

PART 88—MUTINY AND INSUBORDINATION; TRANSPORTATION OF PERSONS CHARGED WITH CRIMES AGAINST THE UNITED STATES

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Section 88.350 Consul to intervene in case of mutiny. If American seamen on board of a vessel of the United States either arrive at a port in a state of mutiny, or a mutiny occurs in port which can not be quelled by the captain, and the captain can not navigate his ship to the United States with the mutineers on board, the consular officer should, if the laws of the country permit, cause the mutineers to be confined and sent home for trial, unless in his judgment the ends of justice will be best subserved by discharging them, in view of unjustifiable cruelty of the captain, or other sufficient cause; and, in the latter case he will be careful to report to the Department of State at length the reasons for his course.*†

*§§ 88.350 to 88.360, inclusive, issued under the authority contained in R.S. 1752; 22 U.S.C. 132.

†In §§ 88.350 to 88.360, inclusive, the numbers to the right of the decimal point correspond with the respective section numbers in Consular regulations, prescribed by Executive order of Dec. 31, 1896. The amending Executive order of Sept. 5, 1922, is noted in brackets following section affected.

88.351 Mutiny defined. In a decision of the Supreme Court of the United States it was held that mutiny consists in the crew of a vessel, or any one or more of them, endeavoring to overthrow the legitimate authority of the commander with the intent to remove him from his command. This may be by resisting him in the exercise of his authority, or by actual usurpation of the command. Mere insolent conduct toward the master, disobedience of orders, or violence committed on the person of the master, unaccompanied by other acts showing an intention to subvert his command as master, is not sufficient to constitute the offense of mutiny. (1 Wheat. 417; 54 Fed. 539)*†

88.352 Insubordination to be discountenanced. It shall be the duty of all consular officers to discountenance insubordination by every means in their power, and, where the local authorities can be usefully employed for that purpose, to lend their aid and use their exertions to that end in the most effectual manner. But care should be taken not to confound a casual disobedience of orders or insubordination not endangering the authority of the master with the crime of mutiny. For these offenses the master has the power to inflict adequate punishment. If the vessel is bound for the United States, and if the master is obeyed by a sufficient number of the

*†For statutory and source citations, see note to § 88.350.

crew to insure the safe navigation of the vessel, he should continue the voyage, if necessary confining the mutinous seamen on shipboard. The consular officer should not discharge the seamen unless that course is clearly justified by the circumstances. If the mutiny is of so grave a character as to endanger the safety of the vessel and to call for the punishment of the offenders, he may take from the vessel so many of them, to be sent to the United States for trial, as will relieve the master from reasonable fear. This power should, however, not be exercised for insufficient cause, nor in any case in which the evidence is not likely to afford good ground for conviction. When the mutiny has been provoked by intolerable cruelty or other sufficient cause, the consular officer may discharge such of the crew as he may deem necessary. In other cases, however, he should endeavor to so exercise the right to discharge as not to offer an inducement to fractious and insubordinate characters to incite disturbance or revolt for the purpose of obtaining a release from the ship. A form of certificate and of the consul's decision in cases of insubordination is given in Forms Nos. 40 and 41. (R.S. 4600, sec. 6, 23 Stat. 55; 46 U.S.C. 703)*† [E.O. 3731, Sept. 5, 1922]

88.353 Mutiny in a foreign port. If a mutiny or grave offense has been committed on an American vessel in a foreign port, or within the jurisdiction of the foreign State, and the circumstances are deemed to call for the punishment of the offenders, the latter should be delivered to the consular officer to be sent to the United States, unless, in the case of seamen, he shall decide to discharge them from the vessel. He should request the aid of the local authority, if necessary, and if he is authorized to do so by treaty or by the established usage of the place, Forms Nos. 32, 40, and 41 may be used. The consular officer is not authorized, however, to exercise this jurisdiction, except under the provisions of treaty, or by usage, or through the courtesy of the authorities of the country who from motives of comity or reciprocity may be willing to deliver up the offenders.*†

88.354 Investigation by consul. In order to determine whether he shall detain or require detention, the consul must inquire into, and in some sense judge and decide, the question of culpability. He must, of necessity, inquire in the usual way—that is, by hearing testimony not as a judicial officer but as consul. As to judgment—that is, deciding whether to detain or not to detain—he must have large discretion. He need not detain men upon such suspicion of guilt as would justify an examining magistrate in holding to bail within the United States. There is no judge at hand to supervise the propriety of such detention by writ of habeas corpus or to admit bail on motion. The consul, in order to induce him to detain, may well require stronger probable cause of belief in guilt than an examining magistrate. He may do this in the interest of the party, and he may do it in the interest of the Government, which must defray the expenses of the detention and custody of the party and of his conveyance to the United States. (8 Op. Atty. Gen. 380)*†

