

Hong Kong    San Francisco    Seattle    Long Beach    Alaska

*Master's Liabilities in the US:  
Accidents, Mistakes & Intentional Acts –  
Is there Really a Difference?  
Do Criminal Prosecutors Really Care?*

CAMM/IFSMA Conference  
San Pedro, California  
8 May 2006


Joe Walsh

**Agenda for Presentation**

Overview US Criminal Laws (Marine Pollution)  
Enforcement Mechanisms and Prosecutorial Discretion  
MARPOL/OWS Matters  
Accidental Discharges  
Strict Criminal Liability and the Erosion of Intent

- Enforcement Efforts:
  - Who Is The "Target"
  - How To Avoid Being A Target

Other Areas of Concern




**U.S. Federal Pollution Laws**

- Oil Pollution Act 1990 (OPA'90)
- Federal Water Pollution Control Act (FWPCA)
- Clean Water Act (CWA)
- Act to Prevent Pollution From Ships (APPS)
- Outer Continental Shelf Lands Act Amendments
- Coastal Zone Management Act
- Magnuson-Stevens Fisheries Act
- Deep Water Port Act 1974
- Trans-Alaska Pipeline Authorization Act
- Refuse Act
- Migratory Bird Act
- Marine Sanctuary Act
- Ocean Dumping Act
- Federal Ballast Water Management Act
- Hazardous Materials Transportation Act




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**U.S. Federal Criminal Laws**

- False Statements or Entries Act. (18 USC 1001)
- Felony Obstruction of Justice. (18 USC 1503)
- **Felony Witness Tampering.** (18 USC 1512)
- **Felony Destruction, Alteration and Falsification of Records.** (18 USC 1519)
- **Conspiracy.** (18 USC 371)
- **Retaliation Against Informants.** (18 USC 1513)
- **Minimum Alternative Fines Act.** (18 USC 3571d)

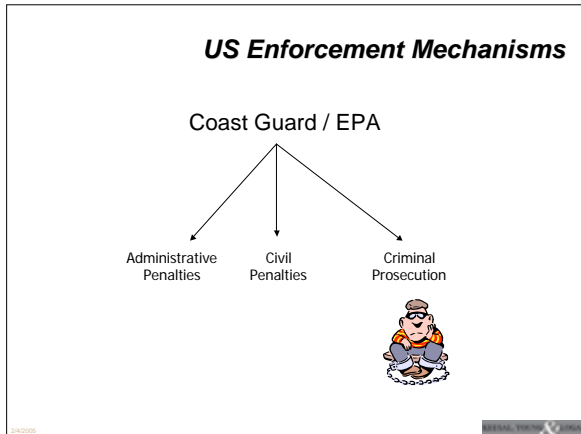


**Master's Liabilities in the US**

The only difference between being in jail  
and sailing on a ship  
is the opportunity to drown.

Mark Twain





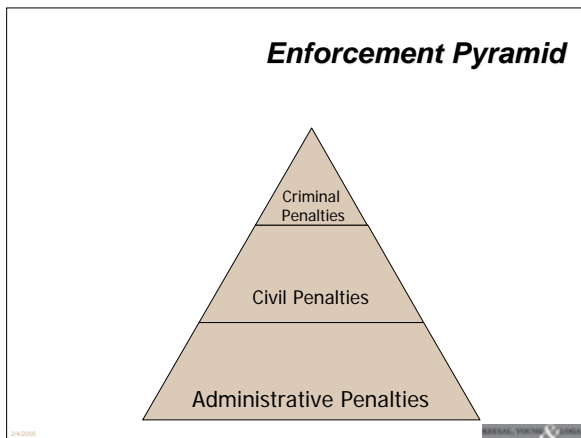
### USCG's Own Words

most egregious

only sought when the facts of the case show that the alleged violation involved intentional or culpably negligent conduct

environmental harm and culpable conduct."

significant



### EPA: "Significant Harm"

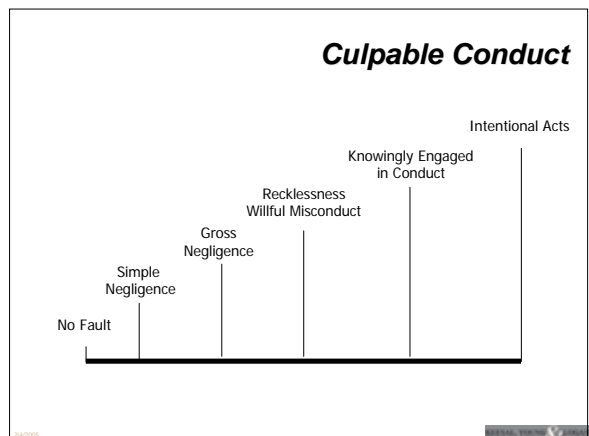
1. Actual harm;
2. Threat of harm;
3. Failure to report an actual or threatened harm; or
4. Illegal conduct that "represents a trend or common attitude within the regulated community whereby prosecution may provide a significant deterrent incommensurate with its single environmental impact."

