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MAINTENANCE, SHORESIDE WAGES, AND
MR. CROOKS: A PROPOSED END
TO TWIN BEDS AND SIX
MEALS A DAY

The recent Ninth Circuit decision of *Crooks v. United States* reiterates the long established truism that admiralty courts will, whenever possible, be munificent in awarding damages to injured seamen. Indeed, it appears that the “poor and friendless seamen,” described in Justice Story’s classic decision, have found the best friend they could hope for—the courts of admiralty, bent on presenting them with extremely liberal damage and maintenance awards. This note will examine the generosity of the *Crooks* award and will explore how other jurisdictions have treated the compensation issues which it raises.

Crooks, the plaintiff-appellee, instituted a single admiralty action against the United States for personal injuries he received as a seaman aboard ship. Crooks charged negligence against the United States and sought damages as well as unpaid maintenance during the period of physical disability following the accident. The district court which initially heard the case awarded the plaintiff the sum of $16,773.00. Included was $15,453.40 for lost earnings during the period of temporary total incapacity, loss of future earnings, medical specials, pain and suffering and $1200.00 for unpaid maintenance plus $120.00 interest thereon.

On appeal, the government challenged the propriety of the district court’s award of $1200.00 maintenance in addition to the rather ample negligence and unseaworthiness damages of over $15,000.00. Specifically, the government noted that plaintiff’s prospective lost wages

1. 459 F.2d 631 (9th Cir. 1972).
3. This is to be distinguished from a civil action brought before the federal courts on the basis of diversity jurisdiction as well as an action tried before a jury. In the instant case, all issues were decided by the judges of the Ninth Circuit.
4. The United States was named as defendant because it owned the public vessel *SS Green Point*. The Suits in Admiralty Act, 46 U.S.C. Sect. 741 et seq. permits such an action.
5. Brief for Appellee at 2, 3, *Crooks v. United States*, 459 F.2d 631 (9th Cir. 1972). The $120.00 interest was conceded to be erroneous by stipulation of the appellee, and will not be further discussed in this note.
6. The government was specifically concerned with that part of the plaintiff’s
were computed by reference to a period which included a considerable amount of shoreside service. This was because the plaintiff's employment during the fifteen months preceding the voyage was divided between landed and seaside service. The government contended that since shoreside wages already included the element of maintenance (a person employed ashore is expected to maintain himself out of his wage and hence such wages are computed accordingly), an allowance of maintenance in addition to shoreside wages would amount to a double recovery. The Court of Appeals for the Ninth Circuit rejected this argument and affirmed the lower court's decision with a slight modification not relevant to this discussion.

**Maintenance and Cure and the Wardship Concept**

It is difficult to appreciate the Crooks decision without a nominal understanding of two basic principles: the extremely liberal nature of the maintenance award and the admiralty court's historical solicitude for the welfare of seamen, who are considered its wards.

The right to maintenance and cure arises when the seaman signs articles, and continues until he has received his discharge. Any recovery which encompassed prospective lost wages during the period of the plaintiff's temporary total incapacity, some $4,761.15 of the total negligence recovery. The amounts allocated for pain and suffering and decreased capacity to earn wages in the future were not contested on appeal.

7. In general, a seaman's wages are computed with recognition of the fact that he will be housed and fed aboard his vessel for the duration of the voyage. Accordingly, his shipside wages reflect this form of indirect compensation by being somewhat lower than a landed employee's salary for similar duties. For this reason it has long been recognized that a seaman who is stricken while in the service of his vessel should be given a special award to maintain and care for himself while recuperating ashore. The award represents compensation for the meals and lodging which are tacitly included on his wage, but which the seaman cannot take advantage of when he is not aboard his vessel. See text accompanying notes 11-29 infra, where the maintenance remedy is more fully discussed. See generally G. Gilmore & C. Black, The Law of Admiralty, §§ 6-6 to 6-9 (1957) [hereinafter cited as Gilmore & Black]; 2 M. Norris, The Law of Seamen §§ 538-611 (3d ed. 1970).

