

Testimony of

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U.S. Criminal and Civil Jurisdiction and Incident Reporting in
the Cruise Industry

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I. INTRODUCTION

Chairman Cummings and Subcommittee members, I am pleased to be here today at the Subcommittee's invitation to testify as an expert witness concerning the legal regimes governing cruise lines in the areas of passenger security, law enforcement, crime and casualty reporting and U.S. jurisdiction.

My name is Larry Kaye and I am the Senior Partner of a leading maritime law firm Kaye, Rose & Partners, LLP, which is based in California and maintains offices in Los Angeles, San Francisco and San Diego. I and the other members of my firm, in addition to representing most of the major cruise lines operating in the United States, act as outside maritime counsel to the Cruise Line International Association ("CLIA"). For the past decade our firm has also acted as outside maritime counsel to the International Council of Cruise Lines ("ICCL") prior to the merger of the two organizations this year. CLIA is the industry trade association for the 21 leading cruise lines operating in North America. Since 1995 I have served as the Chairman of the CLIA/ICCL Executive Partner Council, representing the interests of the 100 shore based companies, ports, suppliers and service providers who transact business regularly with the leading cruise lines. I also sit on CLIA's Board of Directors.

I have been a practicing attorney for the past 29 years and began specializing in maritime law and the cruise ship industry in 1980. My partners and I have been involved in many precedent-setting court decisions in maritime cases over the years in numerous state and federal jurisdictions. I am a member in good standing of the Maritime Law Association of the United States and serve on its Cruise and Passenger Ship Committee. I have lectured at maritime law seminars that have been certified for continuing legal education credit in California and Florida, and have published several articles on cruise industry legal issues affecting operators, passengers and crew. I am also the author of Chapter II of Volume 10 of the leading legal treatise on Cruise Ships, Benedict on Admiralty, entitled "Governmental Regulation" in addition to several published articles on regulatory, legislative, and other issues involving maritime law. I have previously testified before Congress and the California State Legislature concerning issues in the cruise industry and have been consulted and retained as an expert witness in cases involving legal treatment of cruise lines, their passengers and crew.

As legal counsel to various cruise lines and to CLIA, I know that the safety of cruise passengers and crew is the highest priority to my clients. In representing this industry for over a quarter century, I have personally observed the changes over time and the increased care and concern the cruise industry has demonstrated to ensure the safety of the cruising public, regardless of where they may be sailing. As you will hear from others who are testifying today, the cruise lines are keenly aware of the adverse impact that a single criminal incident or casualty can have on an individual's life, family and loved ones.

The cruise industry is also particularly dedicated, as a matter of good business practice, to making sure perpetrators of crime on cruise ships are brought to justice. The reality is that U.S. law enforcement agencies, including the Coast Guard and FBI, not

only have jurisdiction under present laws to investigate and prosecute crimes involving Americans on cruise ships sailing on the high seas, but also are, as a matter of normal practice, routinely requested by the cruise lines to ensure American passengers are fully protected wherever they may be traveling. As a result, despite the unfortunate tragedies which inevitably occur in an industry with more than 10,000,000 patrons each year, cruise ships are an extremely safe vacation environment.

II. UNLIKE ANY COMPARABLE BUSINESSES ON LAND, FEDERAL LAW IMPOSES MANDATORY CRIME REPORTING REQUIREMENTS ON ALL CRUISE SHIPS SAILING TO OR FROM THE U.S.

Any statistical comparison between the rate of crime on cruise ships and that in hotels, resorts, theme parks, restaurants, office buildings, shopping malls, airports or aircraft readily demonstrates that cruise ships are remarkably safe. Nonetheless, in 1972 Congress passed the Ports and Waterways Safety Act, 33 U.S.C. § 1221 *et seq.*, (“PWSA”), which was amended in 1978 and 2002. The stated purpose of the PWSA was increased supervision of vessel and port operations “in order to - (1) reduce the possibility of vessel or cargo loss, or damage to life, property, or the marine environment.” 33 U.S.C. § 1221 (c) (1). The PWSA directed the enactment of implementing regulations and delineated the scope of their reach. Under Section 1223 (5), entitled “Vessel Operating Requirements”, the Secretary of the Coast Guard “*may require the receipt of pre-arrival messages from any vessel, destined for a port or place subject to the jurisdiction of the United States, which the Secretary determines necessary for the control of the vessel and the safety of the port or the marine environment*” [Emphasis added]. “‘Marine environment’ means the navigable waters of the United States *and . . . the waters and fishery resources of any area over which the United States asserts exclusive fishery management authority.*” *Id.*, § 1222 (1) [Emphasis added]. This is an express reference to the 200- mile U.S. Exclusive Economic Zone (“EEZ”).

