven't been problems in the past."

• Topeka police reported spikes in shoplifting and burglaries. Thieves there are stealing license plates to recover stickers on the plates that show proof of tax payments, according to the report.

Some communities reported a decrease in crime despite the economic slump. Phoenix Police Chief Jack Harris says crime in his city has not worsened, and property-related offenses — burglary, theft and robbery — actually have declined 9%.

"We would like to think it's our crime-suppression effort," Harris says. "I hesitate to take responsibility for declines in crime, because that means you get the blame when it goes up."

Eleven percent of the agencies reported crime increases they did not link to the economy.

Wexler says police aren't likely to feel the full impact of the faltering economy until at least midyear because crime tends to pick up in the summer.

In Atlanta, Pennington says the economy already is hampering the department's ability to fight rising crime.

City workers, including the department's 1,760 officers, administrators and chief, are now working 36-hour weeks to save money, he says. The hourly cuts took effect after Christmas.

"This just started," Pennington says. "We'll see how it goes."

PART 5. FIFTH CAUSE OF ACTION: RAY LAHOOD, SECRETARY OF TRANSPORTATION

CLAIM 1. AIDING AND ABETTING OBSTRUCTION OF JUSTICE & CONSPIRACY TO OBSTRUCT JUSTICE: Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* is charged with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with the Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY* and the Director of the *TRANSPORTATION SECURITY ADMINISTRATION* (non-party) for neglecting the Second Amendment rights of U.S. merchant seamen to openly keep and bear arms in intrastate and interstate travel in regard to the *TRANSPORTATION WORKER IDENTIFICATION CARD* (TWIC) and the Second Amendment rights of U.S. merchant seamen to ready access to defensive *SMALL ARMS AND LIGHT WEAPONS* to defend against pirate attacks on the high seas under maritime law in regard to the *MERCHANT MARINER CREDENTIAL* (MMC in violation of the excerpted provisions of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.**) and Exhibit 3 (page** Error! Bookmark not defined.**).**

CLAIM 2. RACKETEERING ACTIVITIVIES AGAINST A SEAMAN'S FIRST AMENDMENT RIGHT TO PETITION THE GOVERNMENT FOR REDRESS OF GRIEVANCES: Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* is charged with hazardous, contributory, imputed, culpable, and concurrent negligence with Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY* and Admiral Robert Papp, Commandant of the *U.S. COAST GUARD* for libel, defamation of character, Obstruction of Justice, violating the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1), (3), (b)(1) & (2) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*); 18 U.S.C. § 1503 Racketeering Activities Relating to Obstruction of Justice, and Racketeering Activities in regard to the DOT Bar Notices of 2004 and 2006.

U.S. Department of Transportation

Office of the Secretary of Transportation

Memorandum

Subject: **ACTION**: DO NOT ADMIT
DONALD HAMRICK File Number #04008

Date: SEP 17 2004

From: Michael Prendergast
Associate Director of Security Operations

Reply to Attn. of:

To: CSMi/WSS, Ltd.
DOT Headquarters, FAA 10A/B, USCG Headquarters Building

Effective immediately, **Donald L. Hamrick** should not be admitted to any of the DOT Headquarters, FAA Headquarters, or USCG Headquarters buildings for any reason without obtaining prior approval from OST Security Operations.

Name:	**Donald L. Hamrick**
Race:	Caucasian
Sex:	Male
DOB:	September 15, 1955
Height:	5'8"
Weight:	230 lbs
Hair:	Ash Blond
Eyes:	Blue
Occupation:	Merchant Mariner

Mr. Hamrick is not allowed in any building under any circumstances. If this individual presents himself for admittance to any building, Security Officers are directed to immediately contact FPS. If Mr. Hamrick attempts to gain entry to USCG HQ, immediately contact Special Agent [redacted], or one of the security team members. Special Agent [redacted] or security team members can be reached at:

Security Team Office Phone Number: 202-267-1753 / 1751

Please telephone OST Security Operations at 202-366-4677 if the subject appears at any of the DOT, FAA, or USCG Buildings.

Your assistance is greatly appreciated.

U.S. Department of Transportation

Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 20590

AUG 1 1 2006

Mr. Donald L. Hamrick
5860 Wilburn Road
Wilburn, AR 72179

Dear Mr. Hamrick:

At the request of the U.S. Coast Guard, you are hereby notified that you are barred from entering the U.S. Coast Guard Headquarters or any U.S. Department of Transportation (DOT) Headquarters Building.

If you should have any official business at the U.S. Coast Guard Headquarters or any DOT Headquarters Building, you must first notify DOT Office of Security, M-40, telephone number (202) 366-4677 and arrange for clearance to enter/access the respective building/facility.

This Bar Notice is issued by this Office in accordance with CFR Title 41, Chapter 102-74.390 and District of Columbia Code, Chapter 22-3302, Unlawful Entry onto Property. Violations of these citations may subject you to arrest and prosecution. The penalty for Unlawful Entry in the District of Columbia is imprisonment for up to six (6) months or a fine of up to $100, and/or both.

Sincerely,

Michael Prendergast
Associate Director, Security Operations

cc: USCG/CGIS

> 41 C.F.R. § 102-74.390 *WHAT IS THE POLICY CONCERNING DISTURBANCES?*
>
> All persons entering in or on Federal property are prohibited from loitering, exhibiting disorderly conduct or exhibiting other conduct on property that—
>
> (a) Creates loud or unusual noise or a nuisance;
>
> (b) Unreasonably obstructs the usual use of entrances, foyers, lobbies, corridors, offices, elevators, stairways, or parking lots;
>
> (c) Otherwise impedes or disrupts the performance of official duties by Government employees; or
>
> (d) Prevents the general public from obtaining the administrative services provided on the property in a timely manner.

I note in the Bar Notice for 2006 that Michael Prendergast, Associate Director, Security Operations, U.S. Department of Transportation incorrectly citied "*District of Columbia Code, **Chapter** 22-3302, Unlawful Entry onto Property*." The full caption hierarchy is:

> District of Columbia Official Code 2001
>
> Division IV. Criminal Law and Procedure and Prisoners
>
> Title 22. Criminal Offenses and Penalties
>
> Subtitle I. Criminal Offenses
>
> **Chapter 33. Trespass; Injuries to Property**
>
> **§ 22-3302. Unlawful entry on property**
>
> Any person who, without lawful authority, shall enter, or attempt to enter, any public or private dwelling, building, or other property, or part of such dwelling, building, or other property, against the will of the lawful occupant or of the person lawfully in charge thereof, or being therein or thereon, without lawful authority to remain therein or thereon shall refuse to quit the same on the demand of the lawful occupant, or of the person lawfully in charge thereof, shall be deemed guilty of a misdemeanor, and on conviction thereof shall be punished by a fine not exceeding $100 or imprisonment in the Jail for not more than 6 months, or both, in the discretion of the court. The presence of a person in any private dwelling, building, or other property that is otherwise vacant and boarded-up or otherwise secured in a manner that conveys that it is vacant and not to be entered, or displays a no trespassing sign, shall be prima facie evidence that any person found in such property has entered against the will of the person in legal possession of the property.

I am not personally sure whether it is properly citied as DC Code or DC Statute but the WebLinks.WestLaw.com Web site for the DC Code's notation is "DC ST § 22-3302."

It is my claim that the U.S. Coast Guard enlisted Michael Prendergast of the U.S. Department of Transportation in a under 18 U.S.C. § 241 *CONSPIRACY AGAINST RIGHTS* and to, 18 U.S.C. § 242 *DEPRIVATION OF RIGHTS UNDER COLOR OF LAW*, with the issuance of the Bar Notices of 2004 and 2006 in retaliation for naming the officers of the U.S. Coast Guard as defendants in my ongoing lawsuits for seamen's rights (*just tertii doctrine)* and my own rights under the *SECOND AMENDMENT* as a function of the *COMMON DEFENCE CLAUSE* in the *PREAMBLE TO THE CONSTITUTION* in what I believe was the U.S.