8. Brief for Appellant at 8, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972).


10. Id. at 635. The $120.00 interest award was omitted from the district court's judgment.

11. See text accompanying notes 11-27 infra.


discussion of this ancient remedy must begin with the oft-quoted remarks of Justice Story in *Hardin v. Gordon*: 15

[The right to maintenance and cure] appears to me so consonant with humanity, with sound policy, and with national interests. . . . Seamen are by the peculiarity of their lives liable to sudden sickness. . . . They are generally poor and friendless, and acquire habits of gross indulgence, carelessness, and improvidence. If some provision be not made for them in sickness at the expense of the ship, they must often in foreign ports suffer . . . disease, and poverty, and sometimes perish from the want of suitable nourishment. Their common earnings . . . are wholly inadequate to provide for the expenses of sickness. . . . Beyond this, is the great public policy of preserving this important class of citizens for the commercial service and maritime defence of the nation. 16

The more recent case of *Aguilar v. Standard Oil Co.* 17 re-examined the nature and scope of maintenance, deeming it “among the most pervasive incidents of the responsibility anciently imposed upon a shipowner for the health and security of sailors . . . .” 18 The Supreme Court noted that the obligation was created by the contract of employment and that liability for maintenance, unlike liability under the Jones Act, 19 is in no sense predicated on the fault or negligence of the shipowner. Explicitly, it stated that, “[s]o broad is the shipowner’s obligation, that negligence or acts short of culpable misconduct on the seaman’s part will not relieve him of the responsibility.” 20

Indeed, the injury or illness need not be causally related to the seaman’s shipboard duties, as long as it manifests itself during the course of the voyage. 21 Thus, in a series of Supreme Court cases, maintenance was allowed when an incurable vascular disease manifested itself while a seaman was in the employ of the ship, 22 where a seaman on shore leave fell into a ditch, 23 where a seaman was struck by a car on shore leave, 24 and even where the seaman over-

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15. 11 Fed. Cas. 480 (No. 6047) (C.C.D. Me. 1823).
16. Id., at 483. Another oft-cited rationale for extreme liberality in the granting of the maintenance award is to provide “inducement to masters and owners to protect the safety and health of seamen while in service . . . .” and to strengthen the maritime marine “by inducing men to accept employment in an arduous and perilous service.” *Calmar S.S. Corp. v. Taylor*, 303 U.S. 525, 528 (1938).
17. 318 U.S. 724 (1943).
18. Id. at 730.
19. 46 U.S.C. § 688 (1970). The Jones Act states that any seaman who suffers personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such an action all Federal Employee's Liability Act statutes shall apply. Id.
22. Id.
stayed his leave and was injured wholly through his own negligence.²⁵ Perhaps the zenith of zeal in awarding maintenance came in a New York state case²⁶ awarding maintenance and cure to a sailor who had suffered a fractured leg while making a hasty exit from a Yugoslavian brothel. Broadly speaking,

[m]isconduct on board ship as well as misconduct ashore will forfeit the right [to maintenance and cure], but the courts have not been inclined to construe misconduct as including what the opinions call 'horseplay'. It is apparent . . . that negligence or contributory negligence of even the grossest kind will not of itself qualify as misconduct and forfeit the right.²⁷

The corollary rationale for the extreme liberality afforded the incapacitated seaman in the area of maintenance and cure is the notion that seamen are the wards of the admiralty courts and therefore must be carefully protected in virtually every area of their existence.²⁸ Hence, as early as 1823, there are descriptions of seamen as "poor and friendless [with] habits of gross indulgence, carelessness, and improvidence . . . ."²⁹ The passage of one hundred and fifty years since Story's famous appraisal has not fundamentally altered this concept.³⁰ It is against this two-pronged backdrop of broadly construed maintenance obligations and judicial paternalism towards seamen, that the Crooks decision must be viewed. Indeed the court explicitly noted that:

The Court [in Aguilar v. Standard Oil Co.] observed in addition [to maintenance and cure being among the most pervasive of all liabilities of the shipowner] that Admiralty out of historic solicitude for the welfare of its wards construes liberally all doubts and ambiguities in favor of maintenance awards. . . . This rule of interpretation is of assistance in the case before us.³¹

²⁷. Gilmore & Black, supra note 7, at 260. "Negligence, whether it is characterized as active, passive, ordinary or gross, does not defeat a seaman's claim for maintenance and cure, for his conduct is not measured by a standard of due care. There must be an element of wilfulness about it in order to deprive him of his traditional right. . . . Neither the rules of contributory negligence, comparative negligence, the fellow servant doctrine, assumption of risk, or that of fault, have any place in the liability or defense against it." Norris, The Seaman as Ward of the Admiralty, 52 Mich. L. Rev. 479, 494 (1954).
The Multi-Faceted Problem of the Double Recovery

The injured seaman is generally in a position to seek recovery through a wide variety of remedies. This plethora of available remedies is largely responsible for the variety of contexts in which the “double recovery” problem surfaces, as well as some of the confusion which surrounds it.

