

# International Cruise Victims



March 7, 2013

Chair, Social Policy and Legal Affairs Committee  
House of Representatives  
PO Box 6021  
Parliament House, Canberra ACT 2600

Dear Chair, Social Policy & Legal Affairs Committee:

On behalf of ICV and ICV of Australia, attached is a review prepared by Mr. Mark Gaouette reviewing issues raised by CLIA and the cruise lines representatives since the start of the enquiry. Mr. Gaouette serves on the Board and Executive Committee of ICV. He is the former head of security for Princess Cruise Lines. Attached will be found, in addition to his presentation, his resume as an expert in this area. We trust that you will find his comments informative and helpful.

ICV Australia has looked to support the recommendations that came from the NSW Coroner and see legislation introduced to regulate the cruise industry so we can avoid certain tragedies whilst Australians take a cruise. This could also be supported by the appointment of an Ombudsman to the industry to start the flow of the necessary impartial information.

Since the February 1st hearing, the cruise line industry has been the subject of worldwide attention. Every major news media has written articles concerning issues with this industry.

Associate Member of



A few of the Media events that ICV has been involved in are noted in our most recent ICV update. It was mentioned that drip by drip the message of ICV was getting out to the World

In the attached paper Mr. Gaouette refers to comments made in the Article written by Newsweek by Mr. Jim Hall, the former head of the National Safety Transportation Board under the Clinton administration. Quoting from Mr. Hall's comments he points out the following:

*" Jim Hall, head of the National Transportation Safety Board during the Clinton administration, says the industry is watched over by "paper tigers" like the International Maritime Organization and suffers from "bad actors" much like in the poorly regulated motor-coach industry, which saw its latest fatal bus crash in Southern California earlier this month. "The maritime industry is the oldest transportation industry around. We're talking centuries. It's a culture that has never been broken as the aviation industry was, and you see evidence of that culture in the [Costa Concordia] accident," says Hall.*

*Ships may seem and feel American but are mostly "flagged" in countries like the Bahamas or Panama in order to operate outside of what he says are reasonable safety standards. "It is, and has been, an outlaw industry," says Hall. "People who book cruises should be aware of that."*

Soon additional legislation will be introduced in the United States to further strengthen laws under which the Cruise Line Industry operates. I trust the Australia Government will have the foresight and move forward with the needed reforms.

My family has only ever wanted to see something good come out of something so awful.

Sincerely

**Mark Brimble**

INTERNATIONAL CRUISE VICTIMS ASSOCIATION

# Australian Standing Committee on Social Policy And Legal Affairs, Crimes Committed at Sea

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Comments and Recommendations Regarding Crimes at Sea  
and Cruise Ship Safety

Cdr. Mark Gaouette, USNR (Ret.)

**3/5/2013**

A critical examination of cruise ship crime in response to the testimony on February 15, 2013 of the Standing Committee's panel of expert witnesses representing the Australian cruise industry and the Police and Security Experts of the Commonwealth of Australia

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**I. Introduction**

1. In July, 2010, President Barrack Obama signed into law, The Cruise Vessel Security and Safety Act (CVSSA) of 2010. This legislation, (also known as the Kerry Act named after one its congressional sponsors, Senator John Kerry) is now U.S. law. The CVSSA had humble beginnings starting with the *International Cruise Victims Association* in 2006. In that year, several family members and victims of cruise ship crime banded together in an effort to find solace, understanding and eventually a voice for reform to the passenger cruise line industry.
2. In the past decade, the occurrence of crime on cruise ships (and the industry's response to it) has been called into question in front of the U.S. Congress, the media and governments around the world. Powerful lobbyists and special interest groups in the meantime have banded together to preserve, or attempted to change the model of cruise ship tourism. Both the cruise industry and victims advocacy groups cooperated with efforts of the U.S. government to make ocean travel safer. At the core of this effort by the U.S. Congress was how crime is investigated on and off the cruise ship, unveiling the true extent and nature of criminal activity on these ships, providing for rapid and accurate ways for crimes to be reported to law enforcement agencies, how that information is made available for the sea-going public, and providing for counsel and treatment for victims.
3. Congress, the U.S. Coast Guard, the Federal Bureau of Investigation (F.B.I.), the cruise lines, U.S. courts and victims groups have debated the "statistics" and they have at times used them to sway the image of crime on these giant ships in one direction or the other. Ultimately, the "statistics" backed up by the heart wrenching stories of the victims or victim's family members provided the evidence required for the passage of comprehensive legislation to require certain safeguards, security measures and protection for the passengers and crew on cruise ships in North America.
4. This document focusses on the history, and lessons learned in the United States for the passage of the CVSSA and its relevance to the Australian efforts to protect its citizens who travel on cruise ships. It stresses the need by the Government of Australia to pass similar legislation to protect the sea going public of the Commonwealth of Australia against crimes at sea on cruise ships (or other vessels) in place of the unregulated "best practices" currently being used by the operators of the cruise industry in Australia.
5. It should be the position by the Government of Australia that in the absence of clear standardized response mechanisms, any crime that occurs in Australian society, be it in a hotel, public building, business, private residence or a cruise vessel requires the guidance of its legislators to help protect its citizens. This is especially true in the case of cruise ships where there appears to be no formalized (governmental) remedies to the problem of "*crimes at sea*" other than the tacit agreements between operators of cruise ships and; where there is no recourse for victims these crimes other than civil litigation or out-of-court settlements.

## II. The Cruise Ship City

1. **Risks at Sea:** On December 13th, 2005, former Congressman Christopher Shays of Connecticut testified before the Subcommittee on National Security, Emerging Threats, and International Relations And, the Subcommittee on Criminal Justice, Drug Policy, and Human Resources. Congressman Shays eloquently summed up in his opening statements about the level of concern at the time with the North American cruise market's security model:

*“Ocean travel puts passengers and crews in distant and isolated environments and subjects them to unique risks and vulnerabilities. Like small cities, cruise ships experience crimes – from the petty to the profoundly tragic. City dwellers know the risks of urban life, and no one falls off a city never to be heard from again. Cruise passengers can be blinded to the very real perils of the sea by ship operators unwilling to interrupt the party for security warnings. And after an incident occurs, a thorough investigation can be profoundly difficult when the crime scene literally floats away, on schedule, to its next port of call.”<sup>1</sup>*

2. **False Sense of Security:** For the majority of cruise ship passengers, first impressions change little from cruise ship to cruise ship, and cruise line to cruise line. There is a sense of false security when boarding a cruise ship past its X-ray screening equipment, document checks, and issuance of shipboard cruise cards. With minor alterations, the boarding scene is repeated on all the major cruise lines around the world. Indeed, the first impressions of the passenger as he or she boards the ship is one of security. The shipboard security “guards” are assigned to search the passenger’s belongings (if not already done in the cruise terminal) and verify their presence on the ships through the passenger’s cruise card. Once onboard, many cruise passengers believe they are entering a world void of security threats.
3. **Shipboard Risks:** For an unsuspecting few however, the cruise ship becomes a landscape filled with security threats which might include potential sexual predators – some of whom may be crewmembers – the possibility for falling overboard, the over-indulgence in alcohol consumption leading to accidents or altercations, and even drug abuse. When a crime is committed on a cruise ship and the passenger becomes a victim, what should the response of the cruise ship be to such incidents? Can the victims expect that the crime or incident will be professionally investigated by onboard personnel that will ultimately lead to the successful prosecution of the perpetrator of the crime? The answer to such questions has been a matter of conjecture by both the cruise lines and their critics. While the cruise lines boast that the onboard safety and security of their passengers is their top-most priority, the record regrettably suggests the opposite. Cruise line security critics claim that crimes committed at sea, occurs in a vacuum, without risk or consequences to the perpetrator and without resolution or compassion for the victim of the alleged crime.

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4. **Floating Cities:** Crime on a cruise ship is no less an undeniable reality than it is for any rural town or metropolitan city. After all, cruise ships, which now have the capability to embark over 6000 passenger and over 2000 crew members, are small floating cities. It is unrealistic to believe that even in the enclosed environment of a cruise ship that criminal activity stops at the gangway; especially since the ship does not have a police force. This is where efforts to of the cruise lines to investigate crime come into play to satisfy the inherent need to protect passengers and crew.
  - a. The most relevant question to be asked in this examination is whether a cruise ship can really claim to be risk free, void of any threats to the passenger, or its crew. Robert (Bob) Beh, Carnival's Vice President of Security once noted, "Cruise ships are like floating cities, any problem you have in a town you have on a ship."<sup>2</sup> That would seem to confirm that even in the most robustly designed cruise ships and despite the efforts any cruise line efforts to curb crime on these ships, crime does, and will continue to occur on ships that are populated with all the good and bad elements of a small city. Captain Howard Newhoff, a security manager for Royal Caribbean International once commented that "most criminal incidents aboard our craft are minor... They occur when people drink too much and get in fights, lose small items, or have wallets stolen from common areas."<sup>3</sup> It is perhaps disappointing that a senior security manager for the second largest cruise line believes that public drunkenness, fights and stolen wallets occurring in any numbers are "minor" and don't take into consideration such other serious crimes such as rape and sexual assault. Such statements also trivialize the victim's stake in being the target of a criminal act, regardless of whether it was pre-meditated or the result of drinking too much as Captain Newhoff suggests. Looking at it another way, no one plans to be a victim of a crime on or off the ship when they book their cruise ship vacation.
  - b. If it is correct that any problem you have in a town, you have on a ship, then it would be prudent to prepare and devote resources to those types of problems in order to provide a truly safe environment for the cruise ship guests. Crimes that routinely occur in cities and towns manifest themselves on a ship, especially when passengers and crew live side by side in close quarters with neighbors they barely know. These crimes might include, assault, sexual assault and rape, drug abuse, alcohol abuse, (especially by minors), theft, robbery, missing persons, manslaughter and possibly murder. With regards to cruise ships, the list would obviously include sabotage, terrorism and piracy. These events mixed with the occasional domestic quarrel, lost child, or shipboard accident involving physical injury and sea related emergencies make the cruise ship a unique environment that requires a number of employees to look after ship's population.
5. **Sea Security:** While the ship has many employees, one noticeable element missing from this well-staffed city at sea, is a police force with jurisdictional authority over its citizens. That is not to say that the seagoing city is not without security. On the contrary, it maintains a contingent of paid employees that enforce the ship's security policies. They are, for all intent purposes, paid to keep the gangways operating smoothly and or to prevent unauthorized access to bars and casinos. But this is where their duties and in most cases, their jurisdictional responsibilities end. They have no legal authority to make an arrest at sea for a serious crime, they may, or may not have formal training to interview witnesses, collect evidence, and document the crime scene.

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In Australia, these responsibilities are for the moment, by agreement, “best practices” adopted by the Australian cruise lines based on the lessons of the North American cruise market’s attempt to police itself. These best practices were incorporated into the 2010 CVSSA in the United States.

6. **Paid Employees:** The safety of passengers and crew aboard a cruise and that is reflected in the professionalism of its security staff. The ability to react with decisiveness and with authority must be combined with professionally trained personnel using modern resources and training methods. With respect to cruise ships, the response of the security force to incidents has predictable responses. This stems from the fact that security officers on cruise ships are paid employees of the cruise lines and not an independent law enforcement representative with any authority (other than what the cruise lines give them). Their capacity to act officially in an investigation when an alleged crime has been committed is limited to the direction given by the Captain and/or the cruise lines. Despite what the security guard has been taught or knows to be correct in criminal investigations, there is the potential for overlooking certain elements or not following standard procedures in the interest of the cruise line’s getting “out in front of the issue.”
7. **Cover Ups?** Although it is unlikely as Mr. Kenneth Edward Moroney, a former police officer in New South Wales Police Force stated during his testimony, that a security officer would purposely withhold information from the authorities in a criminal investigation;<sup>4</sup> it has to be assumed that such cover-ups can, and have occurred in the past. As an example, take the mysterious facts surrounding the disappearance of Merrian Carver off the Celebrity cruise ship *Mercury* in 2005. Her disappearance was reported by a steward to ship’s supervisors every day when she failed to return to her cabin. The reports were ignored. Later, when it was evident that the ship failed to investigate the report of the missing person, the cruise lines blocked attempts by the family’s private investigator and legal counsel to obtain any evidence (including interviews with the steward, supervisors and security) relating to her disappearance and withheld knowledge that onboard video cameras contained an image of the missing woman during her first days aboard. Royal Caribbean Cruise Lines later settled out of court with the family of Merrian Carver.

### III. The CSO

1. **Risk Manager:** The Corporate Security Officer or “CSO,” is the only security position on the corporate shore staff designated specifically in the ISPS Code. Because the ISPS Code is a risk management process, the main duties of the CSO are to ensure that the security vulnerability assessment(s) for the ships are carried out. The CSO’s duties require him to be well versed in this (risk management) process and to be well trained.
  - a. Annex (1) of the ISPS Code specifically states: “the duties and responsibilities of the company security officer shall include, but are not limited to advising the level of threats likely to be encountered by the ship, using appropriate security assessments and other relevant information; ensuring that ship security assessments are carried out; ensuring the development, the submission for approval, and thereafter the implementation and maintenance of the ship security plan; enhancing security awareness and vigilance; ensuring

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adequate training for personnel responsible for the security of the ship; ensuring effective communication and co-operation between the ship security officer and the relevant port facility security officers; and ensuring consistency between security requirements and safety requirements.<sup>5</sup> In addition, the ISPS Code makes it mandatory that “the Company shall ensure that the company security officer, the master and the ship security officer are given the necessary support to fulfill their duties and responsibilities.”<sup>6</sup> Although criminal activity off the ship in the surrounding port areas is something that the CSO needs to account for in his risk management assessments, per the guiding international maritime requirements, company security officers are not required to possess any specialized crime prevention or crime investigation knowledge.

**IV. Ship Security Officer**

1. **Corporate Security Representative:** Generally speaking, the senior security officer on the cruise ship becomes the link to the corporate office and is the only security representative actually mandated by the ISPS Code to be on board the ship. The ISPS Code did not specify the number of any security guards required to be on board a cruise vessel with thousands of passengers. This is because the ISPS Code was written not with just the cruise lines in mind, but to serve as the standard for all maritime vessels meeting the gross tonnage requirements of the ISPS Code. Many vessels which are of equal or greater size and gross tonnage than that of the *Oasis of the Seas* are manned with minimal crew which may number 50 or less. The shipboard security officer on these types of ships is normally a collateral duty.
  - a. Although very cognizant of the threat of piracy and terrorism and crime, shipboard officers rarely have the ability to combat global terrorism or stem the growing tide of piracy or crime in the ports they visit with any effectiveness. They must take their lead in these areas from the corporate security officer as to accepted tactics and obey any warnings about pirates and terrorist threats in the oceans and ports that they visit.
  - b. The ship security officer is limited in his ability to assess the crime rates in the ports they visit. They rarely have an appreciation of the dangers of sailing into geographic areas of political and civil unrest. Internal policing (crime prevention) of the ship is a secondary role after fulfilling the security responsibilities mandated by the ISPS Code. Thus, keeping track of the crime rates in the ports of call where the cruise ship is calling on is hard to maintain (and determine) because the ship’s security officer is too involved in attending to the security responsibilities of the ship when it arrives in port and ensuring the ship meets the correct MARSEC level established for that port.
2. **MARSEC Levels:** In fact, MARSEC levels which were developed for, and are a vital part of the ISPS Code, have nothing to do with the prevailing criminal problem in the port but instead are aimed at the known or perceived terrorist threat in the country or port where the ship is visiting. While these new security regulations have contributed greatly to the safety of cruise ships against the possibility of attack, seizure or hijacking by international terrorists and even pirates, they have

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not contributed significantly in preventing crime from occurring on or off these ships, especially out at sea.

3. **The SSO:** The ship security officers (SSO) on almost all cruise ships are usually (traditionally) retired British Naval Officers or Petty Officers, or British policemen. Most are recruited for their military or police backgrounds, but this appears to be a hiring practice rather than a hiring requirement. Although the cruise lines now have a mix of various nationalities that make up their security forces, once thing is certain, they are not law enforcement officers with any authority to enforce criminal statues at sea. They are often called upon however, to respond to a multitude of incidents on ships that at times, place their own physical safety at risk. Remembering that these ships can carry between 2500 to 3200 passengers on average, the SSOs have a limited number of security personnel to respond to altercations or other security incidents. This creates serious threats to the safety of passengers in an emergency.

V. **Security Guards**

1. **Certifications:** Security personnel must be entrusted with great responsibility so even basic screening requirements in most of the fifty (United) States require a criminal record background check with no convictions for a felony before a guard card certification can be issued. State professional boards such as the California Bureau of Security and Investigative Services (BSIS) regulate every aspect of the guards training, certification and recertification in the State which includes certifying each piece of equipment that the guard is trained on and required to carry in the performance of his or her duties (including firearms when authorized.) On cruise ships that responsibility for certifications rests with the cruise lines based on their interpretations of what security training should be, not by what any certifying authority says. It is done by “best practices.” Although the security guards may receive training using courses developed by the USCG and FBI, those are not the same as guard certifications which lead to the “guard card.”
2. **Recruitment:** Security guard companies would admit that recruiting and retaining individuals who meet the *minimum* qualifications is often difficult. Security guard jobs are entry level positions for most job seekers or may be the only alternative for other job seekers. The motivations for becoming a security guard may be desperation (for a paying job); lack of skills set which would preclude the individual to find a higher paying career field, or the ability of the individual to find employment well beyond his or her prime earning years. These are the harsh realities when speaking strictly about the recruitment of security guards.<sup>7</sup>
3. **Recruitment Pool:** Security personnel who work on a cruise ship may fit some, but not all of these descriptions. Almost exclusively, they all come from foreign countries where the prospect of working on a modern cruise ship is a dream come true for most. Also true is the fact that they must “pass” some sort of background investigation conducted by numerous third party hiring agencies and submitted along with hundreds of other candidates for cruise ship positions. Security ratings, which vary in number on each cruise ship, are drawn from the available human resource pools of India, the Philippines and Nepal, (or other non-western countries).

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Their recruitment is based on a number of other factors which make them eligible for service to the cruise lines, among these are their ability to obtain visa and other international documentation as well as being able to pass a cursory background check. Security training for these ratings in most cases starts from scratch.