Coast Guard's attempt to obstruct justice because what other reason could there be in my situation when the Bar Notices of 2004 and 20067 DO NOT describe any allege offense nor advise me of my rights to appeal, whether administrative or judicial. That alone violates 5 U.S.C. § 551 et al; ADMINISTRATIVE PROCEDURE ACT (Pub. L. 79-404) and my Fifth Amendment right.

PART 6. FIFTH CAUSE OF ACTION: JANET NEPALITANO , SECRETARY OF HOMELAND SECURITY

CLAIM 1. Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY* is charged with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* and the Director of the *TRANSPORTATION SECURITY ADMINISTRATION* (non-party) for neglecting the Second Amendment rights of U.S. merchant seamen to openly keep and bear arms in intrastate and interstate travel in regard to the *TRANSPORTATION WORKER IDENTIFICATION CARD* (TWIC) and the Second Amendment rights of U.S. merchant seamen to ready access to defensive *SMALL ARMS AND LIGHT WEAPONS* to defend against pirate attacks on the high seas under maritime law in regard to the *MERCHANT MARINER CREDENTIAL* (MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.**) and Exhibit 3 (page** Error! Bookmark not defined.**).**

CLAIM 2. Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY*, having General Superintendence over the U.S. merchant marine and merchant marine personnel (46 U.S.C. § 2103), is charged with hazardous, contributory, imputed, culpable, and concurrent negligence with Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* and Admiral Robert Papp, Commandant of the *U.S. COAST GUARD* for libel, defamation of character, Obstruction of Justice, violating the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1)(A), (b)(1) & (b)(3) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*); in regard to the DOT Bar Notices of 2004 and 2006 culminating in Racketeering Activities (18 U.S.C. § 1503) against the Second Amendment rights of seamen.

CLAIM 3. Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY*, having General Superintendence over the U.S. merchant marine and merchant marine personnel (46 U.S.C. § 2103), is charged with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* and Admiral Rebort Papp, *COMMANDANT OF THE U.S. COAST GUARD* for failure or refusal to regulate or submit proposed legislation to Congress on proper manning levels, equipment, amount and type of Small Arms and Light Weapons suitable for defensive against pirate attacks on the high seas as element of *SEAWORTHINESS* under Title 46 Appendix, Chapter 28—Carriage of Goods by Sea: 46 U.S.C. Appendix § 1303 *RESPONSIBILITIES AND LIABILITIES OF CARRIER AND SHIP* that prompted the U.S. Coast Guard to issue their *FINAL AGENCY ACTION* denying my Second Amendment right to the National Open Carry Handgun and/or the National Open Carry Small Arms and Light Weapons endorsement on the MMD (now MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.**) and Exhibit 3 (page** Error! Bookmark not defined.**).**

PART 6. ADMIRALTY CLAIMS AGAINST JANET NEPALITANO, SECRETARY HOMELAND SECURITY

PART 7. ADMIRALTY CLAIMS AGAINST ADMIRAL ROBERT PAPP, COMMANDANT, U.S. COAST GUARD

PART 7. SIXTH CAUSE OF ACTION: ADMIRAL ROBERT PAPP

CLAIM 1. FACIAL AND AS APPLIED CONSTITUTIONAL CHALLENGE AGAINST THE TRANSPORTATION WORKER'S IDENTIFICATION CREDENTIAL (TWIC) AND THE MERCHANT MARINER'S CREDENTIAL (MMC) FOR THEIR OMMISSION OF SECOND AMENDMENT RIGHTS OF SEAMEN AND THE U.S. COAST GUARD AS A RACKETEERING ENTERPRISE AGAINST THE SECOND AMENDMENT RIGHTS OF U.S. SEAMEN: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with Janet Nepalitano, Secretary of the *U.S. DEPARTMENT OF HOMELAND SECURITY*, having General Superintendence, over the merchant marine and merchant marine personnel (46 U.S.C. § 2103), Ray LaHood, Secretary of the *U.S. DEPARTMENT OF TRANSPORTATION* and for neglecting or intentional ignoring the Second Amendment rights of U.S. merchant seamen to openly keep and bear arms in intrastate and interstate travel in regard to the *TRANSPORTATION WORKER IDENTIFICATION CARD* (TWIC) and the Second Amendment rights of U.S. merchant seamen to ready access to defensive *SMALL ARMS AND LIGHT WEAPONS* aboard ship to defend against pirate attacks on the high seas under maritime law in regard to the *MERCHANT MARINER CREDENTIAL* (MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.**) and Exhibit 3 (page** Error! Bookmark not defined.**).**

CLAIM 3. U.S. COAST GUARD VIOLATED THE SEAMEN'S WHISTLE BLOWER LAW: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged with imputed negligence for the actions of Capt. J. P. Brusseau USCG (Retired July 1, 2004) and other Coast Guard officers in regard to libel as a matter of private concern, injury to reputation, harassment, emotional distress, Obstruction of Justice, Conspiracy to Obstruction Justice with the *U.S. DEPARTMENT OF TRANSPORTATION'S OFFICE OF SECURITY* in regard to DOT Bar Notices of 2004 and 2006 in wrongful retaliation for Plaintiff naming Officers of the U.S. Coast Guard as Defendants in civil litigation extending from petitioner's exercise of First Amendment rights to free speech and to petition the government for redress of grievances pursuing Second Amendment rights under the Seventh Amendment right to a jury trial and by such actions the U.S. Coast Guard wrongfully violated the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1)(A), (b)(1) & (b)(3) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*) culminating in Racketeering Activities (18 U.S.C. § 1503) against the Second Amendment rights of seamen.

CLAIM 4. RACKETEERING ACTIVITIES AGAINST THE SECOND AMENDMENT AS AN ELEMENT OF SEAWORTHINESS OF U.S. MERCHANT MARINE VESSELS: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged racketeering activities against the Second Amendment rights of U.S. seamen as an element of seaworthiness of U.S. merchant marine vessels. Admiral Robert Papp is also charge with with various forms of negligence, not limited to hazardous, contributory, imputed, culpable and concurrent negligence with Janet Nepalitano, *SECRETARY OF THE U.S. DEPARTMENT OF HOMELAND SECURITY*, having General Superintendence over the U.S. merchant marine and merchant marine personnel (46 U.S.C. § 2103), and unnamed party Ray LaHood, *SECRETARY OF THE U.S. DEPARTMENT OF TRANSPORTATION* for violating my Second Amendment rights through the U.S. Coast Guard by denying my Second

Amendment application for the National Open Carry Handgun and the National Open Carry Small Arms and Light Weapons endorsement with their Final Agency Action in violation of the principle that defensive Small Arms and Light Weapons is an element of Seaworthiness of merchant marine vessels under Title 46 Appendix, Chapter 28—Carriage of Goods by Sea: 46 U.S.C. Appendix § 1303 *Responsibilities and Liabilities of Carrier and Ship* that prompted the U.S. Coast Guard to issue their *Final Agency Action* denying my Second Amendment right to the National Open Carry Handgun and/or the National Open Carry Small Arms and Light Weapons endorsement on the MMD (now MMC) in violation of the *Merchant Marine Act of* 1936 shown in Exhibit 1 (pages 69–40) and federal laws shown in Exhibit 2 (page Error! Bookmark not defined.**) and Exhibit 3 (page** Error! Bookmark not defined.**).**

CLAIM 2. DAMAGES: Admiral Robert Papp, *COMMANDANT OF THE U.S. COAST GUARD* is charged with imputed negligence for the actions of Capt. J. P. Brusseau USCG (Retired) in regard to libel as a matter of private concern, injury to reputation, unlawful interference with the lawful operation of a merchant vessel, unlawful interference with a seaman's employment aboard a merchant vessel, wrongful detention/false imprisonment of a U.S. merchant seaman in a foreign country (initiated by Capt. Brusseau in Washington, DC), harassment, emotional distress, and subjection to a malicious NCIS criminal investigation extending from petitioner's exercise of First Amendment rights to free speech and to petition the government for redress of grievances pursuing Second Amendment rights in 2002 and by such actions the U.S. Coast Guard wrongfully violated the *WHISTLE BLOWER LAW FOR SEAMEN*, (46 U.S.C. § 2114(a)(1)(A), (b)(1) & (b)(3) *PROTECTION OF SEAMEN AGAINST DISCRIMINATION*).