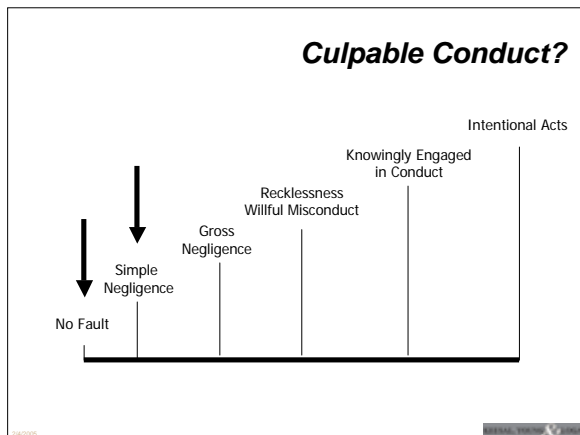
*"... the sad fact remains that the practice of dumping waste oil and maintaining false log books has proved to be commonplace in the maritime and cruise ship industry..."*

*"...the problem is so rampant and so pervasive within the maritime industry..."*

### EPA: "Culpable Conduct"

1. Repeat violations;
2. Deliberate misconduct;
3. Concealment of misconduct or falsification of records;
4. Business operation of pollution-related activities without proper authorization





- ### What are the Intentional Crimes?
- Discharges in violation of MARPOL and/or US laws including APPS and OPA '90.
    - Direct By-passing of OWS
    - Tricking OCM with fresh water
  - Falsification of required records (ORB)
    - Presentation of ORB with false entries during PSC Inspections
    - Crew gives untruthful answers to USCG during PSC inspection


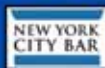
- ### Real World Enforcement: USCG
- USCG has become extremely knowledgeable
  - Aggressive interrogation of crew
  - Seizure of original documents and logs
  - Immediate notification/involvement of DOJ
  - USCG COTP orders detention 33 USC 1908(e)
  - Demand for Security in form of Bond/LOU for Criminal and Civil Liabilities
  - Additional Agreement on Security
  - Proof by Class that OWS operates properly
  - Possible ISM Audit required
  - Assignment of Points against PSC Boarding Matrix

- ### Real World Enforcement: DOJ
- Immediate Issuance of Grand Jury Subpoenas
    - For documents and records (very broad)
    - Crew testimony (cost of lodging, travel, retention)
  - Expect fleet wide investigation and boardings
  - Pressure on low level crew to report and testify against senior officers and company
  - Focus on Managers, Owners, Charterers
  - Pressure to be fully transparent & cooperative
  - Full exploitation of a “Whistleblower” provision

- ### 1998-2004 Vessel Pollution Offenses
- > 35 OWS prosecutions
  - > 58 defendants (individual & corporate)
  - +19 total years of imprisonment for individuals
  - > \$ 133 Million in corporate fines

## Due Diligence in Shipping

Problems and Solutions

September 22, 2003  
New York City, NY

Richard A. Lohr  
Senior Trial Attorney  
Federal Maritime Commission, Maritime  
U.S. Department of Justice  
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Investigative Tools