4. **Training:** In some instances, many recruits have never been to sea before let alone acted in a security capacity. The bulk of the security rating's initial duties and training is devoted to passenger screening proficiency, access control, crowd control as well as firefighting. Little, if any initial training is devoted to criminal investigations and crime scene response primarily because that is not their primary or even collateral duties. That is the responsibility of the shipboard security officer (SSO).
5. **Authority:** Much like a private security guard hired to protect property on behalf of the owner of a commercial store, building or property, the shipboard security guard has no greater law enforcement authority than a private citizen. Arrests made by these private security guards – when they are made at all – are made as private citizens even if the security guard is an off-duty policeman or federal agent working in the capacity of a private security guard. A private security guard's primary function per the California Bureau of Security and Investigation (BSIS) makes it clear that a security guard who is so licensed by the State of California has no greater authority to act in law enforcement capacity than a "private citizen." They are hired to protect private property, and to "observe and report" suspected criminal activity. Even when a crime occurs in their presence, a security guard is trained to call for the police.<sup>8</sup>
6. **Duties:** On the larger ships, a security staff would comprise of only 12-15 personnel (and upwards of 20 -30 for a mega cruise ship such as the *Oasis of the Seas*) which may be augmented by a second layer of security staff during holiday or school break cruises. Security personnel traditionally spend very little time ashore in ports of call for obvious reasons. When the ship is in port, they must guard the gangway, permit or deny access to the ship, and screen all the passengers and their personnel effects. Sometimes, this responsibility may be transferred or assumed in the port terminal by agreement with the Port Facility Security Officer, but that does not relieve the responsibility of manning the gangway by the ship's security force. In port, there are fewer passengers onboard because they are normally on excursions or sightseeing in the port of call. This is when the security force is most active to prevent stowaways or from contraband being brought onboard. When the ship sets sail, these security personnel have to catch up on training usually involving enhancing their screening techniques or are assigned to "at sea security duties" which may include roving patrols and watching CCTV cameras (if they are monitored per the cruise lines' policies).
  - a. A secondary security duty to the ones described above is for security to monitor the entrances to discos, (and bars) and perform roving deck patrols to provide deterrence to unruly passenger behavior. When disturbances occur such as complaints from passengers about noisy neighbors, the purser's office will usually dispatch "security" to investigate the problem. Normally, a visit from the ship's security staff is all that is needed to quiet a situation such as a late night cabin party disturbing other guests.<sup>9</sup> What happens when there is

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- a need for security to physically intervene in an altercation between guests, or to break-up a dispute between passengers or crew?
- b. One Ship Security Officer's viewpoint who worked on a Princess cruise ship said he would not intervene when passengers are fighting and risk another broken jaw which he suffered a few years earlier when he tried to break up a fight between two drunks that were fighting onboard his ship. His advice (and his approach nowadays) is to let the two drunks beat themselves up to point where security can "safely" intervene.<sup>10</sup> Such random (and cautious) approaches to security do not lend themselves to good order and discipline on a ship at sea filled with passengers. Likewise, the ship's security forces are not there (or paid) to take punches from abusive or aggressive passengers who fly out of control due to alcohol consumption, illegal drug use or because they do not respond to authority. Still, when a fight breaks out, everyone expects security to intervene and quickly de-escalate the situation.
7. **In Harm's Way:** Technically speaking, the captain of the ship or the ship's security officer cannot order the security guard into harm's way under these situations. However, because the loyal security guard risks judgment from his peers, the captain, the crew and the ship's passengers for not acting decisively, he is often the last line of defense from these incidents getting out of control and possibly injuring other guests or crew. Situations like these are rare but highlight a need to provide the ship with a more practical response to those individuals who, either through inebriation, drugs or a pre-disposition to violence will not respond to a reasonable order from security to cease their violent or threatening behavior. Since there are no law enforcement personnel onboard, the mere presence of "security" has often proved that is not always a deterrent for bad behavior on the part of some passengers. Even if these cases are rare, (as they are in society), is that a reason not to have a presence onboard to deal with them if private property, and passenger safety is in jeopardy?
- a. At sea, even if all security personnel were on duty at the same time, (which rarely happens), there are on average, minimal security personnel for the thousands of passengers who are all on the ships. It essentially boils down to the argument of whether a security force of that (relatively small size) can adequately discharge the primary security duties of passenger screening, access control, passenger safety, and, be proficient in responding to reports of serious criminal incidents.

**VI. Sexual Crimes on Cruise Ships**

1. **Parent's Worst Nightmare:** Cruise ships are especially designed for families with activities and attractions on ships to please just about every member of the family. What then would be a parent's reaction to learn that during the family's cruise vacation, something terrible, sinister, and unimaginable had happened to one of their young children at the hands of a sexual predator? These realities unfortunately exist both in society and on cruise ships, and the potential for an incident occurring on a cruise ship while slight, is not undeniable. The issue of sexual assaults on minors on cruise ships however is compounded by the environment of the cruise ship itself.

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a. Mixed with the prevalent abundance of alcohol by both passenger and crew, in the relaxed, carefree environment of the ship, especially where there is no perceived law enforcement presence, unsupervised children are at risk from not only the dangers the ship presents, but from the small percentage of pre-inclined passengers or crew members, who might take advantage of such circumstances to molest or sexually assault a minor child. Illegal sexual contact directed against children, pre-teens and teens, is often never reported on the part of the victim out of fear, shame, or threats made by the perpetrator to the minor victim. Threats to remain silent or they will be thrown overboard or will happen to their parents on the cruise are not uncommon. Actual sexual assault cases involving rape and child molestation on cruise ships have documented such threats against the victims. How often do such incidents occur? More frequently than one would imagine and more alarming, even more frequently than the known statistics suggest.<sup>11</sup>

2. **Sexual Predators:** It would be unfair to characterize some or any of crewmembers as child molesters or sexual predators and that certainly is *not what is implied here*. Most if not all crew onboard these ships would be shocked to discover that their shipmate, co-worker and friend are a sexual predator. But the sad truth about this type of crime is that these individuals go about their deviations in secret, behind closed doors, and in private.

a. Some, like the 29 year-old Indonesia crew member working as a pastry chef on the Carnival cruise ship *Triumph* who was arrested in Canada in November 2009 for possession of child pornography may, or may not have been planning something more sinister. The crew member was caught with child pornography on his iPhone as he returned to the Carnival cruise ship. The CBP officers that accompanied him back to his cabin discovered over two hours of child pornography on the crew member's laptop and external hard drive. The footage depicted girls as young as eight and boys as young as 10 being abused.<sup>12</sup> Fortunately, this crew member was caught red-handed with sexually explicit child pornography on his personal mobile device and his computer. What exactly he was doing with the illegal pornographic material is unclear but up to that point, he had not endangered anyone else. What happens however, when these crewmembers actually act out their sexual lust and fantasies for minors on cruise ships?

b. In April 2009, a 30 year-old Philippine bartender admitted to raping a 14 year-old girl while she and her family vacationed aboard the Carnival cruise ship *Freedom*, which had departed Fort Lauderdale for a Caribbean Cruise. What is disturbing in this case is that the young victim and her parents became acquainted with the Philippine bartender who they befriended in the deck area early on in the cruise. The parents should have become alerted when the bartender commented on her beauty and how she "did not look 14."<sup>13</sup> Later in the cruise, the victim told investigators that she was alone on the top deck of the ship at night when the bartender walked up behind her, grabbed her and pulled her into an employee-only room and closed the door behind them. There, he forced himself onto the young victim who according to her testimony repeatedly told him to stop. After a physical struggle, the young girl was overpowered by the attacker who then proceeded to forcibly rape her in the small room.

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- c. The young girl, perhaps out of fear, remorse, embarrassment or guilt said nothing of the rape to her parents, or a member of the ship's crew. It was four months later when the young girl, now traumatized by the incident broke down and confessed to her mother of the terrible night on the cruise ship in which she was brutally raped by a crew member. The crime was reported to the FBI who administered a polygraph (lie-detector test) which proved deceptive. Under later questioning, the suspect did confess to raping the girl aboard the cruise ship just as the victim had described.<sup>14</sup> It is alarming then for parents who book these vacations that believe that in the enclosed environment of a cruise ship, their young children, pre-teen and teenage children are safe from the sexual crimes and assaults committed at the hands of crew members. The problem on cruise ships starts with the so-called record checks.

**VII. Problems with Record Checks**

1. **Pre-checks:** Passengers are not necessarily screened through criminal databases when they are booking cruises, at least not until they actually try and board the ship. The ship's manifest is turned over to Customs and Border Protection (CBP) as well as Customs and Immigrations Enforcement (ICE) who routinely check for wanted terrorists and occasionally turn up a wanted felon. However, whereas cruise ship passengers are not subject to background investigations other than the checks made on the manifests to screen for terrorists and wanted persons, crew members are normally [required] to have a background investigation before employment with the cruise lines begins.
2. **Heart of the Problem:** The problem with "background checks" is that the vetting of cruise ship crew members is more aligned with meeting visa requirements and is not necessarily designed to weed out petty thieves, drug users, abusers of alcohol and potential sexual predators (as in the case of the Indonesian pedophile mentioned above.) Unless there is a previous arrest in the crew members' home country for such offenses which certainly would prevent the potential crew member from passing the cruise line agent's screening (visa) process, the chances are that these foibles may never come to the surface unless they cause injury to another crewmember or a passenger later in the performance of their duties (as in the case of the Philippine bartender). Despite assurance from cruise lines about the availability and reliability of these record checks being conducted by the cruise lines, *the real problem in background checks stems from the lack of investigative data bases in some of the undeveloped countries where crew are recruited from.*
  - a. As opposed to passengers who are checked (hopefully) when they begin their cruise for anyone who may be on a watch list, risks from crew members can be prevented through more stringent pre-hiring practices conducted by the cruise lines' overseas agents, robust background investigations conducted by the foreign consulates and embassies, and periodic security re-investigations conducted by the cruise lines' private investigators. Currently the cruise lines themselves do not perform the background checks at all according to Mr. Giglia's testimony from Royal Caribbean Cruise Lines.<sup>15</sup> They rely on the hiring agents around the world to perform some, or all of the "screening." He says that: "...we employ manning agents. Before we hire anyone, they will assemble a pool of qualified people who meet our

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- requirements—usually language skills and that sort of thing—but they will not present anyone to us who does not have a clear background check. *Most often, that is a letter from a police agency in that person's home country stating that a check had been made and that they do not have a criminal history.*”<sup>16</sup> (Emphasis added). In essence, a letter from a police agency is often all that is needed for a person to be cleared as far as the “Record Check” requirement is concerned.
- b. Many of the hiring agencies who conduct background checks for the cruise lines are on paid commissions when they place employees on cruise ships. In short, there is no incentive for these agencies to keep bad candidates off a cruise ship if they are otherwise equally qualified for the position, and on more than one occasions, bribes have worked to corrupt police agencies to include unworthy candidates on the hiring roster. For these hiring agents, it is simply a matter of supply and demand, and any prospective shipboard employee can be made to look good on paper, especially when the lax visa requirements levied by the U.S. State Department are met.<sup>17</sup>
3. **Limited Resources:** Another concern comes from the limited type of background checks that can be performed in countries like Nicaragua, Trinidad, or India. These countries do not have computerized databases for driver’s licenses or social security numbers much less a database for criminals or a tracking system for sexual predators or other criminals like the National Crime Information Center (NCIC) database in the United States.<sup>18</sup>

**VIII. Cruise Ships and CCTV**

1. **Force Multipliers:** Mega-cruise ships are big places to watch over, and because they are so big and operate in a unique environment i.e., the sea, they present complicated problems with regards to ensuring passenger safety. While every ship has employees assigned to the security department, there are simply not enough security personnel to adequately watch every corner of the ship and keep an eye on the thousands of passengers. Mega-cruise ships which now have passenger loads exceeding 2,500 typically have between 15- 18 fulltime security ratings with one or two security officers. Thus, cruise ships need *force multipliers* to provide for a more secure ship environment. One of the ways they accomplish this is through the use of surveillance by closed circuit television cameras otherwise known as CCTVs.
2. **Expansion:** Gary Bald is the senior vice president and chief global security officer for Royal Caribbean Cruises Ltd., the parent company of Royal Caribbean International and Celebrity Cruises. Bald has said that Royal Caribbean has always had security cameras on its cruise ships. In recent years, the company has greatly expanded the number of cameras due to the growth in its ships, in some cases adding hundreds more to each ship. Royal Caribbean’s *Freedom of the Seas* for example, has rooms for more than 3,600 passengers. According to Bald, the ship has between 700 and 800 CCTVs.<sup>19</sup> Recently, P&O Cruises Australia made a similar statement regarding the use of CCTVs on their fleet of cruise ships in Australia.<sup>20</sup>

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3. **Purpose:** While there are robust numbers of CCTVs on cruise ships, there appears to be no real statement for their use and purpose. CCTVs used in the security industry, are primarily for crime prevention and client safety. Yet although there are large numbers in use on cruise ships, there is no clear understanding for the sea-going public whether the CCTV systems are installed to protect them, or the cruise lines. Ms. Anne Sherry of Carnival Cruise Lines Australia in her testimony said she “thinks” the focus—and the reason for having so much CCTV—is actually on early intervention (in the case of responsible serving of alcohol) although she does not mention how the CCTV systems are used in that process.<sup>21</sup> Some of the common uses of CCTV systems on cruise ships could include passenger safety in the area the responsible serving of alcohol, although that is more the function of alert bar tenders and servers rather than CCTV systems. Another use would obviously be crime prevention. The presence of security cameras throughout a cruise ship work to deter theft and other acts of crime, and can also help investigators by providing detailed video footage of such incidents.
4. **Uses:** There have been a number of high-profile cases involving missing persons on cruise ships. Though cruise ship surveillance would seem to be an effective tool in solving cases involving lost or abducted individuals, their use thus far has been limited at best. (See sub-paragraph 10 below). CCTV should also help to reduce liability - the visual evidence provided by surveillance cameras can reduce liability in cases involving crimes, accidents, and other incidents on board a cruise ship, this includes monitoring employees. Utilizing security to cameras to monitor employees helps to improve employee operations and training. Security cameras are installed to help reduce losses in onboard casinos, retail shops and other areas throughout a cruise liner. CCTV cameras are used watch cash registers, (*at the purser’s desk where cash and credit cards are accepted since the rest of the ship is cashless*) and to catch dishonest employees stealing from the till.
5. **Emphasis:** If there is a great emphasis placed on the use of CCTVs for the safety of the passengers, then it would be a company bragging point for its clientele- i.e., passengers, and to Congress to spotlight those systems and their virtues. Sadly, that has not been the case. In his written testimony which VP Gary Bald presented to Congress on September 29, 2007 extolling the sweeping security reforms either having been implemented or in progress at Royal Caribbean Cruise Lines up to that time, the number of times that CCTV was mentioned by Mr. Bald amounted to zero.<sup>22</sup> In testimony before the House Committee Hearing on Crimes at Sea, the term “CCTV” was mentioned only four times with little detail on its use in crime prevention.
6. **Retention:** At the same congressional hearing which VP Bald submitted written testimony, questioning by the sub-committee on CCTVs was a little more direct. Congressman Elijah Cummings (MD) asked if the surveillance cameras are monitored to which Bald was very blunt. “The monitoring is a different challenge. That is one of the ones on Ms. Dishman’s list<sup>23</sup> that I can’t tell you I am moving forward on right now. The challenge there is we have over 650 cameras on some of our ships. To monitor all of that full time is a monstrous task, plus you bring into consideration the attention span of the people that are actually sitting at the monitor. What I need to understand, is there certain cameras that I need to monitor that are more important than others, and then look at whether or not we can effectively deliver that capability. I just don’t simply have enough internal information to be able to commit to doing it today.”<sup>24</sup>

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7. **Retrieval:** There were other shortcomings concerning the use of CCTVs that the Sr. Vice President was asked about by other Committee members. Congresswoman Corrine Brown (FL) wanted to know about the retention process on the cruise ships. Retention is the process or policy relating to the how long the video data is kept onboard the ship. Gary Bald responded that “the retention process is a challenging one for us from a technical standpoint.” He said that... “It is not a problem for us at all *if* we know that there is an incident that has occurred. We have a mix of analog and digital cameras with digital recorders now. The cameras we are adding are digital, but the volume of material that is captured in a digital recording is very, very large. And so, there is a limit to how much storage capability we have onboard.” Pertinent to this discussion of cruise ship victims is what Mr. Bald said next in relation to the problem of retention. “Where we will be challenged is if someone comes forward perhaps, say, six months later and says that [they] had an incident onboard. I, frankly, think we will not find video that will have captured that. However, for the immediately reported incidents, that is not going to be a problem.”<sup>25</sup>
8. **Monitoring:** The answers by the Sr. Vice President for Global Security at Royal Caribbean to the Sub-Committee’s questions illustrate some inherent problems with CCTV systems in general and specifically in regards to cruise ships. While there are valid reasons for the use of CCTVs on cruise ships, one of their primary concerns is that they are not monitored by security personnel. As Gary Bald stated in his oral testimony before the subcommittee, to accomplish the physical monitoring of over 600 cameras is a monstrous task and calls into question the attention span of the personnel assigned to the task. Monitoring of CCTV cameras is the process by which video feed is sent to a specially designed room where TV monitors receive the live images and personnel are assigned to watch the images for security incidents, safety breaches, or emergency alerts such as fire or flooding. As opposed to areas of the ship which can be monitored by other types sensors which include heat and flooding sensors or a temperature gage which sound alarms when they detect a rise in temperature, live video requires the judgment of a human resource to determine the nature of the alarm.
9. **Value:** Other than crime deterrence, CCTV has no real time value if it is not monitored. The thought of surveillance cameras typically is enough to deter individuals from committing criminal acts or sabotage if they believe that their identity – and proof of the crime – is being watched by security personnel and possibly recorded. Thus, deterrence, at least from criminal acts can be gained from the mere presence of CCTV cameras, but do they prevent crimes in progress or prevent accidents if no one is watching them? If we are to believe Gary Bald of RCCL, then the answer is no. If we also look to the record of the cases where CCTV should have prevented the tragic loss of life or at least provided clues to what happened, then the answer also would be no.
10. **Daniel DiPiero:** One of those cases involved the excessive use of alcohol which contributed to the loss of a young man on a cruise ship, whose last moments were captured on a CCTV recording system. 21 year-old Daniel DiPiero was reported “missing” from Royal Caribbean’s *Mariner of the Seas* on May 15, 2006. The tragic case is similar to the death of Lindsay O’Brien. In January 2006, 15 year-old Lindsay O’Brien fell to her death off the Costa cruise ship *Majica* off the coast of Mexico after being served alcoholic drinks over a two hour period. Costa Cruise

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Lines investigation downplayed the significance of serving alcohol to a 15 year-old girl and then claimed her death was the result of her own suicide. It seems hard to believe that any reasonable person, outside of the cruise lines, could believe that a teenager or a young adult, who has been served an over-abundance of alcohol in the environment of a cruise ship is not a danger to themselves, especially when he or she are leaning over a precariously short ship's railing, vomiting into the sea.

- a. The over-indulgence of alcoholic beverages by cruise ship passengers on a carefree holiday has led on more than one occasion to safety related accidents onboard ship, physical and sexual assaults, and even the unfortunate death of passengers who have fallen over the ship's railing while becoming sick after consuming too much alcohol. While most adult passenger are responsible enough to control their drinking activities as they would in any other social setting, many other passengers, including juvenile underage drinkers are the most vulnerable to the party-like environment of a cruise ship where alcohol is virtually available, 24 hours a day. The case of Daniel DiPiero signifies the tragedy of cruise ship over-indulgence in alcoholic drinking and that the fact Daniel Dipiero's last moments were captured on the ship's closed circuit television system (CCTV) but to no avail in saving him from simply, falling off the ship.
- b. Daniel, (who was of legal age to drink on the ship) after a night of drinking with his friends in one of the late night bars, apparently had reached his limit and wandered out of the bar alone and collapsed on the nearest deck chair on the fourth deck above the main deck. The time was just after midnight. The last few hours of Daniel's young life were recorded there on video cameras, on a lonely and deserted cruise ship deck. The same surveillance camera that recorded his falling overboard also recorded his precise activity prior to that. The video observed him awakening around 2:15 a.m. walking over to the railing, apparently vomiting, and then sliding over the rail into the sea.<sup>26</sup>
- c. The ship's security did not have a roving deck patrol on the weather decks, especially around the time when most of the bars and discos on the ship were closing up for the night. The sight of a young man, obviously passed out from over indulging in alcohol surely would have caught the attention of a passing security patrol, or even other guests as they strolled past him, especially over a two hour period during which he laid unconscious in a deck chair on the fourth deck. The DiPiero family later found out, that no one was actually watching the extensive CCTV camera network aboard ship. If someone had been monitoring the ship's CCTV's, a deck patrol would surely have been dispatched to check on the status of a passenger asleep on a weather deck at night. According to the DiPiero's, the two hour video containing the footage of Daniel falling asleep on the deck chair and then falling over the side had been "edited" by the time they were shown it. One would suspect any footage being cut from a piece of evidence has to be suspect, especially if it contains images of the death of a passenger. What did the two hours of video contain? The cruise line refused to make the video public even though they say the FBI and Coast Guard investigation validate that Daniel DiPiero simply fell off the ship. Modern CCTV recording systems have event triggers that are only activated when activity is actually captured. In other words, it is quite possible that the

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CCTV video that recorded Daniel DiPiero lying down on the deck chair on the fourth deck sometime after midnight, and appeared “edited” did not activate again until he awoke and moved toward the railing. But these facts were not revealed by the cruise lines as to what type of CCTV recording system they have onboard. The cruise lines did however acknowledge that they did not monitor the CCTV cameras.<sup>27</sup> This begs the question: What good are these systems to protect passengers and crew from the dangers of the shipboard environment?