ADMIRAL ROBERT PAPP

Admiral Papp is charged with imputed negligence of his predecessor and gross negligence of his own for failure to perform one of their under 14 U.S.C. § 2 PRIMARY DUTIES OF THE U.S. COAST GUARD (The Coast Guard shall enforce or assist in the enforcement of **all applicable Federal laws on**, under, and over **the high seas** and waters subject to the jurisdiction of the United States; ...); the duty of protecting the U.S. merchant marine and merchant marine from pirate attacks on the high seas by failing to enact regulations or to encourage Congress to pass legislation respecting the Second Amendment rights of U.S. seamen to protect themselves from pirates on the high seas and for wrongfully denying my application for Second Amendment rights in the form of an endorsement for National Open Carry Handgun and/or Small Arms and Light Weapons in response to federally required Small Arms Training as a prerequisite for employment aboard a U.S. Government ammunition vessel in 2002.

Admiral Robert Papp is also charge with failure to inspect U.S. flag vessels of the merchant marine for seaworthiness in their capacity to defend against pirates on the high seas despite any omission of such inspections in the Title 46 of the Code of Federal Regulations; Safety of Life at Sea (SOLAS) Regulations; ISPS, or STCW. This inspection includes the Second Amendment rights of U.S. seamen aboard U.S. flag vessels.

It is therefore demanded a de novo judicial review of the U.S. Coast Guard's Final Agency Action, dated April 19, 2002..

U.S. Coast Guard Form CG-9556,
Acceptance and Oath of Office

I accept this appointment in the United States Coast Guard/Coast Guard Reserve (strikeoutone) in the grade of _______________ with rank as such from (date of ___________. This information was transmitted by Commandant's letter/message (ssic/dtg) __________/ dated __________. Having accepted this appointment, I, __________, do solemnly swear (or affirm) that I will support and defend the Constitution of the United States against all enemies, foreign and domestic, that I will bear true faith and allegiance to the same, that I take this obligation freely, without any mental reservation or purpose of evasion, and that I will well and faithfully discharge the duties of the office on which I am about to enter. So help me God.

2. Under the Supplemental Rules for Admiralty or Maritime Claims the Merchant Mariner's Credential (MMC) (Formerly the Merchant Mariner's Document (MMD)) And The Transportation Worker's Identification Credential (TWIC) Failed to Recognize the Second Amendment as Intangible Property Rights of U.S. Merchant Seamen.

Black's Law Dictionary defines "*intangible property* as "property which cannot be touched because it has no physical existence such as claims, interests, and rights." The Constitution of the United States, the Bill of Rights, and the Thirteenth and Fourteenth Amendments protect intangible property rights of U.S. merchant seamen. Therefore, the right to *openly* keep and bear arms in intrastate and interstate travel is a fundamental right to ordered liberty as implied by the Common Defence Clause of the Preamble to the Constitution and specifically protected by the Bill of Rights, the Thirteenth and Fourteenth Amendments.

A U.S. merchant seaman who has not violated 18 U.S.C. § 922(g) (1) through (9) UNLAWFUL ACTS WITH FIREARMS and passes the 18 U.S.C. § 922(t) NATIONAL INSTANT CRIMINAL BACKGROUND CHECK to buy a firearm ought to have maintained and preserved his/her constitutional right to travel intrastate and interstate with any firearm suitable for the Common Defence and the security of a free state.

However, certain federals and regulations such as 18 U.S.C. § 922(O)(1) POSSESSION OF A MACHINEGUN PROHIBITED; 18 U.S.C. § 922(q) GUN FREE SCHOOL ZONE ACT; 18 U.S.C. § 926A INTERSTATE TRANSPORTATION OF FIREARMS; 27 C.F.R. § 478.38 TRANSPORTATION OF FIREARMS unconstitutionally infringe or prohibit the "National Open Carry Handgun" for U.S. merchant seaman and U.S. citizens alike and establishes unconstitutional conditions of a misguided dependency upon law enforcement for the Common Defence that places U.S. merchant seamen and U.S. citizens alike at risk of personal injury and death from violent attacks by common criminals when law enforcement have no duty to protect individuals 24/7.

Taking an excerpt from *STATEMENT OF PHILIP J. SHAPIRO, PRESIDENT AND CHIEF EXECUTIVE OFFICER, LIBERTY MARITIME CORPORATION BEFORE THE SURFACE TRANSPORTATION AND MERCHANT MARINE INFRASTRUCTURE, SAFETY AND SECURITY SUBCOMMITTEE SENATE COMMITTEE ON COMMERCE, SCIENCE AND TRANSPORTATION*, May 5, 2009:

> Today's U.S. legal framework actually prevents ship owners from arming their vessels for self-defense. While the maritime right of self-defense is enshrined in U.S. law in a statute dating from 1817, more recently enacted State Department arms export regulations effectively prohibit the arming of vessels. Additionally, ship owners risk being second-

> guessed in U.S. courts for self-defensive measures that were common in 1817.

And taking an excerpt from Clif Burns, *TO ARM OR NOT TO ARM?*, ExportLawBlawg.com, May 7, 2009:[1]

> Although the International Traffic in Arms Regulations do not prohibit the arming of merchant marine ships, an export license would be required permitting the temporary export of the weapons to each port that the ship will visit prior to its return to the United States. This would not only be time consuming but would, for example, not permit weapons on ships destined for Chinese parts due to the arms embargo against China in section 126.1.[2]
>
> The narrow exemption in section 123.17(c)[3] for crew members to temporarily export non-automatic firearms and 1,000 rounds of ammunition without a license is probably insufficient to arm properly a merchant ship against pirates with RPG launchers and AK-47s. And it entails an additional burden of a declaration by each crew member to a Customs officer prior to each departure by the crew with non-automatic firearms
>
> Beyond the hurdles imposed by the ITAR, the bond requirement imposed by 22 U.S.C. § 463 BONDS FROM ARMED VESSELS ON CLEARING [4] is also a practical barrier to arming merchant ships. That statue requires

[1] http://www.exportlawblog.com/archives/category/piracy-on-the-high-seas

[2] 22 C.F.R.—Foreign Relations; Chapter 1—Department of State; Part 126—General Policies and Provisions; 22 C.F.R. § 126.1 Prohibited Exports and Sales to Certain Countries.

[3] CODE OF FEDERAL REGULATIONS; TITLE 22—Foreign Relations; CHAPTER 1—Department of State; PART 123—Licenses for the Export of Defense Articles; 22 C.F.R. § 123.17 Exports of Firearms and Ammunition.

(c) Port Directors of U.S. Customs and Border Protection shall permit U.S. persons to export temporarily from the United States without a license not more than three nonautomatic firearms in Category I(a) of §121.1 of this subchapter and not more than 1,000 cartridges therefor, provided that:

(1) A declaration by the U.S. person and an inspection by a customs officer is made;

(2) The firearms and accompanying ammunition must be with the U.S. person's baggage or effects, whether accompanied or unaccompanied (but not mailed); and

(3) They must be for that person's exclusive use and not for reexport or other transfer of ownership. The foregoing exemption is not applicable to a crew-member of a vessel or aircraft unless the crew-member declares the firearms to a Customs officer upon each departure from the United States, and declares that it is his or her intention to return the article(s) on each return to the United States. It is also not applicable to the personnel referred to in §123.18.

[4] U.S. CODE; TITLE 22—Foreign Relations and Intercourse; CHAPTER 9—Foreign Wars, War Materials, and Neutrality; SUBCHAPTER III—Prevention Of Offenses Against Neutrality; 22 U.S.C. § 463. Bonds from Armed Vessels on Clearing

The owners or consignees of every armed vessel sailing out of the ports of, or under the jurisdiction of, the United States, belonging wholly or in part to citizens thereof, shall, before clearing out the same, give bond to the United States, with sufficient sureties, in double the amount of the value of the vessel and cargo on board, including her

that the owners of armed ships post a bond prior to leaving a U.S. port in an amount equal to double the value of the ship and its cargo

Additional Congressional action may not be required, however, to permit the arming of merchant ships. Under 10 U.S.C. § 351, DURING WAR OR THREAT TO NATIONAL SECURITY[5] the President may authorize the arming of merchant ships upon determination that the national security is threatened by the application of physical violence by foreign governments or agencies against U.S. commercial interests. Presumably, foreign pirates would fit within the definition of agencies. Ships armed under this provision are exempted from the double-bond requirement.