As has previously been illustrated, the seaman’s right to maintenance, cure and wages for the duration of the voyage is in no sense predicated on the shipowner’s negligence or fault, but rather is a quasi-contractual duty arising from the contract of employment. There are generally three separate items of recovery in such an action. The first of these is maintenance, which is a living allowance sufficient to enable the seaman to maintain himself in a manner “comparable to that to which the seaman is entitled while at sea . . .” The second item is cure, or care, which consists of the expenses of medical treatment. The right to cure extends until there is such improvement in the seaman’s condition as may be expected from continued care. The last item comprises the seaman’s wages, computed to the end of the voyage the seaman was on when he was incapacitated.

Where there is evidence of actionable negligence, or breach of the shipowner’s duty to provide a seaworthy vessel, a second group of remedies inures to the benefit of the seaman. Unlike maintenance and cure, with its contractual origins, these provisions arise from the law of tort and hence are separate and distinct claims not per se affecting the seaman’s rights to maintenance under the general maritime law. They include the remedies provided in the Jones Act, common law negligence, and the unseaworthiness doctrine. A suit under the Jones Act is substantially the same as a common law suit for negligence or a maritime action for unseaworthiness. The potential elements of re-

32. See text accompanying notes 19-27 supra.
34. Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 528 (1938). This has, however, been given the broadest kind of construction. See text accompanying notes 70-79 infra.
35. Calmar S.S. Corp. v. Taylor, 303 U.S. at 530.
36. See, e.g., The Osceola, 189 U.S. 158 (1903); Bartholomew v. Universe Tankships, Inc., 279 F.2d 911, 915 (2d Cir. 1960), which contains the following language: “It is important to note that if an incapacitated seaman has been put on shore before the end of the voyage there will be a period when he is entitled to recover in a maintenance and cure action not only for room and board and medical expenses but also for wages. . . .”
39. The Osceola, 189 U.S. 158 (1903).
covery under either include medical expenses, past and prospective, indemnity for loss of earnings, past and prospective, and an award for the seaman's physical injuries and pain and suffering.40

It is therefore axiomatic that some of the elements of damages available to the injured seaman under a tort claim are identical to those to which he is entitled under the admiralty doctrine of maintenance and cure. Nonetheless, while "[t]he right to maintenance, cure and wages, implied in law as a contractual obligation arising out of the nature of the employment, is independent of the right to indemnity or compensatory damages for an injury caused by negligence; and these two rights are consistent and cumulative..."41 the seaman cannot recover twice for the same elements of damage.42 The real issue rests on whether such duplication occurs.

The problem is further complicated by the fact that unseaworthiness or negligence claims often are submitted to a jury for consideration as a civil claim, while maintenance and cure may be decided by the judge, sitting in admiralty.43 When the jury returns a general verdict in favor of the plaintiff, the judge is faced with the difficult problem of deciding whether that verdict is inclusive of damages which may be within the maintenance and cure area.44 It is this multiplicity of available remedies and procedures that


42. See, e.g., Vickers v. Tumey, 290 F.2d 426, 435 (5th Cir. 1961); McCarty v. American Eastern Corp., 175 F.2d 727, 729 (3d Cir. 1949); Smith v. Lykes Brothers-Ripley S.S. Co., 105 F.2d 604, 606 (5th Cir. 1939).

43. See, e.g., Bartholomew v. Universe Tankships Inc., 279 F.2d 911 (2d Cir. 1960) (maintenance and cure claim reserved for the judge, negligence claim decided by the jury). The courts are divided on the question of whether maintenance and cure claims must be decided by the judge. Since maintenance and cure is a right which arises under the maritime law, it may always be sought in the admiralty jurisdiction of the court. However, when the negligence and unseaworthiness action is submitted to the jury, most courts will let the maintenance and cure count go to the jury along with the damages count. Gilmore & Black, supra note 7, § 6-9. See, e.g., Garrett v. Moore-McCormick Co., 317 U.S. 239 (1942). See also Rosequist v. Isthmian S.S. Co., 205 F.2d 486 (2d Cir. 1953). Where this occurs the possibility of overlap or double recovery looms large. Often the jury's verdict in the negligence count is so broad as to include those elements which are traditionally within the maintenance and cure area. It is the duty of the trial judge to see that this does not occur.