11. **U.K. CCTV Study:** While cruise ships boast of the use of CCTV surveillance systems for crime prevention, it is not that clear as to whether CCTV has any noticeable effect on crime or the safety of the passengers. With regards to crime, a notable study conducted in the United Kingdom in 2002 seems to confirm that the use of CCTV as a cornerstone of several crime prevention schemes (e.g., public transportation, car parks, public housing, and residential areas) had little or no noticeable effect on the reduction of crime. The report had two main objectives: (1) to report on the findings of a systematic review – of the available research evidence on the effects of CCTV on crime, and (2) to inform public policy and practice on preventing crime through the use of CCTV interventions. The report concluded that in Britain, CCTV is the single most heavily funded non-criminal justice crime prevention measure. Over a three year period between 1999 through 2001, the British government spent £170 million (about \$240 million U.S. dollars today) for “CCTV schemes in town and city centers, car parks, crime hot-spots and residential areas.” During that time there was considerable debate about the effectiveness of CCTV in preventing crime and, hence, on the wisdom of devoting such large sums of money to one type of intervention.<sup>28</sup>
  
12. **Future Use on Cruise Ships:** Exactly what the optimal circumstances are for effective use of CCTV schemes is not entirely clear at present, and needs to be established by future evaluation research.<sup>29</sup> The most relevant statement that comes from the UK study however is contained in the following passage: “future CCTV schemes should be carefully implemented in different settings and should employ high quality evaluation designs with long follow-up periods. They should also attempt to establish the causal mechanisms by which CCTV has any effect on crime, by interviewing potential offenders.”<sup>30</sup> Thus far, no scientific study on the use of CCTV systems on cruise ships has been undertaken to determine if they provide any measure of deterrence or impact on the level of crime on cruise ships. At best, CCTV’s provide a reliable way to vindicate the cruise ship of culpability in an onboard crime or accident if it can be clearly shown that the incident was not the result of cruise ship negligence. At worst, CCTV’s are a convenient alibi when they seem to not be working on the day and time in question or do not cover the area in question. Because the cruise ship controls the access and authority over these systems, they have the final word on what is, and what is not contained on them and what was considered evidence. Thus, the 2010 CVSSA (and its revisions) focused diligently on this misunderstood, but important piece of security equipment on cruise ships.

**IX. Missing Persons on Cruise Ships**

1. **Accident, Foul Play or Suicide:** The crime statistics of any city should yield an indication of the safety of its citizens. However, whereas most cities do not count missing person reports as “crimes,” unless foul play is determined to be involved, a missing person most certainly must be counted in a special category on a cruise ship. After all, the missing person is no longer on the cruise ship. Unlike a city or town where a missing person report is disturbing, there is still a possibility that the missing person may show up at point in the future or somewhere else.<sup>31</sup> If a passenger or crewmember were present and accounted for when the ship set sail from the last port of call, and then is reported “missing,” and when efforts to locate the person on the ship fail, there can only be one possibility; they went overboard and are now “lost at sea.” In any case where a note was not found which indicated that the person voluntarily chose to end their life by jumping off the ship — then what has occurred is “an unattended death.” Such deaths occurring under mysterious circumstances warrant a criminal investigation to determine if the death was the result of an accident, suicide, or foul play.
  
2. **David Ritcheson:** A passenger who jumps off a cruise ship at sea is not a new phenomenon and suicide is certainly a possibility despite how robustly these ships are designed. People who choose a cruise ship to end their lives usually have a motive which surfaces at some point in the investigation such as a note or, a motive is uncovered which indicated that circumstances in their life, especially prior to boarding the ship led to their decisions. In a sad example of pre-mediated suicide, the victim of a notorious hate crime in 2006 chose to end his young life by jumping off a Carnival cruise ship while on a Caribbean cruise.
  - a. David Ritcheson, an 18 year-old Hispanic teenager was brutally attacked by so-called white supremacists including being kicked in the face, and sodomized with an umbrella. Three months before booking a cruise on the Carnival cruise ship *Ecstasy* in July 2007, Ritcheson had testified before members of a House Judiciary subcommittee how he was left for dead after the violent hate crime. Later, Ritcheson said in an interview that he was still struggling with being the victim of that hate crime. He said he did not want to “stand-out.”<sup>32</sup> Ritcheson who was traveling on the cruise with several friends was seen by many people leaping over the railing from the upper most deck of the *Ecstasy* cruise ship. The ship's crew pulled the body from the water and he was pronounced dead.
  
  - b. Although the ship was several hundred miles out to sea headed for Cozumel, the body remained onboard the ship for the remainder of the cruise and was removed and claimed by the family upon the ship’s return to Galveston, Texas.<sup>33</sup> Unconfirmed reports from a young female passenger stated she overheard the victim speak of jumping off the ship the next day. It was not clear if that threat was passed on to ship’s security.<sup>34</sup>
  
3. **Prevention:** Whether or not Ritcheson actually planned his suicide in advance or actually discussed it with others remains unclear. What is clear is that this sad and troubled young man certainly had a motive for taking his own life, and the dizzying heights of a cruise ship deck presented a convenient and viable opportunity to carry out his act. What is more distressing

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however in this examination is that modern cruise ships have no suicide prevention programs, no personnel trained in suicide intervention, no intervention assistance that an individual contemplating suicide can call or turn to in a moment of reflection before jumping over the rail. Ships have no telephone numbers affixed to balconies and railings to call for suicide intervention (like there are on many high-profile bridges) nor do they have posters in the ship's public areas advertising where to turn to for intervention, nor is suicide prevention a topic for the ship's literature in staterooms. Such prevention would seem obvious considering the history of known suicides on cruise ships such as David Ritcheson. Thus, unless this issue is addressed in more robust terms, cruise ship suicides probably will continue, especially as the ships crowd larger numbers of passengers onto the new mega-cruise liners and fewer security personnel are available to respond to potential jumpers.

4. **Rush to Judgment:** Another point relevant to cruise ship criminal investigations is not so much that people commit suicide on cruise ships or that the numbers or disappearances off cruise ships are increasing, but rather the use by the cruise industry of "suicide" to account for the majority of man-over boards" from their ships. There is an obvious "rush to judgment"<sup>35</sup> by the cruise industry in cases where a passenger (or crew member) mysteriously disappear from one of their ships before all the facts are collected or even investigated by competent law enforcement. After all, according to the cruise industry, what other explanation could account for someone being reported as missing on a cruise ship when they are reportedly so safe and robustly designed? No one, according to the cruise industry, could accidentally fall off a modern cruise ship. Cruise lines are quick to issue press statements after a passenger is discovered overboard which they then label as "suicide." These are veiled attempts to get out in front of the media interest which is sure to follow in such cases. The cruise line's public relations department is in effect attempting to sway public opinion about the safety of their ships. According to them, death or injury from going overboard (or the report of someone missing at sea) could only result from the intentional act of throwing oneself off the ship. As was noted in the case of David Ritcheson, these incidents do occur and there is little doubt when there are eyewitnesses who actually saw the victim leap to his or her death. But what should the response of the cruise ship when there is only a report of a missing passenger (or crew) and no one saw the victim jump off the ship and there was no indication that the victim had discussed killing themselves previously or had left a suicide note? Surely the possibility of foul play or an accident cannot be ruled out.
5. **Amber Malkuch:** On August 3, 2009, 45-year old Amber Malkuch disappeared from the Holland America cruise ship *Zaandam* during an Alaskan cruise. Before any facts had been collected by the Alaskan State Troopers or the FBI had been called in to investigate, Holland America and the Cruise Line International Association (CLIA) arbitrarily issued a press statement the following day after she disappeared on August 4, 2009 stating that Amber "probably" took her own life. "Based on evidence and information to date, it does not appear to be foul play," spokeswoman Sally Andrews said from Seattle. "From what we have seen to date, it appears to be a suicide. Of course, the final determination will be made by the investigating authorities with whom we are cooperating fully."<sup>36</sup>

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- a. To the cruise line's delight, other major news networks followed with the CLIA's and the cruise line's take on the missing girl's fate and reported the story as simply another cruise passenger who committed suicide on a cruise ship. This infuriated the Alaskan State Troopers who had not even begun to identify witnesses and inspect the cruise ship for clues. The cruise line's comments on the alleged suicide of Amber Mulkuch prompted a response from the Alaskan State Troopers who had not even begun their investigation because the ship had not yet docked in Sitka, Alaska, the next port on the itinerary. "We still have to do our investigation, and we're not going to make any guesses at this time...It is too premature to label it anything but a death investigation. Suicide is certainly a possibility, but we need to investigate and we need to make sure."<sup>37</sup>
  - b. In a later statement, another Alaska State Trooper spokeswoman issued a more blunt response to the cruise line's conclusion of suicide as the cause of death. "We're the people actually looking into the exact cause of death," said Alaska State Troopers spokeswoman Megan Peters. "We're the ones doing the interviews and looking at the evidence...And if we haven't been able to make a determination, how can the cruise ship line that isn't trained?"<sup>38</sup>
6. **What's at Stake:** These examples serve to illustrate both the importance of investigative law enforcement judgments in cases of missing persons. Insurance, liability and the victim's legacy (to their family and friends) are at stake. These are not matters for cruise line spokespersons to determine with their quick and uninformed press statements. Sadly, the history books are filled with examples such as Amber Malkuch where the cruise lines' spin the facts to serve their own purposes, e.g., product integrity, cruise ship safety, consumer confidence, etc.

**X. Sea Marshals**

1. **Legal and Jurisdictional Issues:** During testimony, the issue of "Sea Marshals" came up many times. Predictably, the cruise industry spoke against the idea of placing anyone with law enforcement authority on cruise ships for a variety of reasons. There are of course, many roadblocks to effectively implementing a Sea Marshal program on cruise ships. There are many questions to be resolved such as how to actually proceed with an investigation when someone with law enforcement authority is onboard. For example, if a passenger or crewmember is suspected of a crime based on testimony of the victim or a witness, or from evidence collected, or from the CCTV footage of the alleged incident, is the alleged suspect arrested and placed into custody and if so, where is he or she placed on the ship? Is the alleged suspect prevented from leaving the ship at the next port of call? Is the alleged suspect advised of legal rights and if so, whose civil / legal rights are used: Australia? the flag state? the suspect's or victim's country? the country where the cruise ship will next make port? These are complicated jurisdictional questions which only touch upon the complexity of crimes committed at sea and illustrate the need for a more standardized approach to crime on cruise ships and other vessels. Anytime crime occurs, whether it is on land or at sea, the response has to include those with law real enforcement authority as part of the first responders. In strictly legal terms, the matter should not be decided

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by the cruise lines themselves due to their attachment and stake on the outcome, be it civil or criminal liability.

2. **Impartialness:** Although an onboard security officer may be recruited for past military or law enforcement experience, and may be trained in the art of criminal investigation using the methods supplied by the cruise lines, the officer has no authority in any official criminal investigation. Impartiality is not implied when trying to determine a suspect's alleged guilt or innocence, what the victim may or may not have done prior to the crime, or to what extent the cruise ship's security policy or management was responsible. Security officers could be placed in a position of being called to testify in court against their employer if the evidence he or she collected at the alleged crime scene is allowed to be introduced into a court of law. This is even more crucial if the prosecution can prove that the alleged crime took place as a result of the cruise ship or cruise line's negligence. On the other hand, since the fleet security officer is presumably the first to collect evidence and/or interview witnesses and suspects, the defense for the accused (suspect) will undoubtedly try to impeach (discredit) the evidence collected by the security officer and/or their security training in crime scene investigations.
3. **There is no 911 for crimes at sea:** When criminal activity occurs on land on property guarded by a private security company, security guards ashore inherently call the police, or 911; cruise ship security guards however are inclined to call the corporate office with predictable results.
  - a. Even if cruise ships security personnel could "call" 911, these ships at sea are at a best, hours away from any law enforcement response. Law enforcement may be hours, if not days away and even then, are probably inclined to decline assistance. Thus criminal activity at sea in whatever proportions one chooses to accept must be dealt with at sea. Is it fair to ask an [security] employee of the cruise line (although trained, but unlicensed and without authority) to be responsible to the victim and/or suspect for outcome of a criminal investigation?
4. **Level of Training:** During testimony, Mr. Giglia, Director of Security for Royal Caribbean Australia, indicated that the training for their security officers and security personnel ranges from one to 32 modules. Each module he indicated could be from one to 16 hours. A chief security officer may have to take up to 48 modules and that these courses are prescribed by legislation or company policy. With regard to criminal investigations, Mr. Giglia did not make any mention of what the course content of any of these modules was, and how many modules (if any) teach investigative techniques to collect evidence and preserve crime scenes, take witness, suspect and victim statement, etc. Thus, while the number of modules required for their security personnel may sound impressive, the amount devoted to the subjects noted above actually amounts to approximately 3.0 hours. This is based on the fact that as Mr. Giglia mentioned, that they are currently using the "Model Training Course" developed by the FBI, USCG and Maritime Academy. The bulk of material in the Model Training Course is devoted to security surveys on the ship, screening of passengers, security administration, security equipment and setting appropriate MARSEC levels on the ship.<sup>39</sup> (See section XIV below for a discussion of the model training course).

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5. **Off Duty:** Ms. Ann Sherry, Chief Executive Officer, Carnival Australia, in her testimony before the Committee, provides her reasons, she (and presumably Carnival Cruise Lines) does not believe the idea of Sea Marshals, would work in the Australian cruise Market. She states that: “...for a number of years we had New South Wales police officers who were *off duty* or on leave travelling on the ships as marshals. It was agreed though after a three year period that it was not working for us, or for the New South Wales police. This was for a couple of reasons. One is that *the longer people are on the ship, the less they are seen as independent anyway*. They are part of the dynamic of what is happening on a ship. So they became relatively ineffective for want of a better description.”<sup>40</sup>
  - a. This could be interpreted to suggest a number of things. First, it might imply that off duty policemen (from New South Wales) enjoyed being on the cruise ship more than they appreciated the reasons they were there on the ship in the first place. With all due respect to the professionalism of the male and female Officers of the New Wales Police Force, it is unfortunate that Ms. Sherry suggests, “they became too attached to the cruise life were probably not taken seriously by crew who came to accept them as one of their own.” Indeed, the Chair for the Committee made light of this fact after Ms. Sherry stated they discontinued the practice, “I bet there were some heartbroken New South Wales Police after that!”<sup>41</sup>
  - b. Another interpretation of Ms. Sherry’s statement might be to suggest that just as the New Wales off duty policeman became relatively ineffective “*for want of a better description*” was because as she stated, the longer they were on the ship, the less independent they were seen as. If we are to believe this, could the same not be said of shipboard security personnel? If they are not there to serve the dynamic purpose (of security and law enforcement on the ship) as she states, then how effective might they be seen in a real criminal investigation where lives have been injured or property stolen or destroyed?
  - c. Fortunately, Ms. Sherry answers this question later in her testimony by stating that “*they were not on duty, because they had no formal jurisdiction* (to wear a police uniform)... trained security staff on board—who are clearly identified as security staff, who are ship's officers and who have more authority on the ship than someone who says, 'I'm a police officer on holidays', which is essentially how it felt.”<sup>42</sup> The Carnival experiment must be commended however in the context of problems associated with “schoolie cruises” and the death of Dianne Brimble many years earlier.
6. **On Duty:** Placing “*off duty*” policemen on any cruise ship was bound to fail. What Carnival should have done was to place “*on-duty*” policemen on their ships and ensure that their duties do not conflict with the regime of the ship or crew. In fact, that is exactly what the U.S. Navy does, by placing civilian law enforcement officers of the Naval Criminal Investigative Service (NCIS) on board its fleet of nuclear aircraft carriers which remarkably, have a crew *smaller* than that of the Royal Caribbean’s *Oasis of the Seas* or *Allure of the Seas*.
7. **At Sea Police:** On U.S. aircraft carriers, male and female ratings are mixed together in tight and stressful quarters, and although this is military maritime environment, the NCIS Special Agents

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investigate more criminal cases on a regular basis than any modern cruise ship does including sexual assault, rape, drug smuggling and drug use, theft, crew violence, terrorism and force protection incidents. NCIS Special Agents who serve aboard ships at sea do so voluntarily for a twelve month period. They are instrumental to the Navy's force protection efforts, counter-narcotics, and crime prevention programs.