Even if U.S. barriers to arming merchant ships can be overcome, that's not the end of the story. The governments of any ports visited by the merchant ship in question may forbid that the vessel be armed. Or, as in, the case of Germany[6] and other countries that have signed the U.N. Firearms Protocol,[7] the port countries may require that a "transit permit" for the weapons be granted prior to the arrival of the ship.

It appears likely that merchant marine ships are going to have to continue to rely on high pressure water hoses for the immediate future to rebuff pirate attacks.

3, Potential Consequences of Imprecise Security Assessments

POTENTIAL CONSEQUENCES OF IMPRECISE SECURITY ASSESSMENTS
In
MARITIME SECURITY AND MET:
PROCEEDINGS OF THE INTERNATIONAL ASSOCIATION OF MARITIME UNIVERSITIES
6th Annual General Assembly and Conference, October 24-26, 2005;
World Maritime University, Malmö, Sweden,

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armament, conditioned that the vessel shall not be employed by such owners to cruise or commit hostilities against the subjects, citizens, or property of any foreign prince or state, or of any colony, district, or people, with whom the United States are at peace.

[5] U.S. CODE; TITLE 10—Armed Forces; SUBTITLE A—General Military Law; PART I—Organization and General Military Powers; CHAPTER 17—Arming of American Vessels; 10 U.S.C. § 351. During War or Threat to National Security

(a) The President, through any agency of the Department of Defense designated by him, may arm, have armed, or allow to be armed, any watercraft or aircraft that is capable of being used as a means of transportation on, over, or under water, and is documented, registered, or licensed under the laws of the United States.

(b) This section applies during a war and at any other time when the President determines that the security of the United States is threatened by the application, or the imminent danger of application, of physical force by any foreign government or agency against the United States, its citizens, the property of its citizens, or their commercial interests.

(c) Section 16 of the Act of March 4, 1909 (22 U.S.C. 463) does not apply to vessels armed under this section.

[6] http://www.auswaertiges-amt.de/diplo/en/Aussenpolitik/InternatOrgane/VereinteNationen/Schwerpunkte/OKriminalitaet.html

[7] http://www.iansa.org/un/un-firearms-protocol.pdf

Ed. Detlef Nielsen,
World Maritime University; WIT Press, pages 75-84.[8]
Southampton, UK and Bellerica, MA, USA;

1. Introduction

The ISPS CODE[9] requires in its Part A Sec. 8 a shipboard security risk assessment to be carried out as "an essential and integral part of the process of developing and updating the ship security plan." Guidance is given in the non-mandatory Part B of the Code in the corresponding Para. 8. A comprehensive list of issues to be considered when such a security risk assessment is carried is provided in this regulation. Apart from this non-binding list of issues no methodology is suggested. Only brief and general advice is given in paragraph 8.2, where the Company Security Officer (CSO) is referred to "any specific guidance offered by the Contracting Governments". To the knowledge of the authors only one country, the United States, has specified such guidance.[10] This leaves it up to the CSO to define a suitable methodology. Principally there is nothing wrong with such an approach. In fact it is used widely throughout various approaches to the assessment of safety and security related matters. One aspect of concern is, however that such an approach involves a certain degree of deviation and comparability of the results provided by different risk assessment teams. The resulting question could therefore be why to discuss this issue any further.

The answer to this is relatively simple. The security risk assessment from the basis of the ship security plan, which creates the security system on board a ship. A plan not addressing all relevant maritime security areas of concern could therefore be considered as not sufficient and subsequently open up the opportunity to challenge the seaworthiness of the ship in question. This would clearly result in far reaching liability issues for the ship owner. Although no case is yet known in the above-mentioned security context, attempts have been undertaken to challenge the seaworthiness in court with respect to the *INTERNATIONAL SAFETY MANAGEMENT* (ISM) *CODE*,[11] a Code bearing many similarities to the *ISPS CODE*. Prominent examples were *Eurasion Dream*, *Torepo*, *Patraikos II*.[12] The question therefore remains if a cargo owner could challenge a ship owner for lacking due diligence with respect to the scope of a security risk assessment if this risk assessment has not addressed areas of concern which led to cargo damage in a security incident. If this is the case would it not be desirable to have stricter guidelines for ship security risk assessment, which would limit the liability of ship owners?

This paper is intended to investigate the issues mentioned above and to highlight the potential consequences. It will furthermore outline a framework intended to safeguard

[8] Available online at Google Books.

[9] International Ship and Port Facility Security Code; IMO Doc. SOLAS/CONF.5/34, 17 December 2002.

[10] NVIC. 10-02, Security Guidelines for Vessels; United States Coast Guard, 21 October 2002. http://www.uscg.mil/hq/cg5/nvic/pdf/2002/10-02.pdf.

[11] International Management Code for the Safe Operation of Ships and for Pollution Prevention (International Safety Management (ISM) Code); IMO Doc. A. 18/Res. 741, 17 November 1993.

[12] North of England P&I Club, The Exercise of Due Diligence in Employing Crew. *Signals – the Loss Prevention Newsletter for North of England Members*, Issue 50, p. 6, January 2003.

http://www.nepia.com/cache/files/147-1201282401/signals50.pdf.

sufficient security risk assessment and discuss advantages and disadvantages linked to minimum standards for security risk assessment.

2. What Can Ship Crews Do Against Maritime Security Threats?

The options available to ship's crews when dealing with maritime security threats are very limited. To begin with, ship crews are neither trained nor attuned to responding to security threats. Seafarers are only beginning today to train, as a result of ISPS Code implementation, to deter and prevent threats and to mitigate the effects of security incidents. Nevertheless, their security tasks are only collateral to their primary functions as navigators and engineers. They cannot be expected to react to a security threat in the same manner as security professionals who are trained to detect, intercept, delay, or neutralize targets. [13] Indeed, the proposed security-related amendments to the International Convention on Standards of Training, Certification and Watchkeeping for Seafarers (STCW) concentrate on the integration of ship security officer (SSO) training within the curriculum and not combat or weapons training.[14] This complements the long-standing policy of various maritime organizations against the arming of seafarers in spite of rapidly rising levels of maritime violence in the past two decades.

Prevailing manning levels and the demanding nature of shipboard life are also factors that limit the options available to ship crews in dealing with security threats. Crews have simply become "too small and too busy to offer any sort of realistic protection against a human intelligence actively seeking to subvert the ship to its wicked purpose."[15]

The most prevalent security threats facing ships today are piracy and armed robbery. The groups that commit these unlawful acts come in different levels of organization and sophistication and employ varieties of *modi operandi*. One variety that is popular in the waters of Malacca Straits and Indonesia is one where a rubber boat carrying the attackers would come alongside the merchant vessel, climb on board using grappling hooks, bind the crew with rope, collect all personal valuables, and raid the ship's safe. Many attacks result in some sort of injury to the crew. In a few attacks where the vessel and its entire cargo were hijacked, crew members have been killed or seriously injured either as a direct result of violence from the attackers or while trying to flee or escape. According to statistics collected by the International Chamber of Commerce-International Maritime Bureau (ICC-IMB) for the year 2004, a total of 325 attacks were reported by ships, of which 197 involved pirates and armed robbers who were armed with guns, knives, or other weapons. During this period, 234 persons were either kidnapped or taken hostage, 59 were injured, 30 were killed, and 30 are still missing, 226 ships were boarded, 12 ships were fired upon, and 11 ships were hijacked.[16]

The threat of maritime terrorism, on the other hand, remains largely a potential one. Compared to piracy and armed robbery against ships, there are relatively fewer incidents

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[13] Emerson, S.D. & Nadeau, J., A Coastal Perspective on Security. *Journal of Hazardous Materials*, 104, p. 4, 2003.

[14] Measures to Enhance Maritime Security, Training and Certification Requirements for Company and Port Facility Security Officers, Report of the Working Group, IMO Doc. STW 36/WP. 2, 12 January 2005.