44. "We think the test to be applied in the determination of this issue, in cases where plaintiff has been awarded a substantial recovery, is a simple one: the items of damage specified and included in the instructions to the jury are presumed to be included in the general verdict and there may be no later allowance for any of such items by way of maintenance and cure. We further hold that as to this defense of duplication or prior payment the defendant must bear the burden of proof." Bartholomew v. Universe Tankships Inc., 279 F.2d 911, 915-16 (2d Cir. 1960).
often results in the situation where an injured party brings separate actions\textsuperscript{45} in the hopes of maximizing his total recovery and perhaps recovering overlapping damages.\textsuperscript{46} Hence, \\

\begin{quote}
although remedies for negligence, unseaworthiness and maintenance and cure have different origins and may on occasion call for application of slightly different principles and procedures, they nevertheless, when based on one unitary set of circumstances, serve the same purpose of indemnifying a seaman for damages caused by injury, depend in large part upon the same evidence, and involve some identical elements of recovery.
\end{quote}

These identical elements loom large in the disposition of maritime lawsuits where alleged double recoveries are sought by the plaintiff.

**Decisions Involving Double Recovery**

The body of case law on the double recovery problem is diverse and perhaps confusing to those not versed in the application of maritime remedies. This note has outlined the available legal courses of action open to the injured seaman;\textsuperscript{48} this section will attempt to lead the reader through some of the more important decisions which have grappled with the problem. In order to appreciate the complexity and scope of this area of the law of admiralty, it is helpful to survey some of the leading cases.

The case law presents a veritable panoply of different applications of the overlapping damages problem. Some of the suits are such blatant efforts at recovering duplicate awards, that it seems almost absurd that they were litigated. Thus, in *McCarthy v. American Eastern Corp.*,\textsuperscript{49} the injured seaman's wages included cash as well as room and board. In his civil claim for damages, on a theory of negligence and unseaworthiness, the libellant included not only cash wages lost by reason of his injuries but also the cash value of the board and lodging which he would have received had he remained in the employ of the respondent. In a separate action in admiralty, however, the

\begin{footnotes}
45. See, e.g., Pacific S.S. Co. v. Peterson, 278 U.S. 130 (1928), allowing such a procedure.
46. See, e.g., Bartholomew v. Universe Tankships Inc., 279 F.2d 911 (2d Cir. 1960). "While the seaman may not split his tort claim into fragments and sue at various times for one part of his damages and then for another [citations] he need not claim or seek to establish at the trial of the counts based on negligence and unseaworthiness all the damages to which he may be entitled." Id. at 916 (emphasis added). See also Fitzgerald v. U.S. Lines, 374 U.S. 16, 18 (1963).
47. Fitzgerald v. U.S. Lines, 374 U.S. 16, 18 (1963) (emphasis added). See also Gooden v. Sinclair Refining Co., 378 F. 2d 576 (3d Cir. 1967), "[A] seaman cannot have both damages and maintenance and cure if there would result any duplication of recovery upon a single claim." Id. at 581.
48. See text accompanying notes 32-44 supra.
\end{footnotes}
plaintiff-appellant sought maintenance for precisely the same period. By successfully recovering the cash value of his lost room and board in his negligence action, the seaman had in fact recovered precisely those amounts which are normally encompassed in a maintenance award. In short, the libellant was seeking a windfall.\textsuperscript{50} The court of appeals appropriately refused to grant the maintenance recovery, noting that:

The ancient rule in the admiralty that the vessel and her owner must provide an injured seaman with maintenance was intended to assure him three meals a day and a bed in which to sleep during his treatment and convalescence. There is no basis in logic or law for assuming that he may ask for six meals a day or twin beds. \textellipsis \textsuperscript{51}

In \textit{Muise v. Abbott},\textsuperscript{52} the First Circuit dealt with an analogous problem. There, the seaman was injured on a defective wharf while returning from authorized shore leave. He brought an action in tort against the wharf owner and settled for $5,500. He then proceeded against the shipowner for maintenance and cure in the amount of $1949.78 ($1039.78 for medical expenses and $910.00 for maintenance during the period of his convalescence). The court recognized that the rights of the seaman to seek compensatory damages on a tort theory and maintenance on a maritime-contractual theory are consistent and cumulative. Nevertheless, it held that:

\begin{quote}

it does not follow from this \textellipsis that [appellant] can recover full damages in both of the actions available to him. The reason for this is that the damages recoverable in each action to some extent overlap and the rule prevails in admiralty \textellipsis that no one may recover compensatory damages more than once.\textsuperscript{53}
\end{quote}

The First Circuit accordingly upheld the lower tribunal's decision which awarded the plaintiff only part of the maintenance and cure which he had claimed. The court determined that part of the seaman's tort settlement was compensation for his medical care and maintenance and the shipowner was not required to further compensate the plaintiff for these amounts.\textsuperscript{54}

Similarly, if the seaman claims wages until the end of the voyage as part of his maintenance, cure and wages remedy, he is precluded

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\textsuperscript{50} It should be observed, however, that in certain situations, a plaintiff-seaman will recover more than he actually lost. "But this is a result of the unique nature of the rights granted by the maritime law to the seafaring man \textellipsis" Richardson v. St. Charles-St. John Baptist Bridge & Ferry Authority, 284 F. Supp. 709, 713 (E.D. La. 1968).