- a. Obviously, jurisdiction is not the question for NCIS agents on military vessels. Jurisdiction however is something Mr. Giglia sees as a stumbling block in his arguments given in his testimony for Sea Marshals. He stated that "it would be difficult to get the various governments to agree that one particular person has jurisdiction in all of their territories."<sup>43</sup> This may be true, but it is not impossible to achieve and could be addressed through memorandums of agreements worked out between the different Australian jurisdictions just as it was proposed under the Ocean Ranger imitative offered in California. (see sub-section 9 below)
- b. A second point Mr. Giglia makes about Sea Marshals is that he believes the Captain (Master) of the ship, through maritime tradition is ultimately responsible for the safety and security of the ship. While no one would argue the jurisdiction of the master of the ship to protect the ship, in the matters of criminal investigations, he is not considered the expert unless he happened to be a former policeman. The Captain of a ship has a multitude of other responsibilities including safe navigation, environmental controls and restrictions, efficient operation of the propulsion plant and so on. All of these factors are important to the "safety and security" of the ship. The Captain depends on a number of officers and trained personnel to advise him on the status and operations of the ship in these matters. (In fact, the security officer on many cruise ships reports to the Staff Captain - second in command - in matters of security and not the Master.) Although the Captain may have had actually served as the chief engineer or navigator on another ship before becoming the Master, in the area of security, he must rely on the professionalism of his chief security officer and will defer to him on matters of investigative processes, or the recommended security precautions to protect passengers and crew on the ship.
- c. A Sea Marshal would not interfere in these processes but compliment the efforts of the onboard security team. If and when a criminal matter rises to level where arrest or detainment is needed, or the need to preserve a crime scene or collect evidence involving crimes for which the law enforcement officer (LEO) has clear jurisdiction (as was the case in the Dianne Brimble), then he would act in the capacity as a "first responder" much like a policeman would do when being dispatched to the scene of a crime on land. Returning to the example of the NCIS, on ships where they are assigned, the NCIS Special Agents do not get involved where the ship's security officer or Master at Arms has jurisdiction and authority over violations of the UCMJ (Uniform Code of Military Justice). These might be incidents which could be classified as misdemeanors in civilian criminal codes. Certain crimes listed in the UCMJ are considered "felonies" and this is where the NCIS gets involved.<sup>44</sup>

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8. **Air Marshals:** The final point to make about the possibility of Sea Marshals is to understand that such programs do exist in the aviation industry, around the world. In commercial aviation, the need to protect airliners led to the creation of the Air (or Sky Marshals in Australia). Establishment of such programs by governments and airlines around the world are operating with professionalism and success. Sky Marshals may be provided by airlines such as El Al (who provide sky marshals on every flight), or by government agencies such as the Austrian Einsatzkommando Cobra, Royal Canadian Mounted Police, German Federal Police, National Security Guard in India, Metropolitan Police SO18 (Aviation Security Operational Command Unit) or US Federal Air Marshal Service. In Australia, the Commonwealth instituted an Air Security Officer (ASO) Program under the Australian Federal Police in December 2001.
  - a. Issues of international jurisdiction and governing responsibilities during emergencies in flight are carried out by Sky or Air marshals. Mr. Mooney stated in his testimony that these officers (however) only act in a purely defensive nature, that is, when the flight is in danger of being skyjacked, or in cases such as the “shoe bomber.” They can play a more visible role when other incidents occur on the aircraft (such as violation of federal law), but do not get involved with issues that clearly the captain of the aircraft has jurisdiction in such as unruly or drunken passengers or where a passenger fails to obey the Captains safety warning, etc.
  - b. While the maritime jurisdictional issues are tricky and complicated, such agreements can be worked out through bilateral agreements or through international treaties. Although this might be beyond the scope of the Australian Parliament’s intent in overseeing the issue of crimes at sea, such remedies are already in place in the United States where “Sea Marshals” from the U.S. Coast Guard board ride ships of “High Interest Value” (such as cruise ships), during periods of increased vigilance due to terrorist threats or suspected criminal activity like drug smuggling in the territorial waters of the United States.
9. **Ocean Ranger Initiative:** Anytime crime occurs, whether it is on land or at sea, requires those with law real enforcement authority to be the recognized first responders. This idea was first presented to the California Legislature in 2008 by state Senator Joe Simitian under the “Ocean Ranger” initiative. “On board security works for the cruise line -- not for the passengers and not for the public,” Simitian said in support of the Bill. “There’s an inherent conflict of interest between the public relations goals of the employer and the public safety requirements of the passenger.” ICV agrees with the position that cruise ship security personnel, despite their training and initiative in protecting cruise ship passengers and crew members are inherently biased in their orientation towards protecting the cruise ship and cruise line interest first, over the interests of its passengers and crew. Simitian went on to say that “We’ve got air marshals on planes with a couple hundred passengers, but we’ve got no one on board the cruise ships with 10 times the number of passengers.” In response to heavy cruise industry lobbying in California against the Bill, the initiate was narrowly defeated in its final legislative vote.<sup>45</sup>
10. **First Responder Capability:** A comprehensive program to place law enforcement officers on cruise ships ultimately will ensure that passengers and crew members are guaranteed professional law enforcement coverage when criminal activity occurs. It guarantees an impartial “first

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responder” that is capable of stabilizing a criminal situation to protect life and limb, collect evidence, interview witnesses and organizes investigative responses in conjunction with his or her parent law enforcement agency. Victims of crimes at sea are more often than not, faced with the prospect of a civil case instead of seeing justice served in a criminal court because criminal charges are never brought. Regardless of whether a criminal or civil case is initiated, the victim and/or the suspect should expect that the evidence for or against the prosecution or defense, was taken by someone directly involved with its collection and not what the cruise ship, or corporate office says it is. Cruise lines have the inherent position to protect their position in a civil case for obvious reasons. In a criminal case, where the cruise ship did everything possible to prevent the crime, tainted evidence should not stand in the way of a competent, professional and transparent investigation. Sadly, this is the case in many instances.

**XI. Prosecution and Litigation**

1. **Lawyers:** Unfortunately, victims of crime at sea range from as Congressman Shays points out, “from the petty to the profoundly tragic.” While hundreds of thousands of cruise ship passengers come and go from their cruise ship vacations with nothing but fond memories, so too are the few who experience criminal and sexual assaults, burglary, theft, among others. With the end of their cruise vacation are exhaustive and shocking legal lessons in the rights they so innocently waived when they embarked on their “risk free” vacation. With limited assistance from their cruise line hosts in seeking redress for alleged criminal acts or injurers they sustained, the victims instead must turn to defense lawyers for help in addressing their complaint.
2. **Prosecution:** Sadly, because these crimes at sea are routinely declined for prosecution by the FBI or local jurisdictional authority, usually because there is no evidence to collect or even a crime scene to investigate, a victim may find that they have no case, no venue, and no hope to bring the guilty party or parties to justice. Settlements to victims or their families are normally the protocols of the cruise line corporate office in the most egregious cases. Rarely, have those responsible for the criminal act, been prosecuted for violations of U.S. or international criminal codes. Even rarer is any criminal prosecution for negligence at the corporate level that resulted in the death or injury of cruise ship passengers. Most of the litigation that maritime lawyers engage in focusses on torts, *i.e.*, suing the cruise lines for monetary, compensative and/or punitive damages for the wrongs the victims and/or their survivors have endured or alleged to have been subject to. If out of court settlements do not settle the issues, then the victims, through their lawyer, take their case to court. Sometimes the victims win, and sometimes, the cruise lines after a fierce defense by their corporate counsels, prevail.
3. **Voluntary Reporting:** According to the Federal government during testimony in 2007 before the House Subcommittee on Coast Guard and Maritime Affairs, there is little reliable data on the number of crimes that occur on cruise ships. Under the pre-existing federal regulations, cruise ships were not legally required to report crime occurring on their ships unless they occurred within the twelve mile territorial waters of the United States. Since 1999, cruise ships “voluntarily” reported crimes occurring on their ships to Federal Bureau of Investigation (FBI).<sup>46</sup>

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Remarkably, the FBI, at the time of the hearing before the house subcommittee disclosed that it did not keep reliable data on the crimes reported by those same cruise lines.<sup>47</sup>

4. **Prosecution Record:** The FBI stated that it maintained only records on open cases which were reported by the cruises lines, a figure they disclosed as averaging between 50 – 60 cases a year.<sup>48</sup> In reality, in the previous five years in question (2002 – 2007), the FBI opened 184 criminal cases aboard cruise ships, mainly involving physical and sexual assault.<sup>49</sup> However, the FBI had a dismal track record when it came to the actual prosecution of crimes on those cruise ships, especially those related to sexual assault. Only 7% of the 135 federal investigations into sexual assault over those five years were ever prosecuted. What happened to the remaining 93% of the cases? “They were dropped,” said Bill Carter of the FBI: “By the time we can get to [the victim and witnesses], a period of time has passed, people's memories change, they were intoxicated, or there is a lack of evidence because it was cleaned.”<sup>50</sup>
5. **Cherry Picking:** If the FBI has no data on the number of cases being reported but only cases that they actual investigate, it leaves one to assume that the cruise lines are free to decide, what crimes meets criteria for “reportable” crime. This takes on the appearance of “cherry picking” in the eyes of advocacy and victims groups who believe that all crime be reported, at least for statistical purposes, regardless of the “validity” of the incident, or whether a case was opened (for investigation), or what the citizenship of the passenger, (or crew) was. For certain crimes, the FBI is under obligation to investigate when they occur at sea (regardless if they occurred on a cruise ship) when they fall under the United States Title 18, Criminal Codes. Some of these crimes would be misdemeanors if committed on land (that is, one could receive a sentence of up to one year incarceration). But because they occur at sea, outside the twelve mile territorial water limits of the United States, the FBI may claim jurisdiction to investigate, as opposed to state or local law enforcement because state and local law enforcement have no jurisdiction to investigate crimes on the high seas. Crimes for which the FBI may investigate include: arson, assault, embezzlement, receiving stolen property, murder, manslaughter, robbery, burglary, stowaways, aggravated sexual abuse, aggravated sexual contact, sexual abuse of a minor, abusive sexual contact, transportation of persons for illegal sexual conduct/activity, and the more obvious cases of terrorism and incidents involving weapons of mass destruction (WMD).<sup>51</sup>
6. **CSI:** This list of crimes, for which the FBI may claim jurisdiction may seem impressive to the casual observer, who believing that if one of these crimes were to occur on a cruise ship, the FBI would immediately dispatch a flying squad of “*CSI*” or crime scene investigators, to professional collect evidence, and start to process the crime scene. This is where the myth of television *CSI* drama begins to break down.<sup>52</sup> In reality, even if it were possible, within the territorial limits of the United States, to get an FBI agent to the ship, normally, the agent would board when the ship makes its next port of call. This could be a day, or longer depending on the itinerary of the cruise ship. In serious instances, such in the case where murder is involved, the ship may be diverted to the nearest available port of call to board the investigative team. But typically, after initial reports are passed to the FBI, jurisdictional prosecution may be, and is routinely declined due to a lack of prosecutable merit which means that there was a lack of evidence (in the form of witness

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statements, physical evidence or even the questions and legality of the what evidence was collected.

1. **The U.S. Attorney:** The FBI, as well as other federal agents faces similar difficulties when attempting to present a criminal case to the U.S. Attorney, and/or the Assistant U.S. Attorney (AUSA) in a Federal district with venue for the case. With respect to cruise ship crime, this may be the next port of call, or the embarkation port in the United States. The U.S. Attorney has little interest in pursuing criminal cases which does not meet the thresholds established by the U.S. Attorney or in cases that the federal government knows it cannot win due to lack of evidence. In other words, the federal government is only interested in prosecuting cases it believes it can win, or which has crossed certain thresholds established in memorandums of agreements (MOAs) with the investigative agencies be they local, state, or federal jurisdictions. For example, the FBI, in investigating theft at sea will only present a case to the U.S. attorney in instances in theft of \$10,000 or more.<sup>53</sup> Sometimes the crimes' notoriety will prompt the FBI to get involved or at the request of Congress as in the Case of Laurie Dishman or George Smith.
2. **Litigation:** Because maritime law is so complicated with multiple jurisdictional facets, it is only natural that courts have taken a leading role in cases involving victims of incidents aboard ships. While criminal prosecution of crimes on cruise ships is rare, victims of crimes on cruise ships still take their case to the courts to seek justice over those accused. Lawyers are an essential part of any corporation and good lawyers are valued for their knowledge of the legal precedence and court procedures. Attorneys who take on the cruise lines by representing the victims or victim's families in litigation become the only recourse for many crimes committed at sea. The legal battles waged in the court rooms of South Florida and other States as well as the U.S. Supreme Court have had serious ramifications to the business models of the cruise industry. The following example is used to illustrate what lengths a victim was forced to seek justice in an obvious (and well documented) case of crew negligence and the legal loopholes used by the cruise industry to prevent the allegations from ever seeing the inside of a courtroom.
3. **Jane Doe vs. Royal Caribbean:** When incidents aboard cruise ships make their way into the courts, if they make it at all, the cruise lines' lawyers begin their legal maneuvering and use the courts to their best advantage. Consider what happened to Jane and Sara Doe and her daughter.<sup>54</sup> In 2007, the Does were passengers on RCCL's *Sovereign of the Seas*. An intoxicated crewmember forced his way into their cabin and assaulted and/or battered Jane Doe, the mother. During the assault, Sara, the daughter called RCCL's security office, but the ship's security office did not immediately react to Sara's plea for help. After "wrestling" the crewmember out of the cabin, Jane called security again, and eventually, security personnel responded. On this occasion, the alleged "assault and/or battery" did not involve a sexual battery, although it was never entirely apparent why the intoxicated crewmember was trying to force his way into the Does' cabin.
  - a. When the *Sovereign of the Seas* docked in Port Canaveral, the Brevard County Sheriff's Office investigated the alleged incident. The Sheriff Office's report indicated that the crewmember involved was extremely intoxicated, and within a short period of time, he had forced his way into several other passenger's cabins, including the Does' cabin. All the other

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- occupants of each cabin were able to force the crewmember out. The Sheriff's report indicated that each of the parties involved in the incidents executed "Decline to Prosecute" affidavits, essentially, ending any claim in the incident.<sup>55</sup>
- b. While other passengers declined to prosecute the crew member, that did not preclude the Does from suing Royal Caribbean Cruise Lines over the incident after they believed that their lives were threatened by a member of the crew. The Does filed a complaint against RCCL in Florida District Court, asserting several causes of action, including negligence. The negligence count asserted that RCCL did not "exercise reasonable care" because it failed to properly control and/or supervise its employees; failed to provide proper security measures to protect its passengers; and failed to properly screen, train, and/or monitor its crewmembers. The Does also asserted that RCCL was negligent in hiring the particular crewmember involved in the incident because RCCL failed to appropriately investigate this crewmember, and that if RCCL would have done so, it would have discovered that he was unsuitable as an "employee for the particular duty performed or for employment in general," that the crewmember "had previously assaulted, harassed or battered a passenger or co-worker or engaged in other activities that would have indicated to RCCL that he would harm passengers," and that the crewmember was "predisposed to commit" the alleged acts.<sup>56</sup>
- c. Normally, these cases which are heard with some regularity in the Southern District of Florida are typical of cruise ship incidents that occur in other jurisdictions of U.S. courts. The cruise lines are mindful of any precedents that may be set by the decisions of these State Courts might set especially if they reach their way into the federal court system and the U.S. Supreme Court. The Supreme Court first addressed crew member assaults against passengers in 1887. In the *New Jersey Steamboat* case, a passenger was physically injured when the ship's watchman violently removed him from a restricted area of the ship. The Court recognized that, by virtue of a contract for safe transportation, a passenger was entitled to protection against the carrier's servants' misconduct or negligence. It reasoned that the servants' misconduct or negligence should be imputed to the carrier because those servants are used to perform the contract of transportation with the passengers. Based on public policy and precedent from railroad cases, the Court held that a common carrier must absolutely protect its passengers from its own servant's misconduct if the act is committed in the course of the servant's employment.<sup>57</sup>
- d. The intoxicated crew member in the Does' case was certainly not in the performance of his duty when he forced his way into the victim's cabin. Later Supreme Court decisions eliminated the requirement that the employee act within the scope of his employment and held that the carrier is strictly liable for any act of its employee against its passengers. This precedence, handed down by Supreme Court decisions, would have hardly have seemed to make much difference in the Does' case.
- e. In the case of *Royal Caribbean vs. Jane Doe*, the cruise lines took the extraordinary (and clever) step to distance itself from the legal process of discovery. In American law practice, discovery is the pre-trial phase in a lawsuit in which each party can obtain evidence from the

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- opposing party by means of discovery devices including requests for answers to interrogatories, requests for production of documents, requests for admissions and depositions. Discovery can be obtained from non-parties using subpoenas. When discovery requests are objected to, the requesting party may seek the assistance of the court by filing a motion to compel discovery.
- f. The Does thus attempted to request RCCL to produce information about its employee and, crime in general on its ships. Such information would be vital in proving a pattern of negligence instead of focusing on an isolated incident. The Does made a *Request for Production*, to RCCL specifically: “in the 5 years that predate the date of this incident, how many reports have [sic] Royal Caribbean International received concerning a crewmember either battering or assaulting a passenger. The information sought here concerns Royal Caribbean International’s entire fleet, including vessels owned, operated or managed by its subsidiaries and affiliates.” Further, the Does requested a copy of all incident/accident reports regarding prior accidents or incidents involving claims of crew members [sic] assaults occurring on vessels owned, operated, or managed by Royal Caribbean International or any of its subsidiaries for the 5 year period predating the incident described in the Complaint.<sup>58</sup>
- g. In the *Writ of Certiorari* filed by RCCL, the cruise line lawyers claimed that such discovery requests were to them, “irrelevant, immaterial, overbroad, burdensome, harassing, oppressive, and would not likely lead to admissible evidence.”<sup>59</sup> A *writ of certiorari* is an order that a higher court issues in order to review the decision and proceedings in a lower court and determine whether there were any irregularities. RCCL lawyers certainly earned their keep in their rebuttal to the Does discovery requests and showed all too familiar savvy in maneuvering through the legal system to quash lawsuits brought on by injured passengers.
- h. In this instance, Counsel for RCCL was able to have Counsel for the Does amend their requests. The court ruled in RCCL’s favor regarding the number of years (five), to three (thus reducing the number of ships in its fleet from 29 to 19) and also agreed that the request for discovery statistics by the plaintiffs was overbroad and unduly burdensome. RCCL also argued that it could not obtain the information that the Does were seeking by searching its computer databases. RCCL’s counsel explained, “[W]hen you are dealing with an assault where someone *fears* they are going to be raped, there is not a categorization for that.” (emphasis added)
- i. It seems unrealistic that a publicly traded company which is the second largest cruise line in the world and boasts ownership of the two largest cruise ships in the world would be incapable of retrieving, within days, if not sooner, the crime statistics that the plaintiffs were seeking through the legal process. In the case before the court, RCCL established that after any incident/accident allegedly occurs on any RCCL vessel, RCCL’s employees create an incident/accident report, and thereafter, the report is forwarded to RCCL’s “Risk Management Department for further handling and use in connection with the anticipated defense of any claim which arises from said incident.” As RCCL’s incident/accident reports were prepared in anticipation of litigation, they are protected by the *work-product doctrine*.

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Thus, when it was established that RCCL did have a database capable of retrieving such incidents, (not actual crime statistics), the court agreed that were protected by court doctrine and not discoverable.<sup>60</sup>

- j. After these detailed and lengthy legal maneuverings, even after the original petition was amended to focus the Does discovery motions on the specific crew member in the incident, the court was persuaded by RCCL that this request was “unduly burdensome on RCCL.” The court summed up its opinion thus; “The record demonstrates that although RCCL maintains a database of incident/accidents occurring on its vessels, RCCL’s database does not contain a category covering the type of incident alleged by the Does. Thus, to produce the information ordered by the trial court, RCCL would be required to manually search every incident/accident report involving approximately nineteen of RCCL’s vessels for a three-year period.”<sup>61</sup>
  - k. Royal Caribbean’s arguments were compelling enough to the District Court Judge in Florida, to essentially quash any discovery “surprises” by the plaintiffs in this case. What is even more remarkable is that the Judge was convinced that the plaintiff’s right to the discovery was a “burden” on Royal Caribbean because it created an overwhelming technical difficulty by requiring it to manually search its records for nineteen of its ships over a three-year period.
4. **Recourse:** The purpose of this lengthy legal brief used in this example should be obvious and helps to summarize the problem with investigating crime or other series incidents at sea. Although the cruise lines, (Royal Caribbean Cruise Lines in this instance) claim that safety and security is their foremost priority, unfortunate events at sea force the passenger (who has been victimized) to seek legal action to release information as basic as crime statistics. That the particular perpetrator of the alleged assault and battery in this instance was crew member is immaterial to the real message contained in the victim’s attempt at justice through the court system. The cruise lines have been very protective of its record on crime and safety. Because the cruise lines have successfully shielded their statistics – sometimes through use of the courts – the need is for them to be more transparent to the public and became the force behind the 2010 Cruise Vessel Security and Safety Act.