[15] Insight and Opinion; Lloyd's List, 7 May 2003.

[16] International Maritime Bureau, Piracy and Armed Robbery against Ships: Annual Report, 1 January – 31 December 2004, ICC-IMB, Essex, 2005.

of maritime terrorism. The *Santa Maria* (1961), *Achille Lauro* (1985), *City of Poros* (1988), *Our Lady of Mediatrix* (2000), *USS Cole* (2000), *Limburg* (2002), *Superferry 14* (2004), and *Doña Ramona* (2005) are some of the few that readily come to mind. Also, a security threat involving terrorism carries with it a potential for much greater damage and injury. While pirates and armed robbers aim to escape with their lives and the stolen items, terrorists do not seek the cargo or personal valuables. Terrorists are highly trained in the use of violence and stand ready, if need be, to kill others or to give up their own lives.[17]

There are other threats to the security of ship's crews aside from piracy, armed robbery, and terrorism. One threat for which the ISPS Code was also developed is the problem of stowaways. According to IMO statistics, 265 cases were reported in 2002 and 185 in 2003.[18] The discovery of stowaways is a serious violation of the integrity and security of the vessel, and stowaways who find themselves in desperate situations could resort to violence against the crew. By the same token, there have been incidents[19] where stowaways have been abused and even killed by the crew.

It is too early to determine what specific effect the ISPS Code has had in terms of the risk profile of ships. One can only assume that the conscientious implementation of the Code would increase deterrence against criminal attacks and therefore result in a lower risk profile. It is now more than a year after the Code entered into force and a number of organizations have issued positive comments on the shipping industry's compliance. The United States Coast Guard (USCG) praised the international maritime community for having "demonstrated a significant level of compliance with the ISPS Code on the July 1st (2004) implementation date."[20] The USCG also reported a continuing downward trend in the overall rate of ISPS-related major control actions (MCA), that is, denial of entry into port, expulsion from port, and ship detention. In July 2004,k the rate was 2.5%. By year end, the MCA rate had dropped to 1.5% or 92 out of 6,087 inspections.[21] Similar praise was given by the secretariats of both the Paris and Tokyo Memoranda of Understanding (MoU) on Port State Control. The Paris MoU reported a 1.46% ISPS-related detention rate[22] while the Tokyo MoU reported 1%.[23] However, even in the face of such positive comments it is import to note that the question of whether significant ISPS compliance – as determined during port state control – translates to more secure ships and seafarers, is a complicated one.

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[17] Mejia, M., Maritime Gerrymandering: Dilemmas in Defining Piracy, Terrorism, and other Acts of Maritime Violence. *Journal of International Commercial Law,* 2(2), p. 165,, 2003.

[18] Reports on Stowaway Incidents: Annual Statistics for the Years 2002 and 2003; IMO Doc. FAL. 2/Circ. 83, p. 11, 12 July 2004.

[19] Eales, B., Getting away with Murder? *Fairplay*, pp. 16-18, 18 November 2004; also Moore, A., Crime on the high Seas. *Fairplay*, pp. 18-19, 18 November 2004.

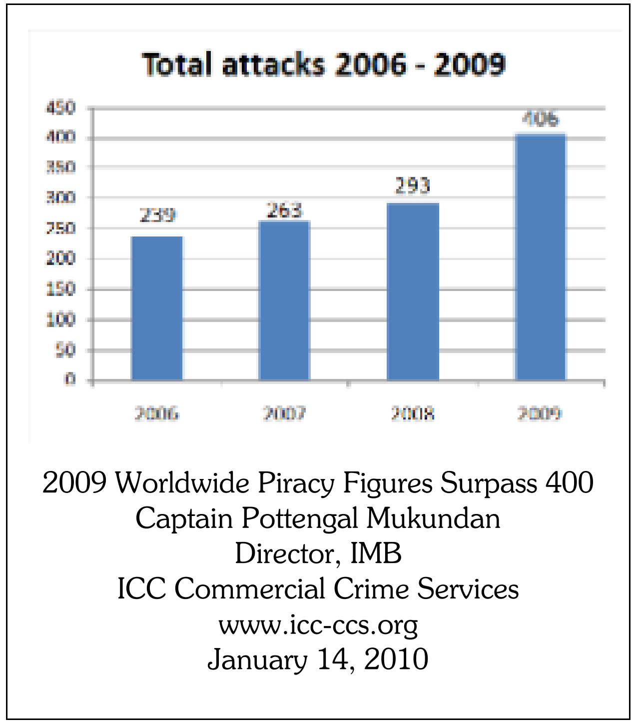
[20] United States Coast Guard (USCG), *PORT STATE CONTROL IN THE UNITED STATES: ANNUAL REPORT 2004*, USCG: Washington, 2005, p. 2.

[21] *Ib.* pp. 6, 25

[22] The Paris Memorandum of Understanding on Port State Control, Annual Report 2004: Changing Course, Paris MoU on PSC: Rotterdam, p. 46, 2005.

[23] International Maritime Bureau, Piracy and Armed Robbery against Ships: Report for the Period 1 January – 31 March 2005, ICC-IMB: Essex, pp. 8-9, 2005.

After the passage of time and the accumulation of sufficient data, it might eventually be feasible to measure the level of success of the Code. As regards the threats of piracy and armed robbery, IMB statistics show a decrease in the number of attacks reported between the years 2003 (445 attacks) and 2004 (325 attacks).[24] They also show a significant decrease in the number of attacks according to type of attack (attempted boarding, detention, firing, hijack, robbery, etc.), type of violence employed (hostage-taking/kidnapping, assault, injury, killing), and type of arms used (guns, knives, other weapons) for the first quarter of 2005 compared to the same period of the previous five years.[25] <u>It would be interesting to see whether in a few years this turns out to be the beginning of a discernable decrease in reported incidents</u>. As far as the threat of terrorism is concerned the lack of critical mass in statistical data will prove the task of determining success to be even more challenging.



2009 Worldwide Piracy Figures Surpass 400
Captain Pottengal Mukundan
Director, IMB
ICC Commercial Crime Services
www.icc-ccs.org
January 14, 2010

To measure the ISPS Code's success would be to determine whether ship crews are able to achieve the Code's objectives of effectively deterring and preventing unlawful acts and mitigating the consequences of an actual security incident. As mentioned earlier, ship crews are already at a disadvantage because of low manning levels and heavy workloads. Also, attention to security is not innate in the seafarer in the same way that safety has come to be. In addition, because an offensive capability is inconsistent with the objectives of the ISPS Code, the only "weapons" available to ship's crew are safety equipment such as fire hoses and signal flares. In otherwords, the answer to the question *Can ship crews effectively react to security incidents?* is a qualified "yes," that is, to the extent that training and proficiency in deterrence and other security tasks are required by the ISPS Code. Once deterrence and prevention have failed and a security incident is imminent or underway, the actions available to the crew are basically limited to activating the ship security alarm system (SSAS), calling emergency stations, evacuating the ship, and acting on instructions from the contracting government.

There is not much a ship's crew can do once an armed robber or terrorist has decided to strike in spite of the ship's ISPS-compliant security system. Merchant ships are not equipped with either an active defence or offence capability. In fact as the *USS Cole* incident so clearly demonstrated, even a technologically advance guided missile destroyer manned by professional naval warriors could be limited in its response

[24] International Maritime Bureau, Piracy and Armed Robbery against Ships: Annual Report, 1 January – 31 December 2004, ICC-IMB, Essex, 2005. p. 6.

[25] International Maritime Bureau, Piracy and Armed Robbery against Ships: Annual Report, 1 January – 31 March 2005, ICC-IMB, Essex, p. 8-9, 2005.

options once the watercraft, its lethal cargo, and its crew of suicide bombers have already blown up in a thousand pieces. In the case of merchant vessels, security risk management (in many cases, risk avoidance) through the ISPS Code is offered as the optimum solution.