\textsuperscript{52} 160 F.2d 590 (1st Cir. 1947).

\textsuperscript{53} Id. at 592.

\textsuperscript{54} Id.
from seeking indemnity for lost wages encompassing this period (from
the injury until the end of the voyage) in a separate action for com-

pensatory damages on a negligence theory. This problem squarely con-
fronted the Fifth Circuit in the case of Vickers v. Tumey. There,
the court also faced the procedural situation in which the jury decided
the negligence claim and the judge, sitting in admiralty, made the
maintenance, wages and cure determination. The court disposed of
the problem stating that "since the element of wages . . . is inherent
in each of the two types of recoveries, there must not be a duplication
in the final award whether it is done . . . by a jury hearing both
phases . . . or partly by the jury and partly by the Judge."57
Many courts state that only amounts necessary and actually ex-

pended by the injured seaman either for hospital care or for food
and lodging are recoverable in an action for maintenance and cure.
There are, however, contrary decisions. Significantly, in the leading
case in this area, where the seaman was denied maintenance and
cure because he stayed with his parents during recuperation, he had
refused to avail himself of the Public Health Service facilities. On the
narrower question of whether he would be denied maintenance had
no such offer been made, it is difficult to speculate whether the Su-
preme Court would render the same determination.

55. 290 F.2d 426 (5th Cir. 1961). No duplication was found on the facts of
the particular suit but the discussion of the problem is nevertheless noteworthy.

56. Id. at 434-35. The court dismissed the very limited nature of the wages (in
the maintenance-wages-cure sense) award, noting that "[w]hile loss of wages as an
element of damages may perhaps extend almost indefinitely for the probable employ-
able life of the seaman, that is not so with regard to this limited duty to pay wages as
part of cure . . . wages in the maintenance-wages-cure sense is a very limited award
and such wages are due as a matter of right wholly without regard to unseaworthi-
ness or negligence or both. Id. at 434-435. See also note 36 supra.
57. 290 F.2d at 435. See also Ortiz v. Grace Lines Inc., 250 F.2d 124 (2d Cir.
1957).

58. The seaman is permitted no recovery for maintenance or cure during the
time he stays in a Public Health Service Hospital, since he has been sustained
during these periods at no cost to himself or his family. See generally 2 M. Norris,

his parents' home during recovery period and incurred no expense to himself for main-
tenance); Numes v. Farrell Lines, Inc., 129 F. Supp. 147, 148 (D.C. Mass.) rev'd on
other grounds, 227 F.2d 619 (1st Cir. 1955) (seaman stayed with mother during his
period of recuperation).

60. See, e.g., Boboricken v. United States, 76 F. Supp. 70 (D.C. Wash. 1947);
Brinkman v. Oil Transfer Corp., 300 N.Y. 48, 88 N.E.2d 817 (1949). Both of these
cases involved relatively young seamen, however, and the courts apparently felt that
the plaintiff's parents should not be burdened with their son's upkeep in lieu of the
shipowner. The general rule, however, prevents such recovery. 2 M. Norris, The

The rationale for denying recovery in these situations is apparent. Since the seaman is cared for at no expense to himself, the hoary picture of a disabled sailor rotting away in a foreign port, or indeed an American city, is merely idle imagery. Allowing a recovery for costs never incurred would be a windfall, and that was never the historic purpose of the maintenance and cure remedy.62

It should be noted, that in their zeal to prevent a so-called double recovery, some decisions in the Second Circuit erroneously held that as a matter of law, "plaintiff cannot recover maintenance and cure in addition to loss of wages, for the same periods." Interestingly, in a case so holding, Evans v. Schneider, the court cited the McCarthy v. American Eastern Corp. decision as supportive authority for its overly broad declaration. Nevertheless, as pointed out, the McCarthy case stands for the more limited proposition that where the seaman includes the value of his room and board in his claim for lost wages, he thereafter cannot recover amounts for maintenance in a separate claim. This is not to say that where he only seeks the net amount of lost seaman's wages (which are generally computed with recognition of the fact that they "tacitly" include a food and lodging increment and are therefore lower than landed wages for similar duties) he should be precluded from thereafter seeking his maintenance in a separate suit. Furthermore, the Evans court cited with approval the case of Perez v. Suwanee Steamship Co., which was subsequently overruled by the United States Supreme Court. It is therefore apparent that the vitality of the Evans decision is open to strong, indeed compelling, doubts.