## **XII. Numbers Game**

1. **Reliability:** There are a few relevant points to be made whenever “statistics” are used to demonstrate the occurrence of crime on cruise ships. Statistics in and of themselves are useful, but depending on who is compiling and interpreting them, they can mean different things to different people. Dr. Ross Klein, an avid cruise critic, author of four books on the cruise experience, has for the last decade devoted considerable time and resources to compiling statistics, from among other sources, freedom of information requests (FOIA), U.S. government documents and information provided by Royal Caribbean Cruise Lines in the discovery phase of lawsuits. Because Dr. Klein’s statistics are so meticulously compiled and documented, they are usually better than government and/or the cruise line’s own statistics and are often cited by

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researchers, journalists and the U.S. Congress as a reliable record of crimes and incidents on cruise ships.<sup>62</sup>

2. **New Data:** As a recognized authority on the statistics, Dr. Klein testified before the U.S. Congress Subcommittee on Coast Guard and Maritime Transportation on March 27, 2007. Dr. Klein's statistics were cited in a journalistic piece on sexual assault on cruise ships in New Zealand. The new research, conducted by Dr. Klein was passed to the New Zealand Herald in advance of several luxury cruise ships which were due to arrive in New Zealand for the 2011 Rugby World Cup. The research, which analyzed data from FBI reports and three major cruise lines, found there was an unusually high incidence of sexual assaults and unwanted sexual contact on cruise ships. In the article, the following statistics were provided as given by Dr. Klein's research:

Royal Caribbean International (RCI) - 18 ships and *451 complaints* of sexual assault and harassment between 1998 and 2005. Celebrity Cruises - 9 ships and an average of *16 complaints each year* between 1998 and 2002.

RCI - which had a ship arriving in New Zealand for the Rugby World Cup downplayed the significance to the statistics by stating that “. . . the company carried more than 4.5 million guests and crew members in 2010 and reported 13 allegations of rape and 11 of sexual assault - not all of which were upheld.”<sup>63</sup>

3. **Tactics:** Just as used in the above example, spokespersons for the cruise lines like to use the tactic of citing the total number of passengers carried to downplay the significance of such statistics. Just like categorizing all missing persons who have gone overboard as suicides to downplay in the public's mind that the cruise ship had nothing to do with the death of one of their passengers, the cruise lines play a numbers game by responding with impressive numbers to make general, and in most cases, meaningless comparisons. The RCI spokesperson stated that in relation to the statistics cited above, 451 complaints between 1998 and 2005 should not be viewed as significant if taken in the context of total number of passengers (and crew) carried by the cruise lines. The statistics RCCL used to refute the issue are from 2010 numbers which indicated that the company carried over 4.5 million passengers and out of that, reported only 13 allegations of rape and 11 cases of sexual assault. They were quick to point out that none of the allegations were upheld.
4. **Spin Doctors:** “Spin-doctoring” avoids responsibility for what is really happening on these ships. The cruise companies and RCCL in particular are correct in their boast that there were no convictions in these case, e.g., upheld. By using such language as “not all of which were upheld,” they cleverly create doubt in the public's mind that these reports were essentially, “non-incidents” much like how Carnival CEO Bob Dickerson referred to the disappearance of George Allen Smith off the *Brilliance of the Seas* in 2005. What is conveyed by this message is while (criminal) incidents are reported, on cruise ships; “no prosecutions” essentially equals “no crime.”

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- a. While it is true that not all crimes are prosecuted for a number of reasons, it does not mean that there is no “crime.” What this information really tells us is that there must be a flaw in the system if there are 13 allegations of rape and 11 of sexual assault, and none are “upheld.”
  - b. There must be either a giant disconnect in the reporting of the incident between the ship and the cognizant law enforcement organization, a lack of a serious investigation of the incident, or the willingness for prosecution of the crime by attorneys or, possibly a combination of all of the above.
  - c. Some of the reasons for this remarkable record by the cruise lines are already self-evident. The fact that there is no standard reporting format and that the alleged crime is investigated by ship’s employees who have a vested interest in protecting the cruise line’s reputation over the rights of the victim have on countless occasions demonstrated serious flaws in the investigation of such incidents. These flaws have included the unprofessional (untrained) collection of medical and physical evidence, tampering with witness statements, and the untimely delay in reporting alleged incidents to authorities. In most cases, the alleged perpetrator is allowed to walk off the gangplank at the end of the cruise without a law enforcement officer ever having the chance to question them. In other cases, when the suspect is questioned by some foreign law enforcement officer at the next port of call, rules of evidence, burden of proof or the simple inefficiency of a foreign legal system all result in a verdict of the victim’s word against the accused.
  - d. Using staggering statistics such as the total number of cruise passengers to overwhelm and downplay the significance of crime is convincing when only several hundred crimes are reported against a backdrop of millions of consumers. If crime occurs in some giant vacuum such as space without any connection to other circumstances in which the crime takes place, then the statistics are really useless in discovering the root causes of crime on each individual cruise ship or cruise line. That should really be the focus of the “statistics.”
5. **Contributing Factors:** It would be more useful to know why that type of crime occurs over and over again. In other words, taken in the context of the cruise ship environment, there should be root elements or patterns which influence the same types of crimes occurring. In the case of a cruise ship, there are any numbers of starting points to categorize contributing factors for crimes such as rape, child molestation, assault, sexual assault, or a missing person. For example, although there is security, would-be criminals might look to the fact that there is no law enforcement around to enforce any laws on these ships. It might be that there is an abundance of alcohol and that it is sometimes abused by underage drinkers. It might be that in the carefree environment of a cruise ship, parents might tend to let down their guard with respect to their children’s safety and their activities such as letting them roam free on a cruise ship without imposing a curfew. It might be that public areas which serve alcohol such as pools are unsupervised with respect to children who may co-mingle with inebriated adults. The list of contributing factors seem to go on and on with respect to a cruise ship.

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6. **Root Causes:** Statistics have remained fairly constant over the years, especially with regards to sexual crimes and missing persons, this indicates that the problem has not gone away, and that the cruise lines have not taken measures to get them under control and thus the need for legislative actions is needed. The only solution is to examine the root causes which are occurring in these environments to see if remedies (crime prevention and proper criminal investigation) will alleviate the problem. Apparently, the cruise lines did just that with unsuspected results.
7. **The Krohne Report:** In May 1999, Royal Caribbean Cruise Lines hired a consulting firm, The Krohne Connection, to prepare a report regarding the problem with sexual assaults aboard its cruise ships. Dr. Kay Krohne was a former commanding officer at the Naval Training Station in San Diego. The report concluded that “improper activity occurs frequently aboard ships, but goes unreported and/or unpunished.”<sup>64</sup>
8. **Swales, Sheridan, Slade & Associates:** In June 1999, another consulting company hired by Royal Caribbean Cruise Lines, Swales, Sheridan, Slade & Associates, presented a study to the company entitled “*Reducing Sexual Assaults on Cruise Ships: Risk Assessment and Recommendations.*” The study concluded that “crew members generally understand that if they commit an offense and are caught they are most likely going to lose their job and returned home, but not spend time in jail.” These consulting firms recommended concrete steps Royal Caribbean could take to reduce the number of sexual assaults on its ships.”<sup>65</sup>
  - a. The conclusions were revealing as to the underlying factors contributing to sexual crimes on cruise ships, at least by its employees. The report found that crew members did not fear repercussions for their criminal activity if caught. Despite this, RCCL, at the time, failed to initiate any of the recommendations that the consulting firms suggested to help reduce the occurrence of sexual assault on their ships.<sup>66</sup> Instead, they issued a policy statement.
9. **Verbal Agreements:** In 1999, as opposed to committing to proactive measures that the two consulting firms recommended to help curb criminal activity on their ships, the cruise lines instead banded together and through their lobbying arm, the International Council of Cruise Lines (ICCL), and came up with a gentleman’s agreement to report crime and to adopt a “zero-tolerance” policy for crime on their ships. Verbal commitments such as the zero –tolerance for crime although well intended, was yet another example of trying to sway the public’s attention away from damaging headlines that were at that time, making their way through South Miami. The verbal agreements were a maneuver to commit the cruise lines into doing something about crime without really doing anything or being held accountable to any authority.
  - a. In 1999 through the work of the International Council of Cruise Lines (ICCL), CLIA’s forerunner, the ICCL announced that they had crafted a partnership of the four major cruise lines, to voluntarily report crimes to the FBI. They called the plan, the “Zero Tolerance Policy.”<sup>67</sup> The Zero Tolerance Policy was a cosmetic attempt to persuade cruise ship passengers that the cruise lines intended to get tough on charges of sexual assaults and crime aboard their ships amid the allegations of rape and unreported crimes that were being

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reported in the media. It was directly the result of an embarrassing release of information about crimes on cruise ships.

10. **Jane Doe vs. Carnival Cruises:** In 1999, as the result of yet another sexual assault case brought by a cruise ship passenger, a Miami judge ordered Carnival Cruise Line to reveal statistics about sexual assaults on their ships. What those statistics revealed was an industry adrift in sexual crime and faulty statistics which hinted that record keeping of such incidents was not being kept, or at least not being kept accurately. Carnival Cruise Lines was required by the Judge to provide statistics on all alleged sexual assaults that occurred over a five year period, 1994 – 1998 including those that took place in international waters. The order was the part of a lawsuit brought on by a 28 year-old woman, employed as a cruise ship nurse onboard the Carnival cruise ship *Imagination*. The case entitled, *Jane Doe v. Carnival Corporation, d/b/a Carnival Cruise Lines, 1998*, centered on the ship’s nurse and another shipboard employee.<sup>68</sup>
- a. The facts in the case appeared simple: Two cruise ship employees became friendly during their employment, although they were not dating and were not involved in a sexual relationship. One evening, the nurse (victim) and the other employee had spent the day ashore sightseeing during a port of call visit, then spent the evening sipping wine in the nurse’s onboard cabin. She asked her male companion to leave as she wanted to sleep. He refused and forced himself on her sexually and eventually, sodomized her. The nurse reported the crime to ship security including the staff captain and captain. However, the male employee was terminated for being late for his next assigned watch and for being intoxicated, not for sodomizing the cruise ship’s nurse. The nurse who was a cruise ship employee for three years was in this instance, not to be believed over the word of the male employee who had only been with the cruise for two months, that she had been raped despite physical evidence to the contrary. Two days after the alleged rape, the male employee was hurried to the Miami airport to summarily be put aboard a flight back to his native Italy. Although the crime had been reported to the FBI, Carnival ignored their requests to detain the suspects at the airport and he was able to escape interrogation by the FBI.<sup>69</sup>
  - b. Carnival Cruise Lines in defense of their actions portrayed the relationship between the nurse and the male employee as consensual. A Federal Grand Jury indicted the male employee of rape but he was never deported from his home country and remains free to this day. As a result of the lawsuit, Carnival Cruise Lines admitted to 62 instances of alleged shipboard sexual assaults between 1994 and 1998 and said that it had investigated each individual case.<sup>70</sup> Among the negative publicity that the case was generating as a result of the list being made public in the media, Carnival retracted its original number of incidents and increased it to 108 allegations, primarily because those who had complained to Carnival during the specified time period found that their complaint of sexual assault was not on the original list of 62 incidents. On the list of 108 sexual assaults were 22 reports of rapes, 16 against passengers.<sup>71</sup>
  - c. The Zero Tolerance Policy was an attempt by the cruise lines to deflect media attention garnered by the *Jane Doe v. Carnival Corporation* lawsuit. As it turned out, “The Zero

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Tolerance Policy” effect on crime was insignificant to the actual occurrence of sexual assault and other crimes on cruise ships. It also failed to compile meaningful crime statistics to build robust crime prevention programs. Although the cruise industry and the ICCL in particular boasted about its zero tolerance policy, the problem of such tacit agreements between the owners and operators of the cruise lines became evident after listening to the government’s testimony about the “Zero Tolerance Policy.” In Congressional hearings under examination and under oath in 2005, U.S. Coast Guard, U.S. Navy Admirals and the FBI admitted that they had never even heard of the “Zero Tolerance for Crime Policy.”

11. **Congressional Hearings:** The First Congressional hearing on cruise ship crime was held on December 13, 2005, six years after the cruise lines agreed to voluntarily report crimes to the FBI. Alongside the tragic stories of cruise ship victims and their families, hard statistics, or lack thereof was what came to drive the measures later adopted in the 2010 Cruise Vessel Safety and Security Act. Getting accurate statistics was at the heart of the lawmakers efforts in understanding cruise ship crime. Getting to meaningful conclusions however was at times, very frustrating for Congress, embarrassing to high-level government officials and distressing to the cruise lines. The first round of hearings did not go particularly well for members of the government’s panel who testified on cruise ship crime which included high ranking admirals from the U.S. Coast Guard, the Navy and the Assistant Director for the FBI.
  - a. Former U.S. Congressman Christopher Shays grilled the government’s panel on cruise ships which included Christopher Swecker, the Assistant Director of the FBI, along with Admiral Justice and Admiral Crowley of the U.S. Coast Guard and Admiral McPherson of the U.S. Navy. The government’s experts were more inclined to testify about terrorism and piracy, a subject that they were more familiar with and accustomed to than to the questions about “criminal statistics.” The Assistant Director of the FBI and the Admirals representing the Coast Guard and Navy said that they were not aware of any requirement for the cruise lines to report crimes. Surely, if they had known of any requirement, such as the “Zero Tolerance Policy” which the ICCL had promulgated in 1999, they would have mentioned that to former Congressman Christopher Shays, during his cross-examination on the subject.
  - b. Nor did the testimony seem to go well for the cruise industry’s lobbying arm, the ICCL or members of the cruise lines own security departments. This might have been expected given that the hearings were being held less than six months after some of the most notorious cruise ship cases had made national and international headlines such as the disappearance of George Allen Smith and Merrian Carver. Testimony given at subsequent hearings included the victim’s stories like those of Ken Carver, Jenifer Hagel Smith, Laurie Dishman, and others whose loss and in some cases physical pain and suffering were evident in their testimony.
  - c. Getting to the heart of crime statistics on cruise ships, and perhaps a little embarrassed by the testimony of F.B.I. Assistant Director Christopher Swecker in his testimony given in December 2005, Salvador Hernandez, then Deputy Assistant Director, Federal Bureau of Investigation came prepared to testify with more solid statistics about cruise ship crime in March 2007.<sup>72</sup>

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- d. His testimony yielded the following: “From fiscal year 2002 through February of 2007, the FBI had opened 258 cases of crime on the high seas, or approximately 50 cases opened annually. Of these 258 cases, 184, or 71 percent, occurred on cruise ships. The remaining cases involved private vessels, commercial ships, and oil platforms. Of the 184 cases that occurred aboard a cruise ship, 84, or 46 percent, involved employees as suspects. Sexual assault and physical assaults on cruise ships were the leading crime reported to and investigated by the FBI on the high seas over the last five years, 55 percent and 22 percent respectively. Most of the sexual assaults on cruise ships took place in private cabins and over half were alcohol-related incidents. Employees were identified as suspects in 37 percent of the cases, and 65 percent of those employees were not U.S. citizens. Employee on employee assaults made up approximately 2 percent of the total cases opened. Fifty-nine percent of the sexual assault cases from fiscal year 2002 to February of this year (2007) were not prosecuted, and the typical reasons for prosecutive declinations were lack of evidence, indications that the act was consensual, and/or contradictory victim or witness statements. Physical assaults were the second most frequent crime upon the high seas with 53 cases opened. Missing persons on cruise ships comprised only 12, or 5 percent of the cases opened during this period. Missing persons were sporadic in nature, and did not appear to have any significant pattern. There were slightly more cases opened on cruise ships and private vessels than fishing vessels and other commercial crafts. It is difficult to draw any conclusions from these cases due to the inability to locate bodies in all cases. Using eyewitness testimony, investigators were able to surmise that alcohol was involved in at least 42 percent of these cases. Investigations were typically closed with indications of suicide or accident; however, in about 25 percent foul play was suspected. Missing person cases yielded no prosecutions over this period of time, and none of the victims were minors.”<sup>73</sup>
- e. The statistics provided by the FBI revealed some startling facts about how serious the problem of crime really is on cruise ships. **To summarize, approximately ¾ of all crimes committed on the high seas are committed on cruise ships and of those crimes; almost half (46 %) are committed by crew members and over half of all crimes reported (55%) are sexual assault crimes.** Half of the sexual crimes occurred in private cabins and more than half involved alcohol. Missing persons cases represented a small amount of cases opened by the FBI but more importantly, about a ¼ were suspected to involve foul play and there are no prosecutions for missing person cases reported.
12. **Lack of Evidence:** The Deputy Assistant Director’s testimony spoke to one other important issue regarding prosecution for sexual assault crimes and that was almost all cases were dropped by the U.S. Attorney’s office for a lack of prosecutable merit, primarily because of “lack of evidence, indications that the act was consensual, and/or contradictory victim or witness statements.” *Although he may not have meant to imply it, Deputy Assistant Director Hernandez confirmed that the lack of professional and trained law enforcement personnel onboard cruise ships resulted in the majority of cases having evidence improperly collected, and witnesses being improperly questioned leading to conclusions that the sexual assault or act was consensual.*

**XIII. The Paris MOU, Port State Control and Ship Safety**

1. **Cruise Ship Safety:** As we have seen in early 2012 with the *Costa Concordia* sinking, victims at sea are not just the result of crime. Cruise ships have been involved in serious incidents as the result of the forces of nature, or through human error resulting in the loss of life. The International Maritime Organization (IMO) has issued guidance on everything from ship design and safety, training and emergency preparation. Despite this, cruise ships have continued to be involved in deadly incidents which in some cases could have been prevented. Recently, ships belonging to Carnival Cruise Lines and Costa Cruises have been involved serious fires onboard which have rendered their ships dead in the water. In the case of the Carnival *Splendor* and *Triumph*, the ships had to be towed back to their home ports at great discomfort to the passengers and crew. Fortunately, there were no serious injuries. Currently, the U.S. Congress, the IMO and the Paris MOU, are taking an interest once again in cruise ship safety. Their interest has been spurred on primarily as a result of the *Concordia* disaster.
  
2. **Paris MoU:** A dramatic change occurred in late 2012 in regards to port state control inspection of cruise ship vessels entering home ports. On 1 January, the Paris MoU (Memorandum of Understanding) launched the Harmonized Verification Programme (HAVEP), which is due to run throughout the year. The initiative for the program came from a year-on-year increase in incidents involving passenger ships. The launch was decided in May last year and therefore after the *Costa Concordia* grounding, which they noted, a disturbing increase in the number of problems with passenger ships was already becoming apparent to Port State Control (PSC) authorities. The 2012 [inspection] report has yet to be published but in 2011, 273 individual ships were inspected – some more than once – and 15 (4.42%) of them detained. That detention rate (for cruise ships) is higher than almost every other ship type. Most likely as a direct result of the *Concordia* sinking, the PSC inspection is now focusing heavily on emergency lifesaving equipment and training. Ships are rarely detained on frivolous grounds, and while out-of-date crew certificates might not be the most worrying issue, many ships were detained for reasons of poor preparation for abandoning ship, deficiencies in life-saving appliances, and fire protection-related matters. All of these will be subject to scrutiny in this year's PSC campaign.<sup>74</sup>
  - a. As part of the HAVEP, PSC inspectors will want to witness an operational control comprising a standard emergency scenario. This will include a simulated machinery space fire, a passenger evacuation and muster drill, and an abandon ship drill, in which lifeboats are lowered into the water and sailed away under power.<sup>75</sup> The need for lifeboat drills became most evident when in February, 2013, a deadly accident took place on the *Thomson Majesty* when the crew was lowering a lifeboat into the water and it crashed down into the water while the ship was in port. Five crew members were killed in the accident.
  
3. **Training Accident:** Following the *Costa Concordia* disaster last year, the Cruise Line International Organization (CLIA) announced 10 new safety proposals that all of the cruise lines were supposed to follow. One proposal was that cruise lines would no longer load crew members

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in the lifeboats during safety drills. Instead, cruise lines were supposed to lower the lifeboats into the water first, load the crew members in next, and then practice motoring the lifeboat around. The proposal envisioned only a few crew aboard during the lowering of the lifeboat, and they must be essential to the operation.