3. Liability for Unseaworthiness in the Context of Maritime Security

The central issue here is whether non-compliance with the ISPS Code constitutes a failure of seaworthiness which in turn can lead to potential liability on the part of the carrier or shipowner. An affirmative conclusion may arguably be attributed to a dubious ship security plan based on deficient or inadequate risk assessment. The problem, of course, is that there are neither any decided cases on this point in relation to the ISPS Code, nor is there any authoritative or scholarly legal literature. (See, however,[26] where the authors refer to deficiency in ISPS compliance, in particular, lack of crew security training, deficient ISPS documentation and master or crew negligence as possibly constituting unseaworthiness.) At best an analogy can be drawn with liability implications for failure of seaworthiness in relation to the ISM Code in the context of which some views have been expressed and some tangential references have been made judicially. These will be examined in the following text.

3.1 What is Seaworthiness?

For the discussion to be meaningful, it must obviously begin with a review of what is the legal concept of seaworthiness. This is a notion peculiar to maritime law and exists mainly within the domain of commercial maritime law; to be precise, in contracts of carriage under bills of lading, in charter-parties and in marine insurance contracts tempered by relevant statutory provisions. Judicially, a seaworthy ship has been described as one that is "… in a fit state as to repairs, equipment, crew and in all other respects, to encounter the ordinary perils of the sea of the voyage" (*Dixon* v. *Sadler*).[27] **A question that arises is whether a security risk is an ordinary peril**. Another judicial definition describes a seaworthy ship as "… one which is reasonably fit for its intended purpose" (*Phipps* v. *ss Santa Maria*).[28] If without ISPS Code certification a vessel cannot be insured or utilized to transport cargo internationally, can it be argued that it is not "fit for its intended purpose"? [29] The classic definition of "seaworthiness" in the case of *F.C. Bradley & Sons, Ltd.* v. *Federal Steam Navigation Co.*[30] where approving a statement on *Carver on Carriage by Sea* the court held that "[T]he ship must have the degree of fitness which an ordinary careful owner would require his

[26] Andrewatha, J. & Stone, Z., ENGLISH MARITIME LAW UPDATE. 35 Journal of Maritime Law & Commerce 369 at 370 (2003).

[27] *Dixon* v. *Sadler* (1839), 5 Meeson & Welsby's Exchequer Reports (England and Wales) 414. But see Nicola S. Pretty, *UNSEAWORTHINESS — TURNING A BLIND EYE?*, 22 Australian & New Zealand Maritime Law Journal 6 (2008): A ship is deemed to be seaworthy when she is reasonably fit in all respects to encounter the ordinary perils Meeson & Welsby's Exchequer Reports (England and Wales) 405, affd (1841) 8 M & W 405.

[28] *Phipps* v. *ss Santa Maria*, 418 F.2d 615-617 (5th Cir. 1969).

[29] Rodriquez, A. J. & Hubbard, M. C., *THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE: A NEW LEVEL OF UNIFORMITY*, 73 Tulane Law Review 1585 at 1601 (1999).

[30] F. C. Bradley & Sons, Ltd. v. Federal Steam Navigation Co. (1926), 24 Lloyds List Reports 446 at 454.

vessel to have at the commencement of her voyage having regard to all probable circumstances of it."

"Seaworthiness is not an absolute concept, it is relative to the nature of the ship, to the particular voyage or even to the particular stage of the voyage on which the ship is engaged,"[31]

3.2 Seaworthiness in Carriage Law: Application of Hague-Visby Rules

Article III, Rule 1 requires a carrier to exercise due diligence before and at the beginning of the voyage to make the ship seaworthy and cargo-worthy. The duty pertains to "all reasonably foreseeable eventualities" but in "normal circumstances"[32] This raises the question of whether a security incident is a reasonably foreseeable eventuality in normal circumstances. In legal terms the test is an objective one, no doubt, but its application may be fraught with confusion.

In *The Eurasian Dream*[33] decision, the court identified the following steps in terms of the application of the Hague-Visby Rules:

> First, the claimant must carry the burden of proving unseaworthiness.
>
> Second, the claimant must prove causation, i.e., that the loss or damage was proximately caused by unseaworthiness.[34]
>
> Third, the defendant must carry burden of proof to invoke the defence of due diligence;[35]
>
> Fourth, if the defendant fails to discharge the burden, he would not be entitled to rely on any of the Art. IV, r. 2 exceptions.

This brings us to the fundamental question of whether a failure to comply with the ISPS Code per se is a breach of the requirement to exercise due diligence to make a ship seaworthy. In *The Eurasian Dream* the failure to have adequate documentation (Fire Manual) may have been a consideration in the mind of the court. Support in the affirmative for this proposition is doubtful given the paucity of authority. A better proposition is that compliance with the ISPS Code is indicative of due diligence exercised by the defendant.[36]

It is perhaps a fair conclusion that compliance with the ISPS Code on balance has better evidentiary use as defence of due diligence than non-compliance as a positive

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[31] Moor-Bick, J., *The Fjord Wind* (1999), 1 Lloyd's Report 307 at 315; approved by Clark, J. (2000), 2 Lloyd's Report 191 at 197, see Cresswell, M.R., *The Eurasian Dream* (2000), 1 Lloyd's Report 719, para. 126.

[32] Lloyds of London Press (LLP), *A GUIDE TO THE HAGUE AND HAGUE-VISBY RULES*, LLP: London, 1985, p. 19.

[33] Cresswell, M.R., The Eurasian Dream (2000), 1 Lloyd's Report 719, para. 123.

[34] See Rodriquez, A. J. & Hubbard, M. C., *THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE: A NEW LEVEL OF UNIFORMITY*, 73 Tulane Law Review 1585 at 8 (1999) for what constitutes "proximate cause."

[35] The Toledo (1995), 1 Lloyd's Report 40, page 5.

[36] Rodriquez, A. J. & Hubbard, M. C., *THE INTERNATIONAL SAFETY MANAGEMENT (ISM) CODE: A NEW LEVEL OF UNIFORMITY*, 73 Tulane Law Review 1585 at 1601 (1999).

indicator of unseaworthiness in respect of Hague-Visby Rules.[37] At any rate, a judicial pronouncement on liability arising out of unseaworthiness, whether it is in the affirmative or in the negative, will surely impact, or at least raise some serious questions relating to security risk assessment.

4. Maritime Security Assessment as a Risk Control Option for the Protection of the Ship Owner

Following the discussions of the earlier sections of this paper it can be concluded that ship crews can prevent or mitigate security incidents only to a certain extent. Security incidents can result from a number of sources and involve a wide range of methodologies. It is therefore very difficult to consider all potential security threats appropriately. At the same time ship owners would benefit from a stricter definition of the scope of maritime security assessments, as they cannot foresee all potential sources of such incidents. The question to be raised is how this can be achieved taking all the aforementioned aspects into consideration.

The ISPS Code[38] apart from its Sec. 8 in parts A and B does not provide any more specific guidance on how to carry out shipboard security risk assessments. Part A (refer in particular to 8.4) refers to the identification of existing security measures, the evaluation of key shipboard operations to be protected, the identification of threats to these operations and the identification of weaknesses resulting from infrastructure, policies, etc. Part B is more elaborate and provides a number of issues to be considered in shipboard security risk assessments (refer to Part B, Sec. 8.7 – 8.10). Although this list is not very long it is specific guidance for risk assessments. The only problem involved is that Part B is not mandatory. One could of course say that in the absence of other guidelines one has to observe the issues mention in Part B. However, not all maritime stakeholders are of this opinion. Recognized organizations (RO's) provide different guidelines for shipboard security risk assessments. A majority, such as the American Bureau of Shipping (ABS) Lloyd's Register favours the risk assessment guidelines provided by the United States Coast Guard (USCG).[39] The USCG guidelines, however, do not specifically relate to the ISPS Code. They have been developed for security risk assessments in general and are lacking therefore specific cross-references to the relevant ISPS Code requirements. Two RO's Det Norske Veritas (DNV)[40] and Germanischer Lloyd (GL),[41] have developed guidelines based on checklists which have very close relationship to the ISPS Code. Both approaches apart from varying methodologies have another significant difference. The USCG guidelines

[37] For the same conclusion in respect of the ISM Code, see Hill, Taylor, Dickins, *"ISM Code What if …" Shipping at a Glance, Guide: 4,* Hill, Taylor, Dickinson: London, 2003. pp. 11-12.