While the courts espouse a general prohibition against double recoveries, they have not limited awards merely to the compensation needed to make the claimant whole. For example, the Ninth Circuit awarded maintenance to an injured seaman who was not supplied his meals while on board ship, but was required to pay for them himself. In The City of Avalon the court increased the libellant's maintenance award and thereby compensated him for food expenditures during his recovery period. Largely relying on policy considerations, the court

62. See text accompanying notes 16-20 supra.
63. Evans v. Schneider, 250 F.2d 710 (2d Cir. 1957); Ortiz v. Grace Lines, Inc., 250 F.2d 124 (2d Cir. 1957) (per curiam).
64. Evans v. Schneider, 250 F.2d 710 (2d Cir. 1957).
65. Id. at 712.
67. See text accompanying notes 49-51 supra.
68. 239 F.2d 180 (2d Cir. 1956) (per curiam).
70. 156 F.2d 500 (9th Cir. 1946).
rejected the appellee's contention that the libellant should be denied a maintenance award for his meals since he paid for his own food while working on board ship. The court interpreted the statement in Calmar S.S. Corp. v. Taylor that "[t]he maintenance exacted is comparable to that to which the seaman is entitled while at sea . . ."\textsuperscript{71} to mean no more than that an injured man during his disability is to be maintained in no better or worse condition than he was at sea.\textsuperscript{72} Hence, even though the appellant would not be entitled to food as part of his wage contract, he would have paid for it and surely would have eaten. Consequently, the shipowner had the duty to see that the injured party be maintained in a comparable condition—that he be supplied with food—despite the fact that in the latter instance the food costs would be borne by the shipowner.

*The City of Avalon* was followed by a series of district court cases in Louisiana. In Richardson v. St. Charles-St. John the Baptist Bridge and Ferry Authority,\textsuperscript{73} a ferryboat deckhand was permitted to recover both lost wages and maintenance notwithstanding the fact that the shipowners never provided him with room and board. While acknowledging the general prohibition against double recovery, the district court made the following determination:

> [the claim] does not present a situation in which a plaintiff is seeking to recover twice for the same elements of damage. To be sure, if [he] is awarded both compensatory damages and maintenance, he will recover more than he has actually lost. But this is a result of the unique nature of the rights granted by the maritime law to the seafaring man. . . .\textsuperscript{74}

*Sylve v. E.W. Gravolet Canning Co.*\textsuperscript{75} presented an almost identical factual situation. The libellant brought an action for damages based on unseaworthiness under the general maritime law, negligence under the Jones Act, and maintenance and cure. The vessel on which he was injured was an oyster boat worked by him and two others near the shore. Though not explicitly stated in the decision, in all likelihood the injured seaman slept and ate ashore. He received no food from his employer. Nevertheless, the court, reiterating the pervasive nature of the maintenance and cure remedy, awarded him eight dollars per day for the 481 day period during which he was an outpatient. The court cited with approval the rule that maintenance must be provided an injured seaman even though that seaman is not normally furnished meals and lodging aboard the vessel. No double recovery

\textsuperscript{71} Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 528 (1938).
\textsuperscript{72} The City of Avalon, 156 F.2d 500 (9th Cir. 1946).
\textsuperscript{73} 284 F. Supp. 709 (E.D. La. 1968).
\textsuperscript{74} Id. at 713.
\textsuperscript{75} 278 F. Supp. 669 (E.D. La. 1967).
problem was found to be present.\textsuperscript{76}

The Second Circuit dealt with the same problem in Weiss v. Central Railroad of New Jersey.\textsuperscript{77} Weiss worked an eight-hour day on a ferryboat on the Hudson River. He was paid an hourly wage and was an "extra hand" aboard the vessel. He lived and ate his meals on shore. The principle issue in the case was whether the plaintiff was a "seaman" entitled to sue under the Jones Act and recover maintenance and cure under maritime law. After an examination of numerous cases, the court held that the injured deckhand was entitled to sue as a seaman.\textsuperscript{78} On the issue of whether he should be denied maintenance and cure, the court was explicit:

We know of no authority . . . for holding that a seaman is not entitled to the traditional privileges of his status merely because his voyages are short, because he sleeps ashore, or for other reasons his lot is more pleasant than that of most of his brethren.\textsuperscript{79}

Indeed, in all of the previously mentioned decisions the seaman, by virtue of the maintenance award, was compensated for something which he ordinarily supplied himself—board and lodging. Nevertheless, considering the extreme liberality with which the courts surround the maintenance and cure remedy,\textsuperscript{80} these rulings are not surprising, and apparently they are not within the prohibition against double recovery.