With regard to security, Section 1226 (a) provides “The Secretary may take actions ... to prevent or respond to an act of terrorism against – (1) an individual, vessel, or public or commercial structure, that is -(A) subject to the jurisdiction of the United States; *and (B) located within or adjacent to the marine environment.*” Thus, under the plain language of the PWSA, in the 200-mile EZZ or in waters adjacent to the EZZ (i.e. on the high seas), the Act allows:

“(b) Specific authority

...the Secretary may - (1) carry out or require measures, including inspections, port and harbor patrols, the establishment of security and safety zones, and the development of contingency plans and procedures, to prevent or respond to acts of terrorism; [and] (3) dispatch properly trained and qualified armed Coast Guard personnel on vessels and public or commercial structures on *or adjacent to waters subject to United States jurisdiction* to deter or respond to acts of terrorism or transportation security incidents...” [Emphasis added].

Finally, Section 1227(a), entitled “Investigatory Powers”, states: “The Secretary may investigate any incident, accident, or act involving the loss or destruction of, or damage to any structure subject to this chapter [i.e. a vessel destined to or from a U.S. Port], or which affects or may affect the safety...of the ports, harbors, or navigable waters of the United States.” Obviously, an act of terrorism or other felony on a ship destined to or from the U.S. would qualify as such an act.

Pursuant to the directive of the PWSA, in 1996 the Coast Guard adopted Title 33 of the Code of Federal Regulations, Part 120, entitled Security of Passenger Vessels (“SPV Reporting Regulations), which established terrorism and crime reporting requirements covering every actual or suspected unlawful act against any passenger on cruise ships traveling to or from the U.S. These Regulations were amended and confirmed in 1998, 2003, and as recently as July 2006. Section 120.110 defines “unlawful act” to include any “felony under U.S. federal law, under the laws of the States where the vessel is located, or under the laws of the country in which the vessel is registered.”

III. THE CRIME REPORTING REQUIREMENTS APPLY TO ALL FELONIES COMMITTED BY OR AGAINST AMERICANS ON THE HIGH SEAS OR IN FOREIGN WATERS

A. The Language of the SPV Reporting Regulations Includes Waters Outside the U.S.

The SPV Reporting Regulations state a report is required for any felony occurring “in a place subject to the jurisdiction of the United States.” *Id.*, § 120.220. That phrase is important because a place *subject to* U.S. jurisdiction is much broader than just US waters. As shown above, the PWSA itself, which was the enabling statute for the SPV Reporting Regulations, extended to the U.S. 200-mile EZZ and waters adjacent to the EZZ [i.e. the high seas] for vessels sailing in or out of U.S. ports. In addition to the plain language of the PWSA, the “places subject to U.S. jurisdiction” are expressly defined by Title 18 U.S.C. § 7 to include waters outside the U.S. 12- mile territorial sea, including a foreign ship on the high seas and even in foreign waters if an American is either the victim or perpetrator.

Therefore, a felony committed by or against an American during a voyage to or from the U.S., under any of the federal criminal statutes governing crimes at sea, must be reported. Under the SPV Reporting Regulations “[v]oyage means the passenger vessel’s *entire course of travel, from the first port at which the vessel embarks passengers until its return to that port* or another port where the majority of the passengers are disembarked and terminate their voyage.” 33 C.F.R. § 120.110 (emphasis added).

A central canon of statutory construction is that all words used in a statute or regulation must be given full effect. The words “subject to” would be rendered meaningless if the drafters simply meant to say “U.S. waters”. The definition of

“voyage” to include the “entire course of travel” would likewise be superfluous. By using these broader phrases the reporting regulations mirror the reach of the very U.S. criminal statutes to which they relate. Any contrary interpretation would mean the regulations in one sentence require *all* felonies to be reported, but in the next sentence limit the reporting only to felonies in U.S. waters. Such a narrow interpretation would also be contrary to the statutory provisions of the PWSA that extend the Coast Guard’s power to the U.S. 200-mile EZZ and waters adjacent thereto. A second canon of statutory construction is that the words used are to be construed so as not to create an inherent inconsistency if another reasonable interpretation avoids it.

The only proper interpretation is that the reporting regulations for ships entering U.S. ports apply wherever and whenever the U.S. has jurisdiction over crimes on those ships. If the SPV Reporting Regulations, which encompass both terrorism and all other felonies, only applied to incidents in U.S. waters, a terrorist incident arising on a roundtrip cruise from Miami 12.5 miles at sea would not have to be reported at all. Surely no one in this day and age would agree with that proposition.