[38] International Ship and Port Facility Security Code; IMO Doc. SOLAS/CONF.5/34, 17 December 2002.

[39] NVIC. 10-02, Security Guidelines for Vessels; United States Coast Guard, 21 October 2002. http://www.uscg.mil/hq/cg5/nvic/pdf/2002/10-02.pdf.

[40] Norwegian Shipowners' Association (NSA), *Guideline for Performing Ship Security Assessment,* NSA: Oslo, 2003.

[41] Germanischer Lloyd, Development and Implementation of a Methodology for the Performance of a Ship Security Assessment, GL, Hamburg, 2003.

do not include any statements about likelihoods of security threats only. This means that on the one hand shipowners who follow the USCG approach strictly have to document any potential security threat and develop mitigation strategies of those issues which can result in severe consequences. If once would follow this approach one has to provide for a number of costly measures. On the other hand shipowners following the DNV-GL approach have to update their security assessments frequently depending on the latest security information available. Potential disputes about the validity and appropriateness of the security information are not likely to be avoided. To make it even more confusing the USCG requires all ships calling US ports to comply with both parts of the ISPS Code – A and B. The result therefore will to a certain degree most likely be frustration by a shipowner who is confronted with the task of arranging for security risk assessments on board his ships. What could therefore be suggestions to overcome this problem?

5. Conclusions and Summary

Any suggestions regarding solutions for the above-mentioned problems have to consider the following three issues:

- Ship crews have limited capabilities to mitigate security attacks against their ships.
- Motives/reasons for security incidents result from a large variety of sources.
- Shipowners need certainty about scope and applicable requirements for the ship security as far as their liability is concerned.

In this respect it is remarkable to see that a number of IMO instruments or documents issued within the IMO framework focusing on risk assessment in general or maritime security in a wider sense have taken some of the above mentioned points into consideration. They provide for more guidelines on the contents of risk assessment on their area of interest.

One example,, to be mentioned in this context, is the guideline on Formal Safety Assessment (FSA).[42] The 2002 extended guidelines include not only "technical" risk assessment, but also human reliability assessment with detailed descriptions of methodologies. Another example is the guideline on places of refuge.[43] In order to assist maritime administrations the IMO provided for these guidelines where in section 3 a dedicated part deals with risk assessment only. Although no specific methodologies are described at least a number of issues to be considered during the risk assessment is listed. It is hoped that the place of refuge guidelines will be extended and updated similar to the FSA guidelines.

Most recently another remarkable example was given through the IMO/ILO Code of Practice on Security in Ports.[44] These guidelines provide for a much more defined

[42] Guidelines for Formal Safety Assessment (FSA) for Use in the IMO Rule-Making Process; IMO Doc. MSC/Circ. 392, 5 April 2002.

[43] Guidelines on Places of Refuge for Ships in Need of Assistance; IMO Doc. A23/Res. 949, 5 March 2004.

[44] Code of Practice on Security in Ports; IMO/ILO, 2005.

http://www.imo.org/includes/blastDataOnly.asp/data_id%3D8557/ILOIMOCODEDRAFTmesship-cp-aEnglishpdf.

framework for a number of issues around port security. The risk assessment part was given special attention in this code. A full methodology is suggested here. This goes significantly beyond the ISPS Code requirements. This example is not the only one. The European Commission (EC) recently suggested a directive on enhancing port security.[45] Annex I deals with the port security assessment. Although the specifications made there do not go beyond the ISPS requirements it is at least remarkable that the EC found it necessary to address this subject.

The question still remains why is special attention only paid to port security and not to ship security as well? Although ships are the weaker link in the security chain they still have an important part to play in the security framework. The lack of more specific guidelines disadvantages shipowners. Therefore more detailed guidelines should be designed for ships security assessments. These guidelines should address the following points:

- List of security incidents that ship crews can respond to depending on:
    - type of the ship;
    - type of the cargo;
    - size of the crew;
    - trading area.
- List of key shipboard operations (incl. safety measures) which have to be protected.
- List of restricted areas where special security measures should be introduced.

The above listed issues are just only a very general outline of key issues to be observed in more detailed guidelines. These guidelines would be in line with current developments on other maritime security related issues, i.e. port security. More communication of the different stakeholders in politics, shipping and research is needed to develop and implement such elaborate guidelines in shipping.

Disclaimer

The views expressed in this paper are the personal views of the authors and not necessarily those of the employers of the authors.

4. The Doctrine of Seaworthiness as Applied to Ship Owners

The Doctrine of Seaworthiness as applied to ship owners is defined in Section 2.a. of *Churchwell* v. *Bluegrass Marine, Inc. et al*., 6th Cir., No. 05-5185 (April 21, 2006); 2006 U.S. App. LEXIS 10026; 444 F.3d 898; 2006 FED App. 0142P (6th Cir.); 70 Fed. R. Evid. Serv. (Callaghan) 27:

> *See Cook* v. *American S.S. Co*., 53 F.3d 733, 742 (6th Cir.1995) (citing *Roper* v. *United States*, 368 U.S. 20, 82 S.Ct. 5, 7 L.Ed.2d 1 (1961)), overruled on other grounds by *Gen. Elec*. v. *Joiner*, 522 U.S. 136, 143, 118 S.Ct. 512, 139 L.Ed.2d 508 (1997). Generally, unseaworthiness is a question of fact for the jury and should not be resolved by the district court as a matter of law. *Waldron* v. *Moore-McCormack Lines*, Inc., 386 U.S. 724, 726-28, 87 S.Ct. 1410, 18 L.Ed.2d 482 (1967) (citing *Crumady* v. *The Joachim Hendrik Fisser*, 358 U.S. 423, 427, 79 S.Ct. 445, 3 L.Ed.2d 413 (1959)). Even the misuse of properly functioning equipment may render a vessel unseaworthy if the misuse occurs at the direction of a superior. *Morales* v. *City*

[45] Proposal for a Directive of the European Parliament and of the Council on enhancing Port Security; European Commission, 2004 http://europa.eu.int/eur-lex/en/com/pdf/2004/com2004_007en01.pdf.

> *of Galveston*, 370 U.S. 165, 170, 82 S.Ct. 1226, 8 L.Ed.2d 412 (1962). Defective gear, an unfit or understaffed crew, or the use of an improper method of storage or unloading cargo all render a vessel unseaworthy. Mitchell, 362 U.S. at 550, 80 S.Ct. 926. A vessel is unseaworthy if the vessel and its appurtenances are not "reasonably fit for their intended use." *Mitchell* v. *Trawler Racer, Inc.*, 362 U.S. 539, 549, 80 S.Ct. 926, 4 L.Ed.2d 941 (1960). A ship owner is strictly liable for personal injuries caused by his or her vessel's "*unseaworthiness*."
>
> Id. (quoting *Johnson* v. *Offshore Express, Inc.*, 845 F.2d 1347, 1354 (5th Cir.1988)). In other words, unseaworthiness proximately causes an injury if it " 'played a substantial part in bringing about or actually causing the injury and the injury was either a direct result or a reasonably probable consequence of unseaworthiness.' " Id. at 1464. A vessel's unseaworthiness is the proximate cause of a plaintiff's injuries if it was a substantial factor in causing such injuries. *Miller* v. *American President Lines, Ltd.*, 989 F.2d 1450, 1463-64 (6th Cir.1993). To prevail on an unseaworthiness claim, a plaintiff must establish that a vessel's unseaworthy condition was the proximate cause of his or her injuries.

5. Negligence as Applied to Ship Owners

Negligence - There is a duty owed by a defendant to a plaintiff when an injury is foreseeable. [T]he owner of a ship in navigable waters owes to all who are on board for purposes not inimical to his legitimate interests the duty of reasonable care under the circumstances in each case" *Kermarec* v. *Compagnie Generale* 358 U.S. 625, 632, 79 S.Ct 406, 410 (1959). There must be a breach of the duty owed, injury to the plaintiff, and a causal connection between the defendant's conduct and the injury to the plaintiff. Black's Law Dictionary defines negligence:

> The omission to do something which a reasonable man, guided by those ordinary considerations which ordinarily regulate human affairs, would do, or the doing of something which a reasonable and prudent man would not do.