88.355 Transportation of persons charged with crime. When, however, mutiny or other grave offense against the laws of the United

States shall have been committed on board an American vessel on the high seas, and without the jurisdiction of any State, it is the duty of the consular officer into whose district the vessel may come to take the depositions necessary to establish the facts in the fullest manner possible. If the circumstances demand that the offenders should be sent to the United States for trial, he may apply to the local authorities for means to secure and detain them while they remain in port; and in all cases where the vessel is not bound for the United States he is directed to procure at least two of the principal witnesses to be sent along with the prisoners. And he will, at the same time, promptly transmit certified copies of all the depositions, together with a carefully prepared report of all the facts and proceedings that may aid in establishing the guilt of the offenders, to the United States attorney for the district to which the prisoners are sent, and also a like report of the case to the Department of State. When practicable to do so, consuls should send the witnesses to the United States in the same ship with the accused, and in all cases should endeavor to get witnesses to the place of trial as soon as possible after the arrival of the accused.*†

88.356 General principles of jurisdiction. The general principle on which such offenses are exempted from the cognizance of foreign tribunals is, as stated by Wheaton, that the public and private vessels of every nation, on the high seas, and out of the territorial limits of any other State, are subject to the jurisdiction of the State to which they belong. This jurisdiction, however, is exclusive only so far as respects offenses against its own municipal laws. It is accordingly otherwise with piracy and other crimes against the law of nations. It is asserted that a vessel while upon the high seas is to be regarded as a part of the country whose flag she bears, and that therefore all offenses and crimes against the laws of the country are cognizable by its tribunals alone; and that, as the municipal laws of the State provide for the punishment of offenders in its territory, whether foreigners or its own citizens or subjects, so also this cognizance embraces all persons, without regard to nationality, who have committed offenses against its laws upon its vessels when on the high seas. Whenever, therefore, jurisdiction over offenses or crimes so committed on American vessels is asserted and exercised, as has sometimes been the case, by the courts of a foreign country, it is the duty of the consular officer to protest against any and all proceedings, and to report the facts and circumstances to the Department of State and to the diplomatic representative of the United States, if there be one accredited to the country (§ 85.307). (Dana's Wheaton 106, 107)*†

88.357 Expenses of detention and transportation. The expenses incident to the removal of an offender from a vessel and his transportation to the United States are usually considerable in amount. In some instances it has been found necessary to employ a keeper for the prisoners; but such an outlay is justified only when the safe-keeping of the accused can not be stipulated for in the contract with the transporting vessel or there are other controlling reasons. Consular officers, therefore, will be careful not to subject the Govern-

*†For statutory and source citations, see note to § 88.350.

ment to the expense of sending offenders to the United States, and of their imprisonment and trial in this country, unless the offense is of an aggravated character and the evidence is such as to render it probable that a conviction can be obtained.*†

88.358 Transportation not obligatory on shipmasters. While masters of American vessels in foreign ports are subject, on the requisition of the consular officer, to convey distressed seamen to the United States, they are not obliged to take on board seamen or other persons charged with crime, to be brought to the United States for trial. (7 Op. Atty. Gen. 722) No specific instructions can be given as to the amount a consular officer may agree to allow a master for transporting a prisoner; but the compensation should be reasonable. The amount may be left, by mutual agreement, to the determination of the Department of State, when all the circumstances shall have been presented after the arrival and delivery of the prisoner to the proper authorities.*†

88.359 Accounts. All disbursements and expenses incurred by consular officers for the arrest, imprisonment, and transportation of persons accused of crime against the United States should be stated in a separate account and transmitted to the Department of State, supported by proper vouchers; and the draft therefor, when there are not sufficient funds in the consulate, should be drawn upon the Secretary of State.*†

88.360 No allowance for legal services. No allowance will be made to consular officers for expenses incurred in procuring the defense in any court of law of American seamen or of persons accused of crimes against the laws of the United States, or the laws of foreign countries, without the special permission or sanction of the Department of State.*†

PART 89—IMMIGRATION AND QUARANTINE

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CROSS REFERENCES

Foreign quarantine regulations of the United States Public Health Service: See Public Health, 42 CFR Part 11.

Immigration rules and regulations of the Immigration and Naturalization Service, Department of Labor: See Aliens and Citizenship, 8 CFR Parts 1-36.

Section 89.361 Consular officers to assist in enforcing immigration laws. Specific duties are placed upon consular officers in connection with the enforcement of the immigration laws and regulations of the United States, and, in general, they are required to assist in such enforcement. To this end consular officers should familiarize