- a. Despite this, eight crew members were in a lifeboat during a drill on the Thomson Majesty cruise ship, apparently in violation of the new CLIA safety proposal, when the lifeboat plunged 60 feet into the water. The lifeboat landed upside down killing five of the crew. Three crew members were injured. The cruise ship was docked at the pier of Santa Cruz port in La Palma, in the Canary Islands. Thomson Cruises is owned by the large German travel company TUI. The cruise ship is operated by Louis Cruises.<sup>76</sup>

4. **Maritime Watch Groups:** Maritime safety experts are becoming more and more disturbed by such careless accidents due to human error leading to death and injury. One comment in the maritime journal *Fairplay* summed it up:

*“SIR, it’s all very well for the Cruise Lines International Association (CLIA) to say they obey all the regulations and comply with all the standards. But it’s a bit like appreciating the situation.”*

*“The facts are that there is serious disquiet among would-be passengers over safety and security.”*

*“And ‘reputation’ costs in the industry are rising exponentially.”*

*“What is needed is some collective team training done in realistic surroundings and supervised and mentored by experienced trainers. [Former Admiral of the Fleet Louis] Mountbatten had it right over 30 years ago when he referred to deficiencies in naval team safety and operational training at that time. ‘Assessment systems are an essential element of effective training solutions,’ he said. ‘As a result, it is of critical importance to develop performance criteria for collective tasks in order to provide feedback to seafarers and to enable leaders to monitor the progress of the unit, diagnose and remedy training deficiencies.’” Malcolm Warr, Chairman, ACR Dubai<sup>77</sup>*

- a. Other maritime regulatory experts seem to agree on the ineffectiveness of certain maritime regulatory or inspection organizations. Jim Hall, head of the National Transportation Safety Board during the Clinton administration, was very adamant on this point when he stated:

**“the industry is watched over by ‘paper tigers’ like the International Maritime Organization (IMO) and suffers from ‘bad actors’ much like in the poorly regulated motor-coach industry, which saw its latest fatal bus crash in Southern California earlier this month. The maritime industry is the oldest transportation industry around. We’re talking centuries. It’s a culture that has never been broken as the aviation industry was, and you see evidence of that culture in the [Costa Concordia] accident.”<sup>78</sup>**

**XIV. 2010 CVSSA**

- 1. Rubber Stamp?** A recent article in Cruise Industry News entitled “Ship Security: Better than Ever,” FBI maritime program supervisory Special Agent David Spanich of the FBI’s Miami Field Office suggested that the new Cruise Vessel Security and Safety Act (2010) was “simply a rubber stamp on what was already present.” This is simply not true.
- 2. Model Legislation:** As previously mentioned, the International Cruise Victim’s Organization (ICV) was instrumental in helping to pass the historic 2010 Cruise Vessel Security and Safety Act (The Kerry Act). This legislation is considered “the model” for reforming the cruise industry with respect to crime reporting, criminal investigations at sea, the compassion and care for victims and their families, as well as for providing for a safer ship environment for passengers and crew. The Kerry Act did not occur in a vacuum however. Its passage was a collaborative effort between many groups. The Kerry Act was the result of a detailed and meticulous effort on the part of the United States Congress, the U.S. Coast Guard, FBI, the International Cruise Victims Association and the cruise industry and its lobby, CLIA. While many on all sides differed on the approach to the problems that the Kerry Act eventually remedied, all parties ultimately agreed on the need to provide legislative guidance to make sea travel safer for the expanding cruise market in North America. Because the Kerry Act clearly identified and defined the problems inherent in sea travel on cruise ships and then provided logical solutions, the Act has since served as a model for similar efforts currently underway in other maritime nations around the world. And the need could not be greater.
- 3. Disasters at Sea:** Since the passage of the Kerry Act, the cruise industry unfortunately has continued to suffer one disaster at sea after another. Even while the *Costa Concordia* was sinking off the coast of Italy in early 2012, another one of its cruise ships caught fire in the Indian Ocean. Two Carnival cruise ships caught fire in the Caribbean and the Pacific Ocean and had to be towed back to their home ports among great passenger and crew discomfort. As sexual crimes continue on cruise ships, (as statistics *do* suggest) cruise ship passengers also continue to disappear with alarming frequency. Like many others in Congress who worked tirelessly on the Kerry Act over the course of two years and two sessions of Congress, the ICV does not believe that the Kerry Act represented simply a “rubber stamp of the current cruise line security model” as FBI Agent David Spanich suggested. Such views by senior U.S. law enforcement personnel would diminish in the eyes of the public, the significance and the need for the Kerry Act and its importance in improving the cruise ship security environment in the United States and as a model worldwide. While the legislation has been a milestone in providing for the first time in U.S. history, a real platform to protect the sea-going public on cruise ships, the law, like any legislation of such a sweeping and comprehensive nature, had flaws in its initial form which needed to be corrected.
- 4. Concerns:** Despite the changes in sea travel that President Barack Obama signed into law in July, 2010, there were several problems associated with the CVSSA’s initial implementation. Critics of the 2010 CVSSA including the International Cruise Victims Organization argued that the crime reporting and the crime-scene preservation training requirements were not being

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implemented as intended by the law. During the fall of 2011, the ICV began to send letters to the FBI and the USCG expressing concerns with how the FBI opened, investigated, and then closed a case and how they should be reported on the USCG Web site. ICV said that the way the FBI has interpreted the requirement of the initial legislation violated the spirit of the law: namely to make “comprehensive, crime-related data readily available to the public.”

5. **Incident Reporting Problems:** Incident Reporting Statistics for the third quarter of 2011 are used to argue the point. Shockingly, the report tells us that there were absolutely no crimes committed on any cruise ship anywhere in the third quarter of 2011. A Security Management review of the first four FBI reports posted on the USCG site shows incidents dropping from a total of 35 in 2010 to only 13 during the first three quarters of 2011, with the third quarter report showing no crimes reported.
  - a. Statistics for 2010 and 2011 are dramatically lower than reported crimes uncovered by a special investigation by South Florida's *Sun Sentinel*, published in 2010. Using a Freedom of Information Act (FOIA) request, **the paper discovered that cruise lines had reported 363 crimes to the FBI between December 2007 and October 2008.** Cruise line crime experts do not believe that crime really dropped by 96 percent from that period to 2010, when the FBI began its reporting. The disparity demonstrated how misleading and misrepresentative the statistics are. In reality, the FBI was not including all alleged crimes but only those that they opened a file on - minus those under investigation; essentially they only opened a file on 10 to 20 percent of the alleged crimes. Supervisory Special Agent Kurt Schmidt of the FBI's Violent Crimes Unit told Security Management Magazine that most alleged crimes on board cruise ships are not investigated because federal prosecutors either don't have enough evidence or probable cause to support the allegations.<sup>79</sup>
  - b. Responding to criticism of FBI criminal reports of crime on cruise ships, Schmidt explained, “We are not in a position to comment on the wisdom of reporting just closed cases versus the number of incidents versus the number of open investigations,” Schmidt explained “The FBI can't interpret the law. The FBI has to comply with the law.”<sup>80</sup> Perhaps through the attempt to hurry the legislation through both houses of Congress, the wording of the law was poorly written, or perhaps as some suspect, that carefully worded language, was purposely inserted to negate the reporting effect of crime on cruise ships. Either way, the results have not had the intended effect to inform the sea-going public on the real nature and extent of crime on these cruise ships.<sup>81</sup> Efforts are currently underway to remedy this reporting flaw.
  - c. While CLIA agrees that the FBI's methodology follows the letter of the law as one would expect, Jim Walker, a maritime lawyer who represents cruise line victims in South Florida, disagrees. He says the FBI's criminal reporting methodology undermines the purpose of the law, which was to provide American consumers with up-to-date crime information to base their vacation decisions on *before booking a cruise*. “So the way these crime statistics are being gathered and publicized (is) doing just the opposite of what should be done,” he says. “The statistics are not only worthless, but they're dangerous because they give a false sense that crimes...don't occur.”<sup>82</sup>

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- d. Dr. Ross Klein, a cruise line expert also worries about underreporting and has researched the issue. He says that the FBI's criminal reporting methodology for cruise ships diverges widely from its land-based methodology, which is tallied by complaints, not cases opened and subsequently closed. For example, he cites the case of Laurie Dishman.
  - e. Dishman was on board a Royal Caribbean cruise ship on February 21, 2006, and charged that a security guard—who turned out to be a janitor filling in for the ship's short-staffed security department—pushed his way into the then-35-year-old's cabin and brutally raped her, leaving bruising from his fingers around her neck. The resulting investigation was completely bungled by everyone responsible in the ship's staff, from the security department to the medical officer to the reporting of the incident. Dishman, who told security onboard about the incident, was told to collect evidence herself in a garbage bag. There simply could not have been a more effective destruction of the crime scene by the [cruise ship] officers coming into the cabin, sitting on the bed” according to Walker. “And then, when they finally let Laurie go to the ship doctor, the ship doctor sent [Laurie and her friend] back into the crime scene to collect the evidence.”<sup>83</sup> The FBI declined to prosecute the crewmember for lack of evidence. And who can blame them. The crewmember was conveniently returned to his native Trinidad for admitting that he had “consensual sex” with Dishman, but not for raping her. Dishman was encouraged by her Congresswomen Representative in California to file a civil suit against Royal Caribbean Cruise Lines. Dishman later received a cash settlement from the cruise line.
  - f. Dr. Klein notes that such an egregious example of shipboard crime would never have been included today in the FBI's statistics because although there was a report of a crime committed onboard, they did not open a case.<sup>84</sup>
6. **Model Training Course:** Another area of concern which arose from the 2010 CVSAA was the “Model Training Course.” Michael Giglia, a former FBI official and is now Director Fleet Security and Investigations, Global Security, Royal Caribbean Line Cruises Ltd. extolled the Model Training Course as being a best practice throughout the Australian cruise market. The security training module / crime-scene-preservation training course was developed by the USCG, the U.S. Merchant Marine Academy, and the FBI as a result of the legislation mandate. The actual course in its final format is in reality, only eight hours long, with a sparse three hours devoted to crime scene-preservation training. The bulk of the course focuses on security assessments, security administration, terrorism, and screening for contraband. The USCG promulgated the course throughout the cruise industry as a *policy letter* which meant there was no requirement for public comment as there must be for regulations.
- a. Another problem was selection of the instructors, especially during the interim phase-in for the course. Under those guidelines, the cruise lines are free to choose who the instructors are and how (by what method) the course is taught. For example, the course could be through non-personal methods such as distance learning or correspondence courses without having interface with actual instructors. The USCG believes three hours

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is sufficient to train crew in what the FBI needs to start a case. But others, including maritime lawyer Jim Walker believe just the opposite. An untrained or poorly trained crewmember will likely *contaminate* a crime scene rather than preserve evidence. Laura Hains, CPP, chairwoman of the ASIS (American Society for Industrial Security) International Supply Chain and Transportation Security Council and a former Customs and Border Protection officer agrees. She stated that crime scene contamination, if not outright destruction, was commonplace on cruise ships in the past. She stated that she has “been on too many crime scenes that you can't even breathe because [crew members] have disinfected the rooms,” she says. “The room was sterile. Anything that was there was wiped down. In one case, the mattress was removed from the room.” In the case of Laurie Dishman, her room was cleaned before the ship arrived in the United States and, thus, before the FBI was able to board the vessel.” Hains added that currently, under the interim implementation period for such training, cruise lines determine whether a crew member is properly trained, not the USCG or an independent auditor. “If the cruise ships are allowed to continue to do their own training, this law is totally going to be ineffective.”<sup>85</sup>

- b. Another big problem of the “Model Training Course” was the certification of instructors. There is no hard, mandatory language that dictates ANY federal or international authoritative body to certify the training providers. Thus, any one portending to be qualified may train crew.
- c. The requirement should obviously be for a one of the developers of the course to certify. The certification could come from recognized authoritative bodies such as the FBI or the USCG, but that is not the current requirement. “Training Providers” would have to prove their bonafides to these agencies, not just to the cruise lines who they may share a comfortable arrangement with. A certified list would then be kept (by the federal agency) that the cruise lines could reference when choosing a certified training provider. Efforts are underway to current this element as well.
- d. Cruise ship security personnel should be trained by a national or federal law enforcement authority prior to commencing duties. The Ship Security Officer should pass competency tests and oral examinations in crime scene investigation that comply with the standards being adopted by the ships Flag State’s ship. A ship security officer should also carry an international license issued by the IMO or Interpol which certifies them as qualified to conduct criminal investigations at sea. This may at least provide for the test of competency in a criminal trial where the security officer is subpoenaed to testify about his authority to conduct investigation actions on the ship.
- e. Mr. Giglia acknowledged that RCCL Australia has embraced the best practices from the model training course as developed by the FBI and USCG. While security “best practices” are certainly important to be shared with the Australian cruise industry just as they are with other industries, best practices e.g., collecting evidence and preserving the crime scenes does not mean certification, jurisdiction or authority in these matters. The

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USCG has repeatedly told ICV that “one of the key things that was consistent throughout the development of the training was that we don't want to train crew members to act as agents of the law.”<sup>86</sup>

7. **Catch 22:** It would appear that the FBI according to the USCG has created a “catch 22” situation for cruise line security personnel.<sup>87</sup> On one hand they are asked to collect preserve a crime scene, collect evidence and start a change of custody but they are not asked to act as law enforcement personnel. As mentioned earlier, if evidence is offered in a criminal trial, the way it is collected and by whom would be object of impeachment proceedings by the defense. The defense would challenge the training, competence and authority of the person who collected the evidence, the chain of custody used to preserve it, and try and cast doubt on its reliability. This includes any type of evidence such as testimonial evidence from witnesses, victims, and suspects, and physical evidence.<sup>88</sup>

- a. A distinction needs to be made in relation to a security guard in a land based company or facility. Security guards, who are hired to protect property as previously discussed, are only required to “seal-off a crime scene” and not investigate. They are instructed to call the police. If they do make an arrest according to their company’s protocols, it is a “citizen’s arrest” and they open themselves personally to liability for false arrest and/or false imprisonment.<sup>89</sup> The point to remember is: those security personnel on a cruise ship when collecting evidence and preserving a crime scene cannot help but act as “agents of the government.”

**XV. The Legacy of Dianne Brimble**

1. **Legacies:** If there are two cruise ship tragedies that could be considered watershed events in forcing change and reform in the cruise line industry, one would most definitely include the case of Laurie Dishman, mentioned above who was raped on a Royal Caribbean cruise ship in 2006. She turned to her Congresswoman, Representative Doris Matsui of California for help because the cruise line security failed to investigate her allegation properly despite the physical evidence and thus, FBI declined to prosecute the because they said it was a case of he said, she said. The resulting inquiry and other glaring examples of mishandled, or inept crime investigations on cruise ships directly led to U.S. Congressional inquiries on cruise ship safety in 2005, 2006, 2007 and ultimately in 2009. The result was the 2010 Cruise Vessel Security and Safety Act. The other watershed event was the well-known and tragic death of Diane Brimble in Australia in 2002 while she was a passenger on the P&O Australia cruise ship *Pacific Sky*.
2. ***Cruising for Trouble***<sup>90</sup> was a book the author wrote about the cruise industry and the threats cruise ships sailed under after the attacks on 9/11. The author also wrote about questions that were left unanswered about the death of Dianne Brimble and, P&O Cruises Australia’s efforts to remedy the investigative shortcomings and neglect of the victim’s family. These changes

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however, were slow in coming in light of public relations disaster Mrs. Bimble's death on the Pacific Sky created.

- a. P&O Cruises were slow to cancel its popular "Schoolie Cruises" but were more successful in implementing a strict responsible serving of alcohol policy. However, it was not until early 2007, five years after her death when then Princess CEO Peter Ratcliffe formally introduced these measures in a press conference in Australia in which he publically apologized to the family of Dianne Brimble.<sup>91</sup> If anything, the changes that were summarized by Peter Ratcliffe highlighted how slow the industry was to change its security model in the face of such tragic occurrences. The media disaster that surrounded Dianne Brimble's death had lingered and P&O Cruises was forced to reform its model and take stricter actions or face losing further consumer confidence. As a result of these actions, P&O Cruises Australia was out in front of many of the issues raised by the Coroner's inquest in 2009.
3. **P&O Cruises Reforms:** ICV previously commented in favor of P&O Cruises Australia endorsement of the Kerry Act after the Coroner's Inquest. They stated that it (Kerry legislation) "may provide a model for any legislation that may be introduced to apply to ships calling in and out of Australian ports. Such an endorsement is a 'way forward' in providing a measured level of security for not only cruise ships calling on American ports of call, but also Australian ports."<sup>92</sup>
- a. P&O Cruises Australia stated that it is their previous practice to report all suspected serious criminal conduct to: State Police, depending on where the ship is based; the Australian Federal Police if the suspected criminal activity contravenes federal law (for example, the importation of illegal drugs); the local police at the ship's next port of call; and the home police of the alleged victim.
  - b. In response to the confusion that these requirements created, P&O Cruises Australia crafted partnerships and reporting protocols with the law enforcement bodies of Australia (Australian National Protocols), and the Pacific Islands (PICP Protocols). ICV endorsed this view and agreed to the standard of beginning an investigation to an alleged criminal act onboard a ship without waiting to resolve jurisdictional questions. This is as the reforms state, "to ensure that precious time and potential evidence is not lost."
  - c. ICV agreed that no jurisdictional vacuum should exist when it comes to reporting and investigating crimes at sea. The Protocols that P&O Cruises Australia has put in place should apply to all passengers regardless of their country of citizenship. ICV would like to see that crimes involving citizens of other countries are investigated by Australian law enforcement and reported to the Flag States of that country for statistical purposes.
  - d. The established protocols stipulated by P&O Cruises Australia require that security officers make their first reports to the corporate office instead of directly to the recognized local, state or national law enforcement authority when suspected evidence of a crime occurs on one of

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their ships. It is unclear if cruise ship security officers can report crime directly to the law enforcement agencies described in the protocols above.

- e. **It should be a requirement of the Australian Government that crime is first reported to law enforcement to provide as prompt a response as possible and then to the corporate office to inform management.** Direct reporting of criminal activity on cruise ships to law enforcement agencies via the Captain/Master of the vessel with info to the corporate office will ensure prompt mobilization of investigative resources and provide for transparency in the reporting of crime at sea.
- f. Regarding the Recruitment of Security Personnel, prior law enforcement and/or military experience should be a prerequisite for new security officers. Such a standard makes sense in the absence of any international standard for shipboard security officers or security personnel. ICV recommends the following actions regarding security personnel:
  - Australian cruise companies should continue with this practice and recruit from the ranks of the military with previous experience in military law enforcement versus a rating that may have only a supply clerk's background or cook's experience. Former law enforcement personnel such as police or detectives should be given priority in the hiring process whenever possible. Shipboard security ratings should also carry an equivalent NSW Security License.
  - Although it was briefly stipulated in the testimony as to the reasons why off-duty members of the NSW police or other states no longer undertake any onboard security functions, ICV would like to see the expanded use of national or local "on-duty" police on cruise ships to act as "independent" monitors representing an immediate law enforcement presence in an "official capacity" rather than in an "unofficial capacity."