Unseaworthiness - Unseaworthiness is the failure of the vessel's owner or operator to provide a vessel that is fit for its intended purpose for the voyage, *McAllister* v *Magnolia Petroleum Co.* 357 U.S. 221, 78 S.Ct 1201, 2 L.Ed.2d 1272 (1958). Seaworthiness is a warranty of fitness for duty, *Martinez* v *Sealand Services, Inc*. 763 F.2d 26, 27, 1986 AMC 851 (1st Cir. 1985), on remand 637 F.Supp. 503 (D.Puerto Rico 1986). Considerations are the proper manning of a vessel through the number, qualification or training of a crew, and fitness of the vessel and her equipment. The fact that an owner or operator used due care is no defense. It is also no defense that the owner had no notice or opportunity to correct the defect, *Mitchell* v. *Trawler Racer, Inc.* 362 U.S. 539, 80 S.Ct. 926, 4 L.Ed 941 (1960). The warrantee of seaworthiness extends to the hull of the ship, the ship's cargo handling equipment, the tools carried aboard, the rope and tackle, and all types of equipment aboard. Even a latent defect may cause a vessel to be unseaworthy.

6. Legal Definition of Seaworthiness

Citing 888-Go-Longy.com,

> Legally defined, a seaworthy ship is one that is fit for any **normal perils of the sea**, including the fitness of the vessel itself as well as any equipment on it and the skills and health of its crew. **Note that this only** includes **the perils of the sea**, **as opposed**

to the perils on the sea, and so does not include piracy, severe storms or other such hazards that may occasionally be encountered.

Because this definition is very general and non-specific, a number of other considerations have to be taken into account. The destination, class of ship, place of departure and even the type of cargo are all considerations when determining seaworthiness. Given the number and type of variables involved, seaworthiness is a relative term that is impossible to be measured or determined in the abstract.

The seaworthiness standard is one of reasonable fitness and does not require a ship's owner to have a perfect, immaculate ship. The law does not require a ship to "*weather any conceivable storm or withstand every imaginable peril of the sea*", the vessel must simply be fit for its particular purpose and offer reasonable safety on the open sea.

It is important to distinguish the difference between a safe ship and a seaworthy ship. The terms "safety of ships" and "ship safety" are often construed to be synonymous with the "seaworthiness" of a ship, however "unsafe" ships are defined in two categories. The first of these categories deals with "seaworthiness" which, strictly speaking, should only concern matters impinging upon the ship's ability to encounter the ordinary perils of the sea. The second category is concerned with conditions onboard the ship that affect the health, safety and welfare of human lives. One could accurately conclude that" safe" and "seaworthy" are different concepts; while "seaworthy" is one part of a "safe" ship, it is not the only consideration.

Commercial maritime contracts tend to note only the seaworthiness of ships and not whether or not that ship is safe.

On the other hand, maritime criminal law uses the term "safety" to describe some of the statutory offenses. For example, let's say that a seagoing vessel lacks sufficient medical supplies to provide for the needs of its crew. A deficiency in medical supplies would probably render the ship" unsafe", but not render it "unseaworthy" as seaworthiness is legally defined. This distinction becomes important when considering the merits of a civil versus a criminal action against a ship's owner or their representative.

7. SEAWORTHINESS - *Clevenger* v. *Star Fish & Oyster Co., Inc.* 5th Circuit, No. 20232 (Dec. 6, 1963) 325 F.2d 397

Clevenger v. *Star Fish & Oyster Co., Inc.* 5th Circuit, No. 20232 (Dec. 6, 1963) 325 F.2d 397

The warranty of seaworthiness extending from the shipowner has its roots deep in maritime history.[46] *Dixon* v. *The Cyrus*, D.Penn. 1789, 7 Fed. Cas. 755 (No. 3,930). But '*until the 1940s the seaman's right to recover damages for injuries caused by unseaworthiness of the ship was an obscure and little used remedy*.'[47] What was

[46] For the history of the development of the doctrine, see Mitchell v. Trawler Racer, 1960, 362 U.S. 539, 80 S.Ct. 926, 4 L.Ed.2d 941; Tetrealt, Seaman, Seaworthiness, and the Rights of Harbor Workers, 39 Cornell L.Q. 381 (1954); Benbow, Seaworthiness and Seamen, 9 U.Miami L.Rev. 418 (1955); Gilmore and Black, the Law of Admiralty, 315-332 (1957); Baer, Admiralty Law of the Supreme Court, 12-30 (1963); Norris, Maritime Personal Injuries 27-48 (1959)

[47] Gilmore and Black, The Law of Admiralty, p. 315 (1957)

originally a justification for sailors' abandoning a ship before the expiration of its tour slowly emerged as a means of recovering for injuries resulting from the operating negligence of the shipowner. Mr. Justice Brown's famous dictum in *The Osceola*, 1903, 189 U.S. 158, 175, 23 S.Ct. 483, 487, 47 L.Ed. 760, 764, that the shipowner is liable to seamen for unseaworthiness, '*a failure to supply and keep in order the proper appliances appurtenant to the ship*', became law in *Carlisle Packing Co*. v. *Sandanger*, 1922, 259 U.S. 255, 42 S.Ct. 475, 66 L.Ed. 927. And *Carlisle* gave a glimmering of things to come.

The notion of liability without fault for unseaworthiness, only hinted at in *Carlisle*, reappeared full-blown twenty-two years later, in *Mahnich* v. *Southern Steamship* Co., 1944, 321 U.S. 96, 64 S.Ct. 455, 88 L.Ed. 561, in which the Supreme Court held, in effect, that unseaworthiness included '*operating negligence*'. …

> 'The warranty of seaworthiness as to hull and gear has never meant that the ship shall withstand every violence of wind and weather; all it means is that she shall be **reasonably fit for the voyage in question**. Applied to seamen, such a warranty is, not that the seaman is competent to meet all contingencies; but **that he is equal in disposition and seamanship to the ordinary men in the calling**.' [*Keen* v. *Overseas Tankship Corporation*, 194 F.2d 515 at 518, cert. denied, 343 U.S. 966, 72 S.Ct. 1061, 96 L.Ed. 1363 (1952)]

PRAYER FOR RELIEF

1. Compensatory Damages

$1 million

2. Actual Damages

Based on the 4-hour wrongful detention based on racial profiling of Dr. Bob Rajcoomar by TSA as described in the Complaint in *Rajcoomar* v. *United States*, U.S. District Court for the Eastern District of Pennsylvania, No. 03-2294 (filed April 14, 2003), and the June 30, 2003 Settlement Order of $50,000 to Rajcoomar the extrapolated *Actual Damages* for the 12-days of my own wrongful detention by the U.S. Coast Guard based "constitutional rights advocacy profiling" in 2002 by the U.S. Coast Guard for 12 days in Lithuania:

(1) **$50,000** ÷ 4 hours = $12,500 per hour.
(2) $12,500 x 24 hours = $300,000 per day.
(3) $300,000 x 12 days = **$3.6 million**

> "The settlement reached in the Rajcoomar case reinforces the principle that no agency of the government is above the law," said Howard Simon, Executive Director of the ACLU of Florida. "Even the actions of officials of Homeland Security are subject to the United States Constitution and to the review of an independent federal judiciary."

3. RICO Act Damages

Based on the Threefold Damages (presuming 3X Actual Damages) as provided for in 18 U.S.C. § 1964(c) for the wrongful detention by the U.S. Coast Guard in 2002:

$3.6 million x 3 = **$10.8 million**
Excluding the 8-years of Obstructions of Justice and Extortions of Filing Fees by the Federal Courts and the 8-years Obstructions of Justice by the Federal Agencies as predicate acts of racketeering activities.

RICO Act damages for such racketeering activities by the federal courts and the federal agencies post-USCG/NCIS detention:

$1 million for each year from 2002 to 2010

$8 million + $10.8 million + $1 million = $19.8 million TOTAL

2. Punitive Damages

To be determined by the Court.

Dated this Day of October ____, 2010

Don Hamrick
5860 Wilburn Road
Wilburn, Arkansas 72179