B. Longstanding Federal Legislation Extends U.S. Criminal Jurisdiction Outside U.S. Waters

The statute that actually defines the places subject to U.S. criminal jurisdiction is Title 18 U.S.C. § 7, which states:

“The ... ‘special maritime and territorial jurisdiction of the United States’ ... includes:

(1) *The high seas*, any other *waters within the admiralty and maritime jurisdiction of the United States* and out of the jurisdiction of any particular State, and any vessel belonging in whole or in part to the United States or any citizen thereof...;

...

(7) *Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States*; [and]

...

(8) *...any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States...* [Emphasis added].

Clearly, when an American national is involved in a crime on the high seas, and even foreign waters if the ship is sailing to or from the U.S, these are “places subject to the jurisdiction of the United States” as described in the SPV Reporting Regulations.

At least twenty statutes codified in Title 18 of the United States Code create felonies for crimes committed in this “special maritime jurisdiction” (U.S. waters for all offenses, high seas for offenses by or against Americans, and foreign waters for offenses by or against Americans on voyages to or from the U.S.). They include Abusive Sexual

Contact (18 U.S.C. § 2244), Aggravated Sexual Abuse (18 U.S.C. § 2241), Arson (18 U.S.C. § 81), Assault (18 U.S.C. § 113), Assaulting or Resisting U.S. Officers (18 U.S.C. § 111), Embezzlement or Theft (18 U.S.C. § 661), Kidnapping (18 U.S.C. § 1201), Maiming (18 U.S.C. § 114), Malicious Mischief (18 U.S.C. § 1363), Manslaughter (18 U.S.C. § 1112), Murder (18 U.S.C. § 1111), Receiving Stolen Property (18 U.S.C. § 662), Robbery and Burglary (18 U.S.C. § 2111), Sexual Abuse (18 U.S.C. § 2242), Sexual Abuse of a Minor or Ward (18 U.S.C. § 2243), Sexual Abuse Resulting in Death (18 U.S.C. § 2245), Stowaway (18 U.S.C. § 2199), Terrorism (18 U.S.C. § 2332), and Transportation for Illegal Sexual Activity (18 U.S.C. § 2421).

A lengthy study was performed by the Congressional Research Service in 2002, entitled *Extraterritorial Application of American Criminal Law*. That study states at pages 12 and 18:

“Congress has expressly provided for the extraterritorial application of federal criminal law most often in the context of the special maritime and territorial jurisdiction of the United States [citing 18 U.S.C. § 7].

...

... [A] surprising number of federal statutes may boast of either explicit or implicit extraterritorial reach. . . . The federal laws most often involve shipboard crimes.”

C. The Legislative History of the SPV Reporting Regulations Demonstrates They Apply to Crimes Outside U.S. Waters

Any contention that cruise lines are “only” required to report felonies arising in U.S. waters is erroneous. Aside from the express language of the PWSA and SPV Reporting Regulations themselves, the legislative history shows they were originally adopted as a result of the infamous terrorist incident aboard the *Achille Lauro*, which involved the murder of a U.S. citizen on the high seas.¹ That incident did not arise in U.S. waters but still occurred “in a place subject to the jurisdiction of the United States” because it involved an American and happened on the high seas. 18 U.S.C. § 7(1) and (7). Both terrorism and murder, like the 20 other crimes listed in Title 18, are felonies over which the U.S. asserts criminal jurisdiction outside U.S. waters. See 18 U.S.C. §

¹ Coast Guard Navigation and Vessel Inspection Circular (“NVIC”) No.3-96 states: “Background. . . .In 1985, a U.S. citizen was killed during the seizure of the ACHILLE LAURO. Since then, the vulnerability of passenger vessels and associated passenger terminals to acts of terrorism has been a significant concern for the international community. . . . Also in 1986, the International Maritime Organization published MSC/Circ. 443 “Measures To Prevent Unlawful Acts Against Passengers And Crews On Board Ships” (reference (c)). *This document was the basis for much of the U.S. legislation and rulemaking that followed.* In April 1987, the Coast Guard published a notice in the *Federal Register* which listed voluntary security measures based upon reference (c). Since then, the Coast Guard has observed varying degrees of implementation of these measures aboard passenger ships and at passenger terminals. This inconsistency, coupled with the rising specter of domestic terrorism, indicated that establishment of minimum *mandatory security requirements* was necessary. As a result, reference (a) was published on July 18, 1996.” (Emphasis added)

2332 (Terrorism) and § 1111 (Murder). For these reasons, cruise lines are required to report, and routinely do report, all felonies involving Americans arising *anywhere* on voyages to or from the U.S. The 21 member lines of the Cruise Line International Association (“CLIA”) also voluntarily report, among other crimes, felonies involving Americans *on voyages that do not touch a U.S. port*, as part of the industry’s Zero Tolerance for Crime Policy adopted in 1999.

