



## FINDING THE HAPPY MEDIUM

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According to 33 CFR §1.07-55(d), “In receiving evidence, the Hearing Officer is not bound by strict rules of evidence. In evaluating the evidence presented, the Hearing Officer must give due consideration to the reliability and relevance of each item of evidence.”

When determining what evidence to provide for the Hearing Officer’s consideration in a case, it’s important to focus on the elements of each violation. Without careful thought, it is quite possible to provide either too much, or not enough, evidence and information. It is fine to tell the whole story, and surrounding circumstances may be weighed as mitigating or aggravating factors; including irrelevant information, however, can be unnecessarily burdensome and distracting for the Hearing Officer. The goal, for both the charging unit and the charged party, should be to find the happy medium.

### More is not always better

Occasionally, alleged charges will stem from an incident that included an extensive investigation, and/or response operations by the Coast Guard. When the **charging unit** is compiling a case package for submission to the Hearing Office, it is more confusing than helpful to include everything available. Instead, consider the elements of the alleged violation, and what evidence is available that clearly shows that these elements have been met. Similarly, it would be more beneficial to the charged party if there were a clear focus on the elements of each violation and any mitigating or extenuating circumstances.

A **charged party** responding to the allegations may be tempted to address all the finer details of the case file, pointing out minor discrepancies, and passionately offering personal opinions or

conclusions about the case. To the Hearing Officer, whose job it is to make a decision based on the facts, such responses are usually less helpful than is evidence containing factual detail to support the finding the party seeks to prove. The charged party may want to: a) determine what evidence is available or obtainable that either clearly contradicts the Coast Guard's evidence relating to the elements of the violation; or b) clearly present facts that are extenuating or mitigating, such as timely achievement of compliance.

### A little is probably not enough

Lack of evidence may render an argument or case less than convincing, or not very credible. It becomes difficult to make a decision if not enough evidence, or not enough of an explanation about how the evidence is relevant, has been provided. To the persons involved in a boarding or other incident, it may be obvious how evidence of a certain fact relates to the proof of an alleged violation. You should try to put yourself in the position of the Hearing Officer, who must understand what happened only from the evidence and explanations provided. Although we may consider ourselves to be knowledgeable and experienced in the matters before us, Hearing Officers are not mind readers. A brief explanation should not only provide the Hearing Officer with a clearer understanding as to why the evidence provided is relevant, but also why, if at all, it should be considered in defense, extenuation, mitigation, or aggravation.

Not too little, and not too much, but just right... Hopefully with some forethought and common sense, both the charging unit and the charged party will be able to find the happy medium of evidence to provide in a case.