A final problem which crops up with less regularity,\textsuperscript{81} but nevertheless tangentially concerns the issue of double recovery, is the courts' treatment of wages earned by the injured seaman before he has reached maximum recovery. The issue here is whether these amounts should be offset against maintenance allowances which the seaman would otherwise have by right. Historically, the courts of appeals were split on this problem,\textsuperscript{82} and it was not resolved with finality until the United

\textsuperscript{76} Id. at 674. See also Hudspeth v. Atlantic & Gulf Stevedores, Inc., 266 F. Supp. 937 (E.D. La. 1967).
\textsuperscript{77} 235 F.2d 309 (2d Cir. 1956).
\textsuperscript{78} Id. at 313.
\textsuperscript{79} Id. See also Bailey v. City of New York, 55 F. Supp. 699 (S.D.N.Y. 1944).
\textsuperscript{80} Judge Lumbard's dissent in Weiss is an intelligent and well-documented argument for the proposition that maintenance and cure has its origins in the peculiar relationship between a seaman and his ship. Consonant with this idea, that to a full-time seaman the ship is not only the place of work, but indeed the framework of his existence during a voyage, the maintenance and cure remedy has evolved to compensate such people for their loss of a "home", so to speak. Judge Lumbard felt that where such a relation between the seaman and his vessel does not exist, as with the plaintiff in Weiss, maintenance should be denied. 235 F.2d at 313.
\textsuperscript{81} See text accompanying notes 16-27 supra.
\textsuperscript{81} Note, 47 U. Va. L. Rev. 1077, 1081 (1961).
States Supreme Court’s holding in *Vaughan v. Atkinson*. There, as a matter of law the Court held that earnings during the period before the seaman is maximally cured are *not* to be used as an offset against maintenance and cure. The Court was largely guided by general policy considerations:

It would be a sorry day for seamen if shipowners, knowing of the claim for maintenance and cure, could disregard it, force the disabled seaman to work, and then evade part or all of their legal obligation by having it reduced by the amount of the sick man’s earnings. This would be a dreadful weapon in the hands of unconscionable employers and a plain inducement . . . to use the withholding of maintenance and cure as a means of forcing sick seamen to go to work when they should be resting, and to make the seamen themselves pay in whole or in part the amounts owing as maintenance and cure. *This result is at war with the liberal attitude that heretofore has obtained and with admiralty’s tender regard for seamen.*

In conclusion, these and other cases seem to hold that double recovery comes into play: (1) where the actual food and lodging cost has been borne by the employer, as where the seaman seeks and gets the value of the food and lodging provided him while aboard ship (as part of his tort recovery) as well as maintenance for the same period; (2) where the food and lodging costs are borne by a third party, and the seaman thereafter seeks maintenance and cure for the same period; and (3) where wages until the end of the voyage are provided as part of the maintenance-wages-cure remedy, and the seaman thereafter seeks these amounts in a separate Jones Act or unseaworthiness action.

The Novelty of the Crooks Case

*Crooks v. United States* presents the more arcane aspects of the double recovery problem and lies within the gray areas of a number of the cases previously discussed in this note. The precise issue it presents is a novelty upon which no other court of appeals decision is squarely in point. Nevertheless, by a process of extrapolation, it can be determined that while the Ninth Circuit’s decision is extremely liberal in the ultimate award, such an award is consonant with historical precedent and supported by deep-rooted policy considerations. While this may seem to justify the decision, it does not foreclose the more analytical approach which this note will propose.