## **XVI. Criminal Investigations at Sea – The Key To Prosecution**

1. **Formalized Guidance:** This paper has already discussed the "model training course" adopted by the Carnival brand in Australia. Its major flaws include the certification for instructors and the method by which it is taught. However, more glaringly, the course has not provided an appropriate (or standardized) guidebook for shipboard reference in investigations other than the three hours spent on crime scene preservation and the associated references that the FBI and USCG recommended.
2. **Response is the Key:** "The greatest opportunities for gathering evidence and solving a crime are in the first few hours after the incident. If the incident is serious then the Ship Security Officer should inform and receive direction from Senior Management. If the incident is a crime then:

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- Identify the crime scene(s). There is often more than one scene;
  - If an outside agency is arriving to process investigation and the crime scene, the SSO is to maintain integrity of the crime scene by cordoning it off and preserving it. In some cases it will be necessary to guard the scene ;
  - Identify victim;
  - Identify, locate and detain the offender ;
  - Identify witnesses ;
  - Take notes ;
  - Forensically recover evidence from the scene ;
  - Complete Security report ;
  - Take relevant statements.”<sup>93</sup>
- a. The opening guidance above on investigative action was taken from one of the most comprehensive investigative manuals written for cruise ship security officers. It was prepared as a reference by the Association of Police Chief Officers –England, Wales, and Northern Ireland along with the Hampshire Constabulary. The authors, all detectives from the Major Crime Department, Special Branch and Scientific Services Department of Hampshire Constabulary clearly understand that “...the training of Ship’s Security Officers often does not cover criminal investigations in any detail. This has on occasion led to confusion and either a lack of action, or inappropriate action being taken. *The consequences of this may be very damaging to the individuals involved as well as to the company in respect of their reputation and may also have serious financial implications.*”<sup>94</sup>
- b. To the casual observer, such immediate actions in criminal investigations e.g., to document the crime scene, collect evidence and uncover the motive and suspect for a crime *would seem obvious*. Yet on a cruise ship where an alleged crime has taken place, such guidance goes out the window, literally. The reason is simple, crime scene investigation is not a skill practiced or required by a Ship’s Security Officer with any great emphasis and certainly not by any legislated mandate.
3. **In Port Response:** By design, these are duties performed by trained law enforcement personnel ashore. If the cruise ship is port, the jurisdiction, and professional response is usually quite clear. In foreign ports, the local constabulary, gendarmerie or police have a duty to respond to the port and conduct an investigation regardless of the nationality of the victim, the suspect or flag state of the cruise ship. It is a simple case of a crime being committed in the sovereign territory within that port of call. Even if the professionalism of the local police force is questionable (which unfortunately is sometimes the case), some type of law enforcement response is guaranteed.
- a. Regardless, investigations that take place while the ship is in port –assuming that the crime took place while the ship was in port – has several advantages over a crime that takes place out at sea namely; the interviews of the suspect, witnesses, and the victim as well as the collection of evidence takes place contemporaneously to the time of the alleged crime.

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Another crucial element that shore based law enforcement have over ship's security personnel is the authority to place a suspect under arrest for the alleged crime. So what happens when crime happens on a cruise ship out at sea? Who is responsible for finding out "who done it?"

4. **The Importance of Evidence:** As any first year law student (and police cadet) knows, "evidence" improperly collected with no formal chain of custody will never reach the inside a court room. In the case of sexual assault, physical evidence in the form of hair, blood, semen, vaginal fluids collected from both the victim and the crime scene are essential in identifying a suspect and the circumstances of the sexual assault. Such evidence would not even be considered (at least in U.S. courts of law) if not properly collected and transferred according to strict evidentiary (and medical) procedures. Such sloppy evidence would be considered "tainted." Without physical evidence, such sexual cases at sea (and on land) normally end up in allegations of consensual sex or where no evidence exists, a case of "he said, she said." The importance of physical evidence as well as testimonial evidence from the victim, witnesses and suspect thus is paramount in any criminal investigation and, must be conducted using standardized methodology.
  
5. **The "Golden Hour" Principle:** The Golden Hour Principle is a term police use to describe taking quick and positive early action in securing significant material (evidence) that would otherwise be lost to in the investigation. In short, crucial evidence should be identified within the first hour after a crime. Where police are informed of an incident shortly after it has occurred, the offender(s) may still be in the area. (Even if the suspect may be on the cruise ship, if not formally accused or held in connection for a crime, he or she may depart the ship at the next port of call). Locating them can also provide forensic opportunities that could otherwise be lost (especially in respect to bodily fluids due to time lapse between the crime and when the questioned specimen is taken), the testimony of witnesses can also be obtained while the offence is still fresh in their minds, CCTV images and other data needs to be collected before it is deleted and swift action can be taken to secure crime scenes before they become contaminated. Even where the incident happened some time before Security or the police are alerted, effective early action often leads to the recovery of material which enables the investigation to make rapid progress. Other recommendations of the ICV regarding criminal investigations were included in the Coroner's Inquiry include:
  - Efforts should continue to ensure that those responsible for conducting crime scene investigations on cruise ships be provided with the most recent, and accepted law enforcement methods and practices for responding to crime. Despite the adoption of Shipboard Crime Manual by P&O Cruises Australia, it should be emphasized in Australia that the *Shipboard Crime Manual* is adopted in all jurisdictions of the Commonwealth. Although this manual (in the author's opinion) is one of the best specifically geared to the criminal investigator at sea, it is unclear if all cruise ship brands in Australia use it as their reference. As already mentioned in testimony by Mr. Giglia, the Carnival brands are inclined to use the FBI/USCG training course and presumably, its assorted investigative references. Ship security officers do not have the time to consult miscellaneous references on crime scene investigation ashore but need one manual specifically written

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for their use at sea. The urgency of a prompt and immediate response to a crime scene requires qualified and trained security personnel who do not require “on-the-job-training.”

- ICV recommends the increased use of CCTV and recording systems to monitor the activities cruise ships. These systems provide a potential wealth of evidence and documentary record of any criminal event and have implications for the cruise ship outside of crime prevention. These include documenting injury/accident cases, monitoring areas of the ship for fire or flooding, access control, and preventing acts of sabotage or terrorism. While it is understood that the cost to implement CCTV systems and 300 – 600 cameras on a ship is no small investment to the cruise lines, the cost is small compared to those systems preventing criminal activity, a needless accident or tragedy (e.g., man overboard).
  - The extensive implementation of CCTV cameras on Australia’s fleet of cruise ships is impressive. However, it has been the unfortunate experience on the majority of cruise ships that requests to review CCTV recordings by counsel for victims after an alleged have been refused or, the cruise lines have denied the existence of any recording that could support the victim’s claim or exonerate the suspect. A statement of purpose is needed that defines the scope and purpose of the CCTV systems, AND, a policy statement is needed as to the availability to any passenger or crew who claiming themselves as a victim, believe evidence of the crime, or exoneration, can be reviewed by the victim, or suspect in the event they become involved in an alleged crime or serious accident on the ship. Passenger (or crew member) has the right to request in writing through the ship’s Captain that that evidence be retained until it can be reviewed by a law enforcement official who would normally have jurisdiction in that case. A similar right should be extended to passengers and crew when they have been seriously injured on the ship.
  - While the Kerry Act legislation makes the possibility of new technology to detect man-overboard incidents, the current CCTV systems if used more robustly have the capability to save a passenger or crewmembers life. All too often evidence of a tragedy at sea is recorded only to be replayed hours or days after an event. The death of Daniel Dipiero in May 2005 discussed earlier is a case in point. If not already the practice, it is recommended that they be monitored and detailed Operating Procedures be written as to what these [human] monitors are looking for and the responses they should initiate if they view suspected danger or trouble.
  - Monitoring should include areas of the ship where passengers have the potential for being injured, (e.g., ship’s railings), around casinos, bars and discos, and youth centers.

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- Logs of those personnel assigned to monitoring shipboard CCTV systems should be kept on board the ship for at least one year to assist investigators.
- Any recording on a particular ship where an alleged crime has been committed or serious injury accident has occurred and the possibility that evidence is contained on a CCTV DVR system exists; these recording must be retained in excess of 14 days or longer. That storage should be accomplished by extending it to the maximum recording capability for that CCTV recoding system.
- A law enforcement investigator must be the authority to decide what photographic evidence is in a criminal investigation.
- A law enforcement official must be able to examine the CCTV recording(s) in their original state, on the ship in their original form in addition to the archived disc.
- A law enforcement investigator must be given a detailed list of the number and locations of all CCTV cameras on board ship to help determine if all aspects of an alleged crime or incident have been reviewed for evidentiary content.
- Rules of evidence should apply when retrieving CCTV footage and the retrieval by ship security ratings. Retrieval should follow a more detailed set of procedures than currently done. Ideally, a law enforcement officer should supervise the retrieval process and be available to testify to this fact later on. Ideally, the security watch-stander who was on duty at the alleged time of the incident should also be present during the retrieval.
- Regarding onboard security audits, ICV recognizes the international role of the Flag States in conducting security assessments in accordance with the provisions of the ISPS Code. While these audits are useful to ensure compliance with the provisions of the ISPS Code, especially with regards to preventing terrorism, pirate attacks, illegal contraband, stowaways, it does little to provide for a crime prevention program on board the ship.
  - ICV endorses the use of independent audit teams. Results of the audit should be used to refine any shortcomings in the crime response by ship's personnel and, be made available to criminal investigators to determine if those audits revealed any deficiencies which may have attributed or compounded any criminal or negligent circumstances on the cruise ship.
  - Audits should contain a detailed review of crew member incidents and disciplinary actions and the cause for any removal of a crew member from their duties on a cruise ship.

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- o As is contained in the Kerry legislation, the ship must make available to investigators, a ship's log (electronic or written) which contains a chronological entry for all reported crimes, suspicious incidents, injuries, and unattended deaths, mysterious deaths and missing persons, whether they relate to events or incidents involving crew members or passengers. These records are permanent archives of the ship
6. **Responsible Serving of Alcohol:** ICV commends the Australian cruise market in the in the Responsible Serving of Alcohol. They represent a reasonable concerted effort to ensure that the serving of alcohol on cruise ships does not interfere with the safety of passengers while embarked on the ship. ICV would like to see similar monitoring of crew members and ensure that crew members who violate alcohol policies regarding the serving of alcohol to minors, or other unauthorized persons are reported to the ship security officer, RSA supervisor and Captain, for disciplinary action.
- a. Promotions on the ship, such as “happy hours,” themed drinks and “two-for-one specials,” which encourage the consumption of alcohol, should be eliminated. **All for one purchase of alcoholic packages which is now being tested and implemented in the American cruise market, should not be adopted in the Australian cruise market.** Such packages have the ability to serve up to 15 alcoholic drinks in a 24 hour period. Such drink packages although attractive to cruise line promotions, may increase – not decrease – alcohol related incidents. Passengers should understand they have the capability to purchase drinks but those choices should not be the central theme for any shipboard event or activity and purchases of alcohol should be made responsibly.
  - b. Finally, a robust program to track and spot underage drinkers should continue such as the use of the Fidelio system used as a tool to prevent the purchasing of alcohol onboard Australia's cruise ships.
7. **CARE Program:** Under the Care and Assistance for P&O Cruises Australia passengers in times of need, “If a death were now to occur onboard one of P&O Cruises Australia's ships, P&O Cruises Australia would provide compassionate care and practical support to that passenger's family and traveling companions in accordance with its CARE program.” However, the CARE Program must also take into account the requirements of a criminal investigation in providing for compassionate care for victims and their families. The following should be considered:
- a. When death occurs on a cruise ship under suspicious circumstances, as is the case in any death investigation, the body of the deceased is considered the “best evidence.” Many criminal investigations have been solved through the evidence collected from not only the crime scene, but the body itself. In regards to the death of a passenger or crew member under suspicious circumstances, clear protocols should be in place to ensure that the body of the victim/deceased is preserved until qualified medical coroners can examine the body; this includes preventing efforts to embalm the body before returning it to a different international location or to family members.

## Notes

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<sup>1</sup>“Shays, Souder Hold Hearing on Cruise Line”, Safety [www.house.gov](http://www.house.gov); December 13 2005, <http://www.house.gov/shays/news/2005/december/deccruise.htm>

<sup>2</sup> Teresa Anderson, “The cruise ship industry is adapting to evolving security demands,” Cruise Control [online] (undated), <http://www.thefreelibrary.com/CRUISE+CONTROL.-a060521633>

<sup>3</sup> Ibid

<sup>4</sup> Pg. 42 CHAIR: “Would that mean that, if something happens on your watch, you would be more likely to cover up than to report it—if you are going to have your employment terminated whenever the data starts to show that there are some troubles in the ranks? Mr Moroney: I think potentially you would be terminated for not bringing issues to notice rather than covering them up. You might cover it up once or twice. Inevitably, as I know from my own background, the truth will surface. It may take a week, a month or a year, but it will surface. So, in that sense, it is that constant renewal of training and lifting the professional standards of the security staff, indeed valuing the security staff amongst the staff of a cruise ship itself.”

<sup>5</sup> International Code For The Security Of Ships And Of Port Facilities (ISPS Code), International Maritime Organization, 2003 Edition, [http://www.stlucia.gov.lc/nemp/agreements/ISPS\\_Code\\_en.pdf](http://www.stlucia.gov.lc/nemp/agreements/ISPS_Code_en.pdf), pg. 14

<sup>6</sup> Ibid, pg. 9

<sup>7</sup> The broad characterization of the private security industry is not an attempt to malign the level of professionalism of P&O Cruises Australia Security Officers or those of RCCL and Carnival Cruise Lines Australia. Such are generally accepted realities however for the “private security” guard industry around the world. As a Regional Security Officer (RSO) with the U.S. Department of State, Bureau of Diplomatic Security, assigned to five high-threat U.S. Embassies, the author was responsible for recruiting and training the private security guard forces for the U.S. Embassy. The author has managed a private security guard force for the U.S. Department of Homeland Security, U.S. Customs and Border Protection under a federal contract with the Federal Protective Service (FPS). The security shortcomings of both management and guard force personnel of the Federal Protective Service are well known in the United States and is now the subject of Congressional reform. Recently, government agents testing security personnel at U.S. facilities protected by the FPS were able to smuggle explosives into many buildings including the U.S. Capitol. As the Director of Security for Princess Cruises, the author was involved in the recruitment of fleet security officers, security ratings, and youth security guards. The fleet security officers were recruited for their former military, law enforcement and security backgrounds and the author was impressed by the level of professionalism that these individuals brought to the security program on Princess cruise ships.

<sup>8</sup> A frightening and shocking incident took place in Seattle, Washington, in February, 2010 which dramatizes the point. A 15-year-old girl was brutally beaten and kicked in the head by a gang of other teenagers on a Seattle bus platform while several security guards stood by and watched. The incident was caught on surveillance video. The girl was jumped from behind by another girl in front of three uniformed security guards. Transit tunnel security officers were on the platform and witnessed the assault, however they did not intercede as they are unarmed, civilian employees of the transit authority. A representative of the transit security officers told ABC News that the security guards are trained not to become involved in violent confrontations or fights but are instead told to call 9-1-1, which they did. Such events put in perspective the difference between a security guard’s role and that of a police officer. In the incident described above, a felony assault took place in the presence of trained security guards yet they lacked the authority to intercede and to make an arrest.

<sup>9</sup> In some cases, the security officer can be the cause of further problems. A cruise-ship passenger I interviewed upon his return from a Carnival cruise to the Mexican Rivera in 2008 told me that security was called to break-up their loud party on the weather decks one evening. The security guard did this by inviting the party to one of the ship’s bars that he opened and then acted as bartender which included “free drinks” for the group. Although the

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security guard did not engage in drinking himself, the passenger who I interviewed, who was himself a security guard in real-life wondered; who was watching the ship? Source: personal interview of the author with anonymous source, Riverside, California, January, 2008

<sup>10</sup> Author’s personal conversation with Princess Cruise Lines “SECO,” December, 2004

<sup>11</sup> Data is compiled from documents provided by the company (Royal Caribbean Cruise Line) in discovery lawsuits related to court cases involving sex-related incidents. Readers should draw no conclusion that RCCL is more problematic than other cruise lines. We assume the results would be similar for other cruise lines if they were to willingly disclose all incident reports received. Rather than criticize RCCL for this data, readers should see the importance of having all incidents reported to an independent third party and to have the data available online to consumers. “Sexual Assault” refers to incidents ranging from unwanted sexual contact to forcible rape. “Sexual Harassment” refers to incidents of a sexual nature but where physical contact was limited. The age of the victim is rarely indicated in the records provided. However, it was possible to discern from discovery documents that 79 of the incidents between the years 2003 – 2005, involved a minor (younger than age 18). This means that at least 17.5% of all incidents reported involved a minor. Source: Courtesy of Dr. Ross Klein, <http://www.cruisejunkie.com/SA-RCI.html>

<sup>12</sup> Steve Bruce, “Cruise ship worker jailed,” The Chronicle-Herald – Metropolitan, November 3, 2009, [http://thechronicleherald.ca/cedrom\\_archives/](http://thechronicleherald.ca/cedrom_archives/)

<sup>13</sup> Amy L. Edwards, “Carnival cruise ship bartender accused of raping teen to make Orlando court appearance” Orlando Sentinel, May 31, 2010, <http://www.orlandosentinel.com/news/crime/os-carnival-cruise-ship-rape-20100531,0,2587036.story>

<sup>14</sup> Ibid

<sup>15</sup> Dr STONE: “Given that those staff may come from lots of countries where we do not have cross-jurisdictional interests, are you able to get those checks quite readily? Ms Sherry: Yes. Mr Giglia: With regard to your question about background checks, there are two levels here in operation. One is our private efforts and the second is government efforts to ensure our crew is of good character and not of criminal background. As I think Mr Smith may have mentioned in previous testimony, *we employ manning agents*. Before we hire anyone, they will assemble a pool of qualified people who meet our requirements—usually language skills and that sort of thing—but *they will not present anyone to us who does not have a clear background check. Most often, that is a letter from a police agency in that person's home country stating that a check had been made and that they do not have a criminal history*. In addition to that we use a well-known private company that does something called a global sanction check, which checks public records that may be out there concerning someone. So someone may not have been arrested but may have a background unsuitable for employment on our cruise ship. Those are our private efforts. After that, there is governmental screening. Most of our crew require a visa of some sort so, for example, in the United States our crew members get a C1/D visa which requires them to present themselves to the United States embassy in their home country, go through the entire visa process and, before the visa is issued, the US government—or whatever government needs the visa—will do their screening.”

<sup>16</sup> Ibid

<sup>17</sup> The author can attest to the types of bribery and trickery many “agents” used in the visa process including forgery of bogus documents. During the author’s tenure as the Regional Security Officer (RSO) at the U.S. Embassy in La Paz Bolivia, Managua Nicaragua, Beirut Lebanon, and Moscow, Russia, he was required to investigate consular officer referrals when agents working on behalf of local hiring companies, supplied suspected forged documents or offered bribes to consular officials to make their visa package clear of any disqualifying factors or, were offered bribes directly from visa candidates.