### Records Comparison

Oil Record Book vs. Bridge Log

Alarm Printout

### Image taken with Forward Looking Infra-Red Radar

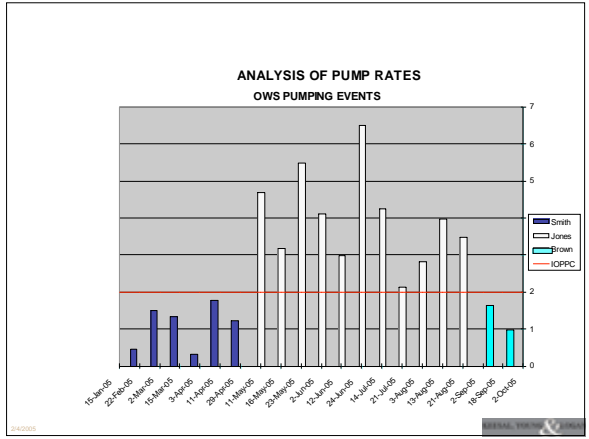
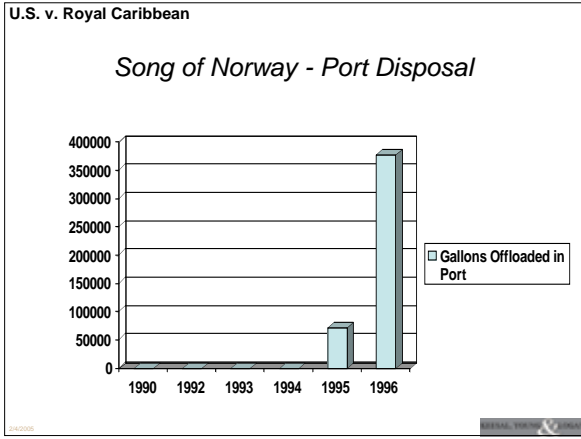
Investigative Tools

### Records Comparison

Investigative Tools

### Analysis of ORBs

BILGE & WASTE OIL PROCESSES												
BILGE PUMPING			OILY WATER SEPARATOR				INCINERATOR					
DATE	TIME	QUANTITY	TYPE	STATUS	REMARKS	DATE	TIME	TEMP	STATUS	REMARKS	DATE	TIME
10/25/94	10:00	100	W	OK		10/25	10:00	150	OK		10/25	10:00
10/25/94	11:00	150	W	OK		10/25	11:00	150	OK		10/25	11:00
10/25/94	12:00	200	W	OK		10/25	12:00	150	OK		10/25	12:00
10/25/94	13:00	250	W	OK		10/25	13:00	150	OK		10/25	13:00
10/25/94	14:00	300	W	OK		10/25	14:00	150	OK		10/25	14:00
10/25/94	15:00	350	W	OK		10/25	15:00	150	OK		10/25	15:00
10/25/94	16:00	400	W	OK		10/25	16:00	150	OK		10/25	16:00
10/25/94	17:00	450	W	OK		10/25	17:00	150	OK		10/25	17:00
10/25/94	18:00	500	W	OK		10/25	18:00	150	OK		10/25	18:00
10/25/94	19:00	550	W	OK		10/25	19:00	150	OK		10/25	19:00
10/25/94	20:00	600	W	OK		10/25	20:00	150	OK		10/25	20:00
10/25/94	21:00	650	W	OK		10/25	21:00	150	OK		10/25	21:00
10/25/94	22:00	700	W	OK		10/25	22:00	150	OK		10/25	22:00
10/25/94	23:00	750	W	OK		10/25	23:00	150	OK		10/25	23:00
10/26/94	00:00	800	W	OK		10/26	00:00	150	OK		10/26	00:00
10/26/94	01:00	850	W	OK		10/26	01:00	150	OK		10/26	01:00
10/26/94	02:00	900	W	OK		10/26	02:00	150	OK		10/26	02:00
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10/26/94	09:00	1250	W	OK		10/26	09:00	150	OK		10/26	09:00
10/26/94	10:00	1300	W	OK		10/26	10:00	150	OK		10/26	10:00
10/26/94	11:00	1350	W	OK		10/26	11:00	150	OK		10/26	11:00
10/26/94	12:00	1400	W	OK		10/26	12:00	150	OK		10/26	12:00
10/26/94	13:00	1450	W	OK		10/26	13:00	150	OK		10/26	13:00
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10/27/94	05:00	2250	W	OK		10/27	05:00	150	OK		10/27	05:00
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10/29/94	19:00	5350										



### Non-OWS/MARPOL Cases

To: D/S Progress  
 Fm: Master, Freja Jutlandic  
 Dt: 20/March/00

Re: Engine Room Crack

As we expect uscg contr baltimore I believe they repairing place and leaky problem. To avoid any instruct proceeding re this repairs to uscg.