In January 2000, the FBI itself issued a Memorandum, entitled "Crimes on the High Seas- Criminal Conduct on Board Ships Upon the High Seas", which established Guidelines for the cruise industry to follow in reporting criminal activity. That Memorandum stated: “All sexual matters, i.e. rape, attempted rape, abusive sexual contact, or sexual assault will be investigated.” It even called for investigation of “kidnapping or abduction in a foreign port.” The FBI could not establish guidelines for investigating crimes at sea or in foreign ports if it did not have the authority to require reports of such incidents from ships sailing to and from the U.S.

The Coast Guard likewise issued a 42-page Navigation and Vessel Inspection Circular (“NVIC”) interpreting the SPV Regulations themselves in 2002. The 4-02 NVIC can be found at <http://www.uscg.mil/hq/g-m/nvic/4-02.pdf>. Section 3.1 of the NVIC reiterates that cruise lines must report each unlawful act against any person on board ship that occurs in a place subject to US jurisdiction. *Significantly, that same section actually defines "place subject to U.S. jurisdiction" as the U.S. Exclusive Economic Zone, some 200 miles from the U.S. and includes the high seas. That alone is inconsistent with any interpretation that the existing regulations only apply in US territorial waters (12 miles out).*

IV. FEDERAL CRIMINAL JURISDICTION EXTENDS SPECIFICALLY TO ALLEGED SEXUAL CRIMES ON CRUISE SHIPS

Five federal statutes make it a felony to commit certain sexual acts on cruise ships on the high seas, or in foreign waters if the ship sails to or from the U.S, if an American is involved. They are 18 U.S.C. § 2241 (Aggravated Sexual Abuse); § 2242 (Sexual Abuse); § 2243 (Sexual Abuse of a Minor or Ward); § 2244 (Abusive Sexual Contact) and § 2245 (Sexual Abuse Resulting in Death). Consistent with the SPV Reporting Regulations, all of these felonies must be and are reported in the cruise industry whenever an American is involved. (They are also reported when foreign nationals are involved and the ship is sailing to or from the U.S.)

Specifically, these five statutes require reporting of any actual or attempted “sexual act” or “sexual contact”(as defined)² accompanied by force, threats, mental or physical incapacity or inability to consent, administering of drug, intoxicant or other

² These terms are defined in 18 U.S.C. § 2246. A “sexual act” is any contact between the genitals, or penis and anus or mouth, or mouth and vulva; or intentional touching, not through clothing, of the genitals of a minor under age 16. “Sexual contact” is intentional touching, directly or through clothing, of the genitals, anus, groin, breast, inner thigh or buttocks of another.

substance, or with a minor. In 2006 Section 2244 (b) ("Abusive Sexual Contact) was amended by Congress to make it a felony to "knowingly engage in sexual contact with another person without that other person's permission" *even in the absence* of force, threats, intoxication, etc, and not involving a minor. Previously such unwanted touching of an adult, standing alone, was a misdemeanor and not required to be reported under the SPV Reporting Regulations (although such incidents were still routinely reported as part of the industry's Zero Tolerance Policy). Thus, effective in 2006, non-consensual, intentional touching of the buttocks, inner thigh, groin, breast, genitals or anus on a cruise ship, even through the clothing, is a felony punishable by up to two years in jail and *must* be reported.

V. NUMEROUS COURT CASES HAVE UPHELD EXTRATERRITORIAL JURISDICTION OF THE U.S. FOR CRIMES ON SHIPS ON THE HIGH SEAS OR IN FOREIGN WATERS

At least 12 published court decisions have upheld indictments or convictions of crimes at sea on passenger ships arising outside the U.S. under the above maritime statutes or similar state statutes. The central theme of all of these cases is that the criminal act involves a U.S. citizen, or has an effect in the U.S. when the victim returns here. The cases echo bedrock principles of international law embodied in the United Nations Convention on the Law of the Sea, which provides in Article 27, entitled "Criminal Jurisdiction On Board a Foreign Ship" that the coastal State may board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship "if the consequences of the crime extend to the coastal State."