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<sup>18</sup> NCIC is a computerized index of criminal justice information (i.e. - criminal record history information, fugitives, and stolen properties, missing persons). It is available to Federal, state, and local law enforcement and other criminal justice agencies and is operational 24 hours a day, 365 days a year. <http://www.fas.org/irp/agency/doj/fbi/is/ncic.htm>

<sup>19</sup> Thomas Steinmetz, "When Cruise Vacations End Tragically, Who's To Blame?" ETurboNews, January 6, 2009, <http://www.lipcon.com/news/when-cruise-vacations-end-tragically-whos-to-blame.htm>

<sup>20</sup> P&O Cruises Australia is another brand of Carnival plc. P&O Cruise Australia received notoriety in the early part of the decade as a result of the tragic death of Dianne Brimble on the Pacific Sky. That incident ultimately led to dramatic security revisions and management shakeups at P&O Cruises response to the shortcomings in the investigation and treatment of the victim's family

<sup>21</sup> Referring to the use of CCTVs and RSA, the nexus is not clear from the testimony: "Rather than dealing with people after they get to the stage of needing more intervention, we have supervisors in all of the bars, whom we call RSA supervisors, who watch the dynamic of what is going on. If we see people who are clearly drinking too fast or getting too drunk, we stop serving them alcohol. We have a lot of authority on board the ships to stop serving. The RSA supervisors will often suggest to people and their friends that maybe they cool off or even that it is time to call it a night." Pg. 9

<sup>22</sup> In fact, the only mention of CCTV or video surveillance was in reference to the International Cruise Victim's Organization's proposals, specifically, "We have also received recommendations from the International Cruise Victims Association. Their "Ten-Point Program" contains sound concepts and, although in some instances we do not agree with their implementation approach, their work has stimulated productive dialogue. In general, their proposals are consistent with our goals to ensure: reliable cruise employee vetting; well-trained and capable shipboard security with a high degree of integrity and appropriate oversight; effective video surveillance systems; viable technology and processes to address missing persons; and capable medical care."

<sup>23</sup> Laurie Dishman was a 32 year-old woman who was raped on a Royal Caribbean cruise ship by a security guard in 2006. The investigation on the ship consisted on the medical officer requiring her to collect her "evidence" in a trash bag. Although the FBI investigated, they declined prosecution upon referral to the U.S. Attorney's office, Laurie Dishman sought recourse thorough her elected representative, Doris Matsui of California who also sits on the Transportation Sub-Committee. Laurie Dishman was given the opportunity to testify before the sub-committee during the same hearing in which Gary Bald testified and made several recommendations, among them was constant monitoring of the ship's CCTV system.

<sup>24</sup> "Cruise Ship Security Practices And Procedures," Hearing Before The Subcommittee On Coast Guard And Maritime Transportation Of The Committee On Transportation And Infrastructure House Of Representatives One Hundred Tenth Congress First Session, September 19, 2007 <http://www.gpo.gov/fdsys/pkg/CHRG-110hhrg11037916/html/CHRG-110hhrg11037916>.

<sup>25</sup> Ibid

<sup>26</sup> Jeanne Starmack, Family sues cruise line over death," Vindy.com [online], May 9, 2007, [http://www4.vindy.com/content/local\\_regional/319426772001975.php](http://www4.vindy.com/content/local_regional/319426772001975.php)

<sup>27</sup> Starmack, "A year later, questions remain"

<sup>28</sup> Brandon C. Welsh and David P. Farrington, "Crime prevention effects of closed circuit television: a systematic review," Home Office Research Studies, London, August 2002, <http://rds.homeoffice.gov.uk/rds/pdfs2/hors252.pdf>

<sup>29</sup> Ibid

<sup>30</sup> Ibid

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<sup>31</sup> The author, while a civilian Special Agent of the Naval Criminal Investigative Service (NCIS) investigated a missing person report where a female sailor disappeared under mysterious circumstances from her ship while it was in port at the Naval Station, Pt. Mugu, California. The case drew attention from the sailor's mother in South Carolina who was close friends with the U.S. Senator from that state. After all investigative leads were exhausted and failed to determine where the missing woman was, she was official declared missing by the U.S. Navy and presumed dead. A year later, she turned herself in to military authorities in the State of Alaska where she had been living all that time.

<sup>32</sup> Bill Murphy, Paige Hewitt et.al, "Spring Teen Who Survived Pipe Attack Dies After Leap From Cruise Ship," Houston Chronicle, July 1, 2007, <http://www.chron.com/disp/story.mpl/front/4936066.html>

<sup>33</sup> Ibid

<sup>34</sup> Paige Hewitt, Eyder Peralta And Peggy O'Hare, "Girl Says She Heard Ritcheson Talk About Jumping From Ship," The Houston Chronicle, July 5, 2007, <http://www.chron.com/disp/story.mpl/metropolitan/4942785.html>

<sup>35</sup> "Rush to Judgment" is a book about the assassination of U.S. President John F. Kennedy written by Mark Lane and published in 1966. The book takes issue with the conclusions of the Warren Commission and suggests that there was a conspiracy to assassinate John F. Kennedy.

<sup>36</sup> "Cruise line: Woman's death likely suicide," Associated Press, August 4, 2009, <http://www.komonews.com/news/52439837.html>

<sup>37</sup> Ibid

<sup>38</sup> Luke Ducey, "Was cruise ship passenger's death suicide? Investigators don't know," Seattle PI, August 17, 2009, [http://www.seattlepi.com/local/409330\\_malkuch17.html](http://www.seattlepi.com/local/409330_malkuch17.html)

<sup>39</sup> Mr Giglia: Yes. The training, of course, depends on the level we are hiring someone. The training for an entry-level security guard will understandably be less than the training for the chief security officer, but the training is still quite extensive. The training for a security guard at an entry-level position comprises 32 courses that are either required by regulation or required by company policy. As the entry-level position moves up the ranks to a security supervisor to a deputy security officer all the way up to a chief security officer there is more and more training that may be required. For a chief security officer there are currently 48 different modules of training that are required. Dr STONE: Sure, but how long are these modules? Mr Giglia: Anywhere from one hour to 16 hours, depending on the course. Dr STONE: One to 16 hours? Mr Giglia: That is for each module. CHAIR: So more than the New South Wales security guard requirements—or Queensland? Mr Giglia: Most definitely.

<sup>40</sup> "Ms. Sherry: I presume you are referring to the proposal around sea marshals, or something to that effect, which we in fact did try on the ships here. For a number of years we had New South Wales police officers who were off duty or on leave travelling on the ships as marshals. It was agreed though after a three year period that it was not working for us or for the New South Wales police. This was for a couple of reasons. One is that the longer people are on the ship, the less they are seen as independent anyway. They are part of the dynamic of what is happening on a ship. So they became relatively ineffective for want of a better description."

<sup>41</sup> pg. 11

<sup>42</sup> Ibid

<sup>43</sup> pg. 12

<sup>44</sup> The author served aboard an Amphibious Helicopter aircraft carrier, the *USS Tarawa*, LHA-1, and was the ship's designated security officer in charge of investigations and the Master at Arms ratings and as such, investigated

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minor infractions of the UCMJ. After leaving active duty, the author served as a civilian Special Agent of the NCIS before becoming a Special Agent of the U.S. State Department's Bureau of Diplomatic Security (DSS).

<sup>45</sup> The bill would require cruise ships embarking from ports in California to have on board a licensed marine engineer, granted peace officer status under this bill, to monitor matters of public safety and environmental compliance. To fund the program, this bill would authorize the Department of Justice to assess a fee on a ship of \$1 per berth per day the ship is operating in California's waters. SB 1582 is no longer active. Its final status was: Did not pass the Legislature [http://www.senatorsimitian.com/entry/sb\\_1582\\_sea\\_marshalls\\_on\\_cruise\\_ships/](http://www.senatorsimitian.com/entry/sb_1582_sea_marshalls_on_cruise_ships/)

<sup>46</sup> Congressional Hearing on Crimes Against Americans on Cruise Ships, Subcommittee on Coast Guard and Maritime Staff, March 23, 2007, pg. 1

<sup>47</sup> Ibid

<sup>48</sup> Ibid, pg. 2

<sup>49</sup> Dan Masapust, "Congress to Throw Crime Overboard," Cruise News, July 7, 2009, [http://www.shermanstravel.com/blogs/cruise\\_news/877/congress-aims-to-throw-crime-on-cruise-ships-overboard](http://www.shermanstravel.com/blogs/cruise_news/877/congress-aims-to-throw-crime-on-cruise-ships-overboard)

<sup>50</sup> Julie Rawe, "Crime Rocks the Boat," TIME, March 7, 2006, <http://www.time.com/time/printout/0,8816,1169912,00.html>

<sup>51</sup> Congressional Hearing on Crimes Against Americans on Cruise Ships, pg. 3

<sup>52</sup> Crime Scene Investigation or "CSI" is a popular drama format currently used for police detective shows on television. It is a re-dressing of the old "who done it" format of past crime shows like *Dragnet* and *Hawaii Five-0* popularized in the 1960's. The popularity of the show CSI has generated a host of spin offs including *CSI: Miami* and *CSI: New York*. The original series follows Las Vegas criminal investigators who use physical evidence to solve grisly murders in graphic settings. At about the same time they created CSI, CBS, the network which produces the television program, also came up with the hit show "NCIS" which they originally wanted to call "Navy CSI" but changed it instead to "Navy NCIS" or simply, NCIS which is an acronym for the Naval Criminal Investigative Service, the criminal investigative arm of the U.S. Navy.

<sup>53</sup> Congressional Hearing on Crimes Against Americans on Cruise Ships pg. 3

<sup>54</sup> Jane Doe and Sara Doe are fictitious names for the real victims in this case.

<sup>55</sup> "Royal Caribbean Cruises, Ltd., Petitioner, vs. Jane Doe & Jane Doe," Third District Court of Appeal, State of Florida, January Term, A.D. 2007, Opinion filed May 23, 2007, <http://www.cruisebruisse.com/files/3d06-1885.pdf>

<sup>56</sup> Ibid, pg. 3

<sup>57</sup> Lawrence R. Booth, "Cruise Ship Liability; Rape and Injuries on the High Seas," Findlaw.com, [online] undated, <http://library.findlaw.com/1999/Oct/1/129463.html>

<sup>58</sup> Ibid,

<sup>59</sup> Ibid

<sup>60</sup> Royal Caribbean Cruises, Ltd., Petitioner, vs. Jane Doe, et.al, pg 9

<sup>61</sup> Ibid, pg. 11

<sup>62</sup> See Ross Klein, "Cruise Junkie," <http://www.cruisejunkie.com/>

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<sup>63</sup> Elizabeth Binning, “Sex-assault risk greater on liners than on land: study,” [nzherald.co.nz](http://www.nzherald.co.nz/travel/news/article.cfm?c_id=7&objectid=10753403), September 22, 2011, [http://www.nzherald.co.nz/travel/news/article.cfm?c\\_id=7&objectid=10753403](http://www.nzherald.co.nz/travel/news/article.cfm?c_id=7&objectid=10753403)

<sup>64</sup> Written Testimony of William M. Sullivan Jr. Esq., Partner, Winston and Strawn, LLP, before the Committee on Transportation and Infrastructure, United States House of Representatives, Subcommittee on Coast Guard and Maritime Transportation, September 19, 2007

<sup>65</sup> Ibid

<sup>66</sup> Ibid

<sup>67</sup> “Cruise industry leaders announce zero tolerance for crime at sea,” CNN Travel Guide, CNNTravel.com, July 27, 1999, [http://articles.cnn.com/1999-07-27/travel/9907\\_27\\_cruise.rules\\_1\\_carnival-attorney-curtis-mase-crew-members-cruise-industry?\\_s=PM:TRAVEL](http://articles.cnn.com/1999-07-27/travel/9907_27_cruise.rules_1_carnival-attorney-curtis-mase-crew-members-cruise-industry?_s=PM:TRAVEL) “Following recent reports of alleged sexual assaults and other security problems aboard cruise ships, the 16 member companies of the International Council of Cruise Lines ICCL trade association have announced new guidelines for reporting allegations of crime at sea. In an open letter, the four senior executives of the ICCL back up the new policy with a pledge of zero tolerance for crimes committed on our vessels. The CEOs of Carnival, Royal Caribbean, Princess and Crystal cruise lines signed the letter, which says, in part, If crimes do occur, the appropriate law enforcement authorities will be called in to investigate and prosecute to the fullest extent of the law. The stated intent of the industry move is to establish what ICCL officials say is the first uniform standard requiring that all reports of crime at sea be passed on to the FBI for any ship that makes calls in U.S. seaports and for any incident involving a U.S. citizen.”

<sup>68</sup> Bonita Navin, “Stalking Sexual Predators at Sea: The response of the cruise industry to sexual assaults onboard,” *International Travel Law Journal*, 196, 1999

<sup>69</sup> Ibid, pg. 196

<sup>70</sup> Ibid, pg. 196

<sup>71</sup> Ibid, pg. 197

<sup>72</sup> Committee on House Transportation and Infrastructure Subcommittee on Coast Guard and Maritime Transportation March 27, 2007 (testimony of FBI Deputy Assistant Director Salvador Hernandez). 2007 WLNR 5853236

<sup>73</sup> Ibid

<sup>74</sup> The Paris MoU is an organization which consists of 27 participating maritime Administrations and covers the waters of the European coastal States and the North Atlantic basin from North America to Europe. The mission is to eliminate the operation of sub-standard ships through a harmonized system of port State control. Annually more than 24,000 inspections take place on board foreign ships in the Paris MoU ports, ensuring that these ships meet international safety, security and environmental standards, and that crew members have adequate living and working conditions. <http://www.parismou.org/>

<sup>75</sup> “Paris MoU targets passenger ship problems,” *Fairplay*, 21 February 2013

<sup>76</sup> Jim Walker, “CLIA Safety Proposal Ignored: Lifeboat Plunges 60 Feet, 5 Dead,” <http://www.cruiselawnews.com/2013/02/articles/maritime-death/clia-safety-proposal-ignored-lifeboat-plunges-60-feet-5-dead/>

<sup>77</sup> Malcolm Warr, Chairman, ACR Dubai , “Cruise lines can learn from Lord Mountbatten’s views on safety,” *Fairplay*, 21 February 2013

<sup>78</sup> <http://www.thedailybeast.com/newsweek/2013/02/25/triumph-passenger-s-carnival-cruise-from-hell.html>

<sup>79</sup> Matthew Harwood, "Cruise Control at Sea," Security Management, March 2012, pgs. 54-65

<sup>80</sup> Ibid

<sup>81</sup> Author's summation based on anonymous source interview with confidential congressional access, April, 2012

<sup>82</sup> Harwood, "Cruise Control"

<sup>83</sup> Ibid

<sup>84</sup> Ibid

<sup>85</sup> Ibid

<sup>86</sup> Quoting LCDR Pennant, USCG in personal correspondence btwn Ken Carver, ICV and Kathryn Turman, FBI dated 21 January 2103

<sup>87</sup> A catch-22 is a paradoxical situation in which an individual cannot or is incapable of avoiding a problem because of contradictory constraints or rules. Often these situations are such that solving one part of a problem only creates another problem, which ultimately leads back to the original problem. Catch-22s often result from rules, regulations, or procedures that an individual is subject to but has no control over. The term catch-22 was coined by Joseph Heller in his novel *Catch-22*.

<sup>88</sup> The author has testified in Federal Grand Juries as a Special Agent of the U.S. Diplomatic Security Service (DSS) involving fraudulent and "questioned documents" and, has introduced evidence in criminal cases as a Special Agent with the U.S. Naval Criminal Investigative Service (NCIS) ranging from narcotics to sexual assaults.

<sup>89</sup> The author is a licensed private investigator in the State of California.

<sup>90</sup> Mark Gaouette, "Cruising for Trouble," Praeger/ABC-CLIO, Santa Barbara, Ca. 2010, pg. 123

<sup>91</sup> "Carnival Cruise Lines Does Public Relations Damage Control," Peter Ratcliffe , CEO, P&O / Princess Division, Carnival Corporation 22 February 2007, [http://www.cruisebruisse.com/carnival\\_press\\_release\\_feb\\_22\\_2007.html](http://www.cruisebruisse.com/carnival_press_release_feb_22_2007.html)

<sup>92</sup> P&O Cruises Australia – Overview of reforms, pg. 4

<sup>93</sup> "The Crime Manual for Ship's Security Officers," Copyright of Hampshire Constabulary - 2009  
[http://www.acpo.police.uk/documents/TAM/2010/The%20Crime%20Manual%20for%20Ship%20\(non%20restrictedd\)\\_2010.pdf](http://www.acpo.police.uk/documents/TAM/2010/The%20Crime%20Manual%20for%20Ship%20(non%20restrictedd)_2010.pdf)

<sup>94</sup> Ibid

## **Author's Bio:**

My name is Mark J. Gaouette. I have served as a volunteer on the Board of Directors for the International Cruise Victim's Association since 2008. I would like to respectfully offer these comments and recommendations to the Standing Committee on Social Policy and Legal Affairs in response to their hearings on crimes committed at sea. I provide my educational, military, government and professional security background and experience which I believe, allows me to comment with competence on these matters:

- I am currently a security consultant to the government of the United Arab Emirates in Abu Dhabi, UAE,
- I was previously employed by the Department of Homeland Security (DHS), Customs and Border Protection (CBP) as a Sr. Security Specialist, Office of Air & Marine.
- Prior to this, I was a Special Agent of the Defense Intelligence Agency as a Force Protection Officer. I am Department of Defense, Level II trained in anti-terrorism.
- I was the former Director of Security for Princess Cruises in Santa Clarita, California from 2003 to 2005.
- The bulk of my federal government career was spent as a Special Agent of the Diplomatic Security Service (DSS) of the U.S. Department of State. I served as a Regional Security Officer (RSO) at five high-threat U.S. Embassies (La Paz, Bolivia, - 2 years, Managua Nicaragua, - 2 years, Moscow Russia, 2 –years Beirut, Lebanon, 1 year, and Sana'a, Yemen - 6 months). I served at the State Dept. during the Gulf War.
- While a Special Agent of the Diplomatic Security Service, I conducted criminal investigations for the Department of State in Los Angeles, Ca. and presented criminal cases to the Assistant U.S. Attorney in the Central District of California. I have testified before the Federal Magistrate and Federal Grand Juries.
- I served as a Naval Officer on active duty (1982 – 1986) with 42 months of sea duty aboard a helicopter aircraft carrier. I was a Surface Warfare Officer (SWO) and qualified as an Officer of the Deck (OOD), Engineering Officer, and Ship's Security Officer aboard the *USS Tarawa*, LHA-1.
- I was a Reserve Agent of the Naval Criminal Investigative Service (NCIS) with the rank of Commander (O-5) in the U.S. Naval Reserves / Office of Naval Intelligence. I investigated criminal and counterintelligence conduct of U.S. Naval Forces throughout the world (NCIS Europe, the Middle East, Asia/ Pacific and US NCIS field offices) which included, murder, rape, child molestation, and assault. (1986 – 2001)
- I have graduated from the U.S. Federal Law Enforcement Academy located at Glynco, Georgia on two occasions - once with the Naval Criminal Investigative Service (NCIS), and once with the Diplomatic Security Service, (DSS). On both occasions, I completed the Federal Criminal Investigator's Basic Course (16 week program) as well as follow-on security training in weapons and protective services.
- I graduated from advanced language programs at the Foreign Service Institute(FSI), U.S. Department of State in Arlington, Virginia, 6 months full-time language training in Spanish (1991) and 1 year full-time language training in Russian (1998- 1999). In addition to this, I have completed numerous professional, military, and government security training courses online and through formal schooling.
- I graduated from the University of California at Los Angeles, (UCLA) with a Bachelor's degree in Political Science, International Relations.
- I hold a California Private Investigator License and CCW (Carry Concealed Weapon) license in 36 states.
- In March 2010, ABC-CLIO, my book, "*Cruising for Trouble, Cruise Ships as soft Targets for Pirates, Terrorists, and Common Criminals,*" was published by Greenwood Press/Praeger Publications.