Tks/brgds  
 Captain Maric

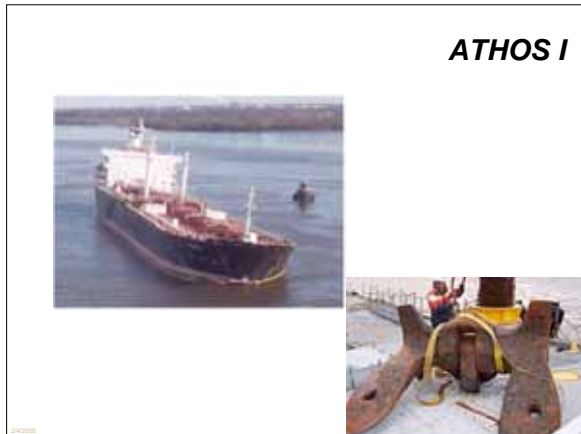
### U.S. v. Sabine

#### Summary of Criminal Prosecution

- Prosecution of Individuals
  - Unlicensed crew member pled guilty to directing many discharges.
  - C/O convicted of manslaughter
  - Chairman, President, Vice-President, Port Engineer, Master and Chief Officer charged w/ dumping 442 tons of diesel contaminated wheat on high seas.
- Corporate Convictions
  - \$2 million criminal fine
  - court supervised environmental compliance plan
  - \$200,000 criminal fine for Clean Water Act violation for discharge of tank cleaning wastes in Mississippi River.

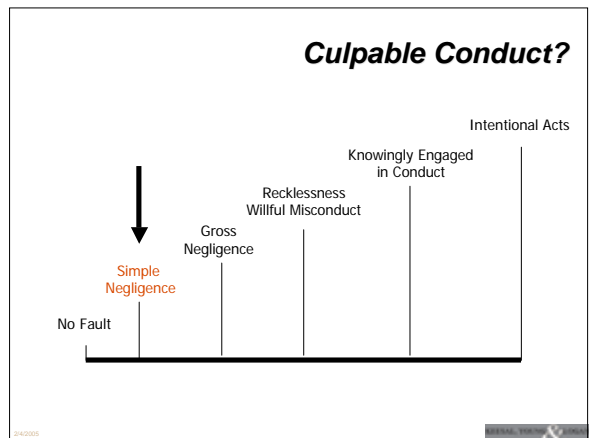
### United States v. Cook

### Accidental Discharges



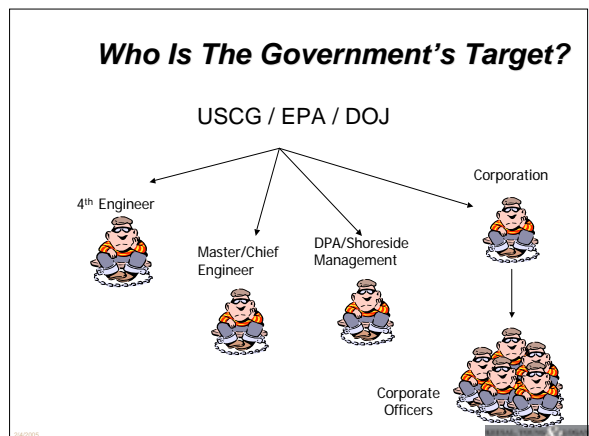
### What are the Crimes?

- Accidental discharges (strict liability)
  - Clean Water Act
  - Federal Water Pollution Control Act
  - OPA '90
  - State law
- Refuse Act
- Migratory Bird Act (strict liability)
- Alternative Minimum Fines Act



### Agenda for Presentation

- ✓ Overview US Pollution and Criminal Laws
  - Enforcement Mechanisms and Prosecutorial Discretion
  - MARPOL/OWS Matters
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  - Strict Criminal Liability and the Erosion of Intent
- Enforcement Efforts:
  - Who Is The "Target"
  - How To Avoid Being A Target
- Other Areas of Concern



### But We Didn't Approve The Misconduct



### How To Avoid Being A Target?

- ✓ Insist on compliance w/ laws, policies, etc.
- ✓ Implement audit procedures to verify
- ✓ Insist on truthful logs and disclosures
- ✓ Avoid unnecessary suspicion
- ✓ Beware of "routine" MARPOL inspections
- ✓ Find and address violations "before" USCG
- ✓ Consider self-reporting

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### Other Areas of Concern

- DOJ HAZMAT Initiative
  - US v. Emery Worldwide Airlines
    - \$6MM Fine
    - ECP
    - 3 years probation
  - US v. Solar International Shipping
    - False statements
    - Conspiracy to make false statements



### Other Areas of Concern

- Water Quality
  - Bilge Water Management
  - MARPOL I, II
  - MARPOL V
  - Ballast Water Management
- Air Emissions
  - MARPOL VI
  - Clean Air Act (EPA and CARB)
- SOLAS
- Maritime Security
- Commercial Issues

### A Little Foresight is a Good Thing