United States v. Neil, 312 F.3d 419 (9th Cir. 2002), and *United States v. Roberts*, 1 F. Supp. 2d 601, 606-07 (E.D. La. 1998), both involved crimes allegedly committed by non-U.S. citizens on foreign cruise ships on the high seas or in foreign waters. In both cases charges were brought under federal statutes which operate within the "special maritime jurisdiction." Both courts found the U.S. had jurisdiction to prosecute the perpetrators under 18 U.S.C. § 7, consistent with international law. The *Roberts* court noted that prior precedents found jurisdiction on the high seas under section 7(1) without regard to vessel ownership (citing *Nixon v. United States*, 352 F.2d 601, 602 (5th Cir. 1965); *United States v. Tanner*, 471 F.2d 128, 140 (7th Cir. 1972)) and rejected the perpetrator's argument that foreign vessels are subject to the exclusive jurisdiction of the country whose flag they fly. The *Roberts* court acknowledged the five traditional theories of jurisdiction under international law and found valid jurisdiction under both passive personality (based on the U.S. nationality of victim) and objective territorial jurisdiction (effects of the act in the U.S.). The *Neil* court upheld U.S. jurisdiction over a sexual assault in Mexican waters under 18 U.S.C. § 7(8), noting the Constitution allows extraterritorial application of U.S. laws when Congress expresses such intent. The court examined whether the exercise of jurisdiction would violate international law and concluded: "international law clearly supports extraterritorial jurisdiction" under the territorial and passive personality principles.

Similar court cases include:

- *State v. Jack*, 125 P.3d 311 (Alaska 2005) [charge under Alaska Criminal Code for committing sexual assault while on Alaska state ferry in Canadian waters permitted because Alaska has jurisdiction under “widely recognized ‘effects [within the state] doctrine’”];
- *United States v. Curtis*, 380 F.3d 1311, 1312 ((11th Cir. 2004) *cert denied* 2006 U.S. LEXIS 6167 (2006)[conviction of waiter on foreign cruise ship for sexually assaulting passenger upheld under 18 U.S.C. § 7 when cruise ship sailed from and returned to U.S.];
- *State of Florida v. Stepanski*, 761 So. 2d 1027 (Fla. 2000) *cert denied* 531 U.S. 959 (2000) [prosecution under Florida’s criminal statutes for burglary and attempted sexual battery aboard foreign cruise ship on high seas permitted because of crime’s effects in state];
- *Iowa Supreme Court Board of Professional Ethics and Conduct v. Blazek*, 590 N.W. 2d 501 (Iowa 1999) [professional disciplinary proceedings against passenger who sexually assaulted minor on cruise ship and pled guilty to federal felony charge of abusive sexual contact under 18 U.S.C. § 2244(a)(1)];
- *United States v. Pizdrint*, 983 F. Supp. 1110, 1112-13 (M.D. Fla. 1997) [application of extraterritorial jurisdiction held proper for assault by passenger against his wife and another passenger, a U.S. citizen, on high seas aboard foreign cruise ship];
- *United States v. Roston*, 986 F.2d 1287 (9th Cir. 1993) [conviction of passenger for murder of his wife during cruise on high seas upheld under 18 U.S.C. § 1111];
- *United States v. Frisbee*, 623 F. Supp. 1217 (N.D. Cal. 1985) [indictment of passenger upheld under 18 U.S.C. § 1111 for murder of fellow passenger aboard cruise ship]; and
- *United States v. Flores*, 289 U.S. 137, 155-56 (1933) [indictment of U.S. citizen for murder of another U.S. citizen aboard ship in foreign territorial waters permitted, finding criminal offenses (even when committed within territorial waters of foreign sovereignty) are within maritime jurisdiction of the U.S.].

VI. U.S. LAW ALSO REQUIRES REPORTING OF SERIOUS INJURY, DEATH OR DISAPPEARANCE OF AMERICANS ON CRUISE SHIPS OUTSIDE U.S. WATERS

Title 46 U.S.C. § 6101, entitled “Marine Casualty and Inspection” (“MCI”) governs the role of the Coast Guard and vessel operators with regard to marine casualties. The stated purpose of this regime is to “increase the likelihood of timely assistance to vessels in distress and directs the Secretary of Transportation to enact implementing

regulations. Id.; 46 C.F.R. § 4.01-1. The enabling statute, § 6101, defines a marine casualty as (1) death of an individual; (2) serious injury to an individual; (3) material loss of property; (4) material damage affecting the seaworthiness or efficiency of the vessel; or (5) significant harm to the environment.

All ships must report marine casualties that occur on the navigable waters of the U.S., regardless of the nationality of the victim. 46 U.S.C. § 6101 (d)(1); 46 C.F.R. § 4.03-1. U.S. flag ships must report marine casualties arising anywhere. 46 C.F.R. § 4.03-1(a) Under subsection 6101(f) of the statute, the Secretary of Transportation is mandated to prescribe regulations for the reporting of marine casualties occurring in certain specified geographical areas *beyond navigable waters of the U.S. when the casualty involves a U.S. citizen*, provided the vessel embarked or disembarked at a U.S. port, *or* transports passengers under any form of air and sea ticket package marketed in the U.S.³

The Coast Guard has clearly interpreted the MCI Regulations to apply outside U.S. waters. An internal Coast Guard Memorandum dated February, 1996, authored by the Commander of the Eleventh Coast Guard District, stated:

“Section [f] of 46 U.S.C. § 6101 is an exception to customary international law, which generally prohibits any country from asserting jurisdiction over foreign vessels on the high seas. However, the statute and its legislative intent indicate this was clearly Congress’s intent. Even though no implementing regulations have been issued to date, the Coast Guard has the legal authority to conduct such investigations.”

The same Memorandum cites the Eastern District of Louisiana’s decision in *Veldhoen v. United States Coast Guard*, 838 F. Supp. 280 (E.D. La. 1993), which involved a collision between the NOORDAM, a Netherlands Antilles cruise ship carrying 1,124 US citizens, and a Maltese freighter in international waters. The court noted: “The question...is whether, by enacting 46 U.S.C. § 6101[f], Congress intended to give the Coast Guard the power to conduct an investigation of this kind of an incident involving two foreign-flag vessels, one of which was carrying U.S. passengers. The court then held: “Based on the statutory expression of Congress. . . [section 6101 [f]] was enacted to enable the U.S. Coast Guard to investigate precisely this kind of incident.” Id. at 282.

Section 6101(g) extends the reporting requirements even further, to any vessel involved in a marine casualty as defined under the *IMO Code for the Investigation of Marine Casualties and Incidents* (“IMO Code”), consistent with international law, when the U.S. is a Substantially Interested State (“SIS”). The definition of a SIS under the IMO Code includes nations other than those whose ships are involved. *For example, if a U.S.*

³ The coordinates are 75 degrees north latitude, west of 35 degrees west longitude, and east of the International Date Line, or operating in the area south of 60 degrees south latitude. This area is quite extensive, and covers the entire Pacific Ocean up to a point just west of Midway Island, the mid and west Atlantic (including all of the Caribbean Sea), and all oceans within 1800 miles of the South Pole.

citizen is killed, injured or disappears (when death or serious injury can be presumed) on a vessel anywhere in the world, the U.S. is automatically considered a SIS and a report is required. See IMO Code, § 4.11.5; 46 U.S.C. § 6101 (g).

VII. INFORMATION CONCERNING CRIMES ON CRUISE SHIPS WAS ACCURATELY DISCLOSED DURING THE PRIOR CONGRESSIONAL HEARING

In January, 2006 Congressman Christopher Shays, on behalf of the House Subcommittee on National Security, Emerging Threats, and International Relations, sent a written request to various cruise lines for information on “robberies”, “sexual assaults” and “missing persons” for the three year period ending December, 2005. The term “sexual assault” was not defined. Nor is the term defined or even used by any federal statute or by many states, including Florida (where most of the cruise industry is based). The definition that does exist in other states varies significantly. For example, California’s definition of “sexual assault” is quite narrow, being limited only to actual sexual acts and does not include unwanted touching unless it involves a minor. *See* California Penal Code section 11165.1.

The ICCL therefore initiated discussions with the Subcommittee’s staff as to a reasonable definition of “sexual assault” to use in compiling the requested information. Staff agreed one common definition, based upon federal statutes and precedents, should be used by all respondents. Again, it should be emphasized that the responding lines *had been reporting to the FBI all sexual felonies* in accordance with the 1998 SPV Reporting Regulations, and lesser offenses in accordance with the industry’s written 1999 Zero Tolerance for Crime Policy. In addition, the lines had been reporting *all sexual complaints* to the FBI in accordance with a January 2000 Memorandum, entitled “Crimes on the High Seas- Criminal Conduct on Board Ships Upon the High Seas.” which established Guidelines for the cruise industry to follow in reporting criminal activity. That Memorandum stated: “All sexual matters, i.e. rape, attempted rape, abusive sexual contact, or sexual assault will be investigated.” The FBI itself clearly drew a distinction between “sexual assault” and “abusive sexual contact.” Congressman Shays asked only for a report of “sexual assaults”, which necessarily involve some form of violence or coercive conduct.

Consistent with the federal statutes, FBI Guidelines and federal case law precedents, the responding cruise lines erred on the side of including every incident that involved a sexual act. Also included was every incident of sexual contact accompanied by force, threats, mental or physical incapacity or inability to consent, administering of drug, intoxicant or other substance, or with a minor. This definition was discussed with Committee Staff at the time the reports were compiled and the cruise lines’ reports expressly reiterated the definition used. *The only incidents that were not included within the category “sexual assault” were alleged unwanted touching of adults without any*

element of force, fear, threats, intoxication, incapacity or involving minors. These crimes do not meet the legal definition of an “assault”, though still criminal in nature.⁴

The term “assault” is defined as (1) “a willful attempt to inflict injury upon the person of another,” or (2) “a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.” See *United States v. Skeet*, 665 F.2d 983, 986 (9th Cir. 1982). See also *United States v. Dupree*, 544 F.2d 1050, 1051 (9th Cir. 1976) [“an assault is committed by either a willful attempt to inflict injury upon the person of another, or by a threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.”]

As recently as this month, a federal circuit court addressed the problem of a federal criminal statute not defining the term “assault.” In *United States v. Lewellyn*, 2007 U.S. App. LEXIS 5267, *5-6 (9th Cir., March 7, 2007) the court held: “Because § 113 does not define “assault,” we have adopted the common law definitions: n4 (1) “a willful attempt to inflict injury upon the person of another,” also known as “an attempt to commit a battery,” or (2) “a [*6] threat to inflict injury upon the person of another which, when coupled with an apparent present ability, causes a reasonable apprehension of immediate bodily harm.... Nearly all of the other circuits apply these same common-law definitions of assault. See, e.g., *United States v. McCulligan*, 256 F.3d 97, 103-04 (3d Cir. 2001); *United States v. Ashley*, 255 F.3d 907, 911 n.4 (8th Cir. 2001); *United States v. Bayes*, 210 F.3d 64, 68 (1st Cir. 2000); *United States v. Williams*, 197 F.3d 1091, 1096 (11th Cir. 1999); *United States v. Chestaro*, 197 F.3d 600, 605 (2d Cir. 1999); *United States v. Calderon*, 655 F.2d 1037, 1038 (10th Cir. 1981); *United States v. Bell*, 505 F.2d 539, 540 (7th Cir. 1974); *Shaffer v. United States*, 308 F.2d 654, 655 (5th Cir. 1962).” Id. at *6, n. 5.

An unwanted touching of an adult without any element of force, fear, threats, intoxication, incapacity or involving minors is not within the legal definition of “assault”. Such incidents were therefore not requested to be included in the reports to the Subcommittee. However, they *were* reported to the FBI in accordance with the January 2000 Guidelines, and after January 2006 when such incidents became felonies (even though still not “assaults”) *must* be and are reported under the SPV Reporting Regulations.

VIII. VICTIMS OF CRIME ON CRUISE SHIPS HAVE FULL REDRESS UNDER THE U.S. CIVIL JUSTICE SYSTEM

In addition to U.S. criminal jurisdiction over crimes on foreign ships on the high seas, civil jurisdiction over the cruise lines themselves provides a very high level of protection to passengers, which is often higher than for patrons on land. The broad reach of U.S. civil jurisdiction to claims arising on cruise ships enables any U.S. passenger who

⁴ During the entire three-year time frame covered by the request, such incidents carried a maximum penalty of a misdemeanor under 18 U.S.C. § 2244 (b).

sails from or to a U.S. port to seek redress in U.S. courts. Even U.S. passengers who travel abroad to take a cruise, for example in the Mediterranean, are able to file suit against the cruise line in the U.S. if the company's operations base is here. Most or all cruise lines routinely carrying U.S. passengers maintain a base of operations or principle office in the U.S. Foreign passengers who take cruises on U.S.-based ships are also able to sue in the U.S.

The testimony received by Congress to date from victims of alleged crimes has come almost entirely from plaintiffs who have filed lawsuits against the cruise operators of the ships on which these incidents arose. In many cases lawsuits have been filed against the cruise lines even when law enforcement determined there was insufficient evidence to press charges. Any foreign flag under which the ship is registered has no bearing whatsoever on the passenger's ability to file suit in the U.S. if the cruise line is based in the U.S., or if the ship routinely sails to or from a U.S. port.

Stricter legal standards are typically applied to cruise lines than comparable businesses on land, especially in the case of alleged crimes such as sexual assaults. The law recognizes an implied "warranty of safe passage" that dates back to the turn of the 19th Century. Moreover, any provision in a ticket contract for a cruise to or from the U.S. that lessens or weakens the passenger's right to a trial in a court, or limits recoverable damages, is legally void. *See* 46 U.S.C. § 30509. The law governing alleged sexual assault against passengers by crewmembers is a specific example where passengers receive much greater protection on ships than patrons on land, even though the instances of assaults are far greater on land than at sea. Currently, the Courts in the federal Eleventh Circuit (encompassing much of the Southeastern United States, including Florida) and the Ninth Circuit (encompassing the Western United States, including California, Washington, Alaska and Hawaii) both impose ***strict, absolute liability on the cruise line*** whenever a crewmember assaults a passenger. *Doe v. Celebrity Cruises*, 394 F3d 891 (11th Cir. 2004); *rehearing en banc denied*, 132 Fed. Appx. 825, 2005 (2005), *cert. denied*, 2005 U.S. LEXIS 8179 (2005); *Morton v. De Oliveira*, 984 F.2d 289 (9th Cir. 1993), *cert. denied*, 510 U.S. 907 (1993). This strict liability of the cruise line was recently extended to an alleged sexual assault by a waiter occurring ashore in a foreign country outside a bar during a week long cruise. *Doe v. Celebrity Cruises, supra*.

In these jurisdictions where most of the North American cruise business is centered, the law imposed on cruise lines is far more stringent than that applied to any other business on land or at sea. If a cruise passenger establishes an unwanted sexual advance by a crew member, the line must automatically pay all damages claimed and proved to a jury, even if the company took all reasonable steps to screen and hire the crew, arranged adequate security, and had no prior complaint or notice of the propensity to commit the alleged crime. This "strict liability" standard is the most stringent known to American tort law and on land is only applied in cases involving defectively designed or manufactured consumer products, or ultra-hazardous activities.

On land, operators of hotels, theme parks, restaurants, office buildings, hospitals and other facilities are generally *not* held strictly liable for sexual assaults on patrons. A guest in a hotel ashore could not hold the hotel owner liable for an alleged assault by a hotel employee absent a showing of negligent hiring or retention of an individual with a known criminal past. The same would be true for an assault by a waiter in a restaurant. Yet when the identical incident is claimed to have occurred on a cruise ship, the cruise line is automatically liable for all damages.

Another example of how cruise lines have been held to a more stringent liability standard than on land involves service of alcohol. Almost every state in the nation has enacted a so-called “dram shop” act. Generally, all of these acts bestow some form of immunity on servers of alcohol from civil liability for injuries or deaths caused to or by an intoxicated patron. The public policy behind these laws is that the culpability for drinking to excess should be placed squarely on the person who consumes the alcohol, not on the person who serves it. Shifting civil liability away from the intoxicated patron tends to lessen one’s incentive to drink responsibly. In several states, exceptions exist to this immunity of servers of alcohol only when such beverages are knowingly sold to minors or habitual drunkards.

There is no federal maritime dram shop statute, and no rule of immunity for cruise lines from civil liability for injuries caused to or by intoxicated patrons. In Florida, for example, cruise lines have been held liable for injuries sustained by an intoxicated patron who fell and sued the cruise line for “allowing him” to become intoxicated. *Hall v. Royal Caribbean Cruises, Ltd.* 888 So. 2d 654 (Fla. 3d DCA 2004). Had the same patron become intoxicated in any bar in Miami and caused an automobile accident, the bar owner would be immune from liability. The contrary maritime rule has been adopted in Indiana, New York and Texas. *See, e.g., Kludt v. Majestic Star Casino*, 200 F. Supp. 2d 973 (N.D. Ind. 2001); *Bay Casino, L.L.C. v. M/V Royal Empress*, 1999 A.M.C. 502 (E.D.N.Y. 1999); *Young v. Players Lake Charles, L.L.C.*, 1999 A.M.C. 2529 (S.D. Tex. 1999); and *Thier v. Lykes Bros., Inc.*, 900 F. Supp. 864 (S.D. Tex. 1995). The net result is that cruise lines, unlike their shore side counterparts, have been sued, sometimes successfully, for injuries and damages arising from the negligent acts of intoxicated patrons. In other words, the liability standard applied against cruise operators is more stringent, even though cruise patrons do not generally operate motor vehicles after imbibing and are much less prone to serious injury than patrons on land.