Preliminarily, it should be observed that *Crooks* does not fall within

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83. 369 U.S. 527 (1962).
84. *Id.*, at 533 (emphasis added).
85. 459 F.2d 631 (9th Cir. 1972).
any of the neat categories of proscribed double recovery. Hence, in order to avoid the pitfalls of the *McCarthy v. American Eastern Corp.* decision (where the libellant included the cash value of his room and board in his negligence claim and then sought maintenance and cure) counsel for Crooks "explicitly excluded from his past gross earnings basic allowances he had received for room and board while employed as a seaman . . . ."88

Nor does the prohibition against collecting wages to the end of the voyage (as part of the maintenance-wages-cure remedy) and subsequently seeking these amounts in the negligence claim as damages arise.89 In *Crooks*, the plaintiff received unearned wages until March 18, 1967,90 presumably the end of the voyage, and sought his compensatory damages for the period beginning after this date. Nevertheless, the dissenting judge mysteriously disagreed with the majority on the ground that the "award of maintenance amounted to a double recovery,"91 citing *Vickers v. Tumey*92 as authority for his viewpoint. It is readily apparent, however, that *Vickers v. Tumey* was not even in point. The situation in the *Vickers* case was one in which the plaintiff sought to recover wages until the end of the voyage within the maintenance remedy and lost wages covering this identical period in his negligence action. As previously indicated,93 the plaintiff Crooks made no such attempt.

Finally, there was no dispute over maintenance allowances for the period of time in which the seaman recuperated in the Public Health Service hospital. The plaintiff excluded these periods when he computed the number of days for which he claimed maintenance.94

Lost Wages and Shoreside Employment

The threshold issue concerned the propriety of awarding the plain-
tiff lost wages in his negligence claim which were largely based on shoreside salary rates, as well as maintenance for an identical time span. During the period of incapacity resulting from the accident, Crooks claimed $4,761.15 in prospective lost wages. He also sought maintenance of $8.00 a day for this same calendar period. The dates utilized in computing the maintenance award were not disputed by the United States. Furthermore, the government did not seek to relitigate the district court's finding of negligence and unseaworthiness. What was vehemently contested was the total award which Crooks ultimately received: “In light of the district court's method of computing plaintiff's recovery for lost wages . . . the United States contends that no maintenance should have been awarded.”

In computing the quantum of prospective wages which the plaintiff lost as a result of the defendant’s negligence, the court used a fifteen month period prior to the voyage on which the accident occurred to determine the plaintiff's average monthly wage. It was decided that examination of such a period would serve as a probable index to his future work patterns. During this span, the libellant was employed as a seaman for approximately four and one half months. For the remainder he was engaged in nonseagoing occupations. Hence, two-thirds of his salary during this period was a result of shoreside employment.

The defendant-appellant argued that computation of post-injury lost wages by extrapolating preinjury earnings which encompassed a period during which the seaman worked ashore without receiving his room and board from his employer would be permissible by itself. However, where maintenance is awarded on top of these amounts for the identical period, a double recovery necessarily occurs.

Logically, if a seaman is awarded lost wages based on landed employment earning rates, which are not diminished as seaman's wages are by the tacit increment for room and board, as well as a maintenance allowance for the identical period, he will certainly be recovering more than he has lost. Salaries which are based on shoreside employment are sufficiently remunerative to afford their recipient the necessary

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95. Brief for Appellee at 2, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972).
96. Brief for Appellant at 7, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972).
97. Id.
98. Id.
100. Crooks v. United States, 459 F.2d 631, 634 (9th Cir. 1972).
amenities of life, including food and lodging. Therefore, it might be concluded that as to the period for which the plaintiff recovered shore-side wages (some two-thirds of his recovery in terms of a percentage), his “maintenance” was already covered.

Nevertheless, the seaman is afforded maintenance at the expense of the shipowner even where his seaside salary did not include a food or board allowance. In this line of cases it may be said that the ship-side wage is the equivalent of the shoreside wage—the room and board expense is paid by the seaman himself, with no assistance from the employer. Despite this, the courts so holding have not found the maintenance award to constitute a double recovery.

*Wright v. Cion Corp. Peruna Desvaspores*

On the precise facts of *Crooks* (where the seaman has only recently engaged in maritime service and his previous working record, from which his prospective lost wages will be computed, is based on landed employment) there is only one lower court decision. In a New York District Court Case, *Wright v. Cion Corp. Peruna Desvaspores*, the injured plaintiff sought recovery of lost prospective earnings during his period of incapacity as well as a maintenance allotment for the identical time span. For a long period before the voyage the libellant had not engaged in maritime employment. In determining the extent of his damages, the judge looked to his prior working record. On the plaintiff’s claim for lost prospective wages the court made an award of $106 per week—the salary he received “next subsequent to the accident.”

However, apparently on the premise that such salary included an element of support, in the nature of room and board, the judge refused to allow any amount for maintenance:

> I realize . . . that in the ordinary seaman’s case my finding that Hughes was disabled from working . . . would at least *prima facie*, entitle him to a recovery for maintenance during that period. . . . There would be some question whether an award for loss of earnings and an award for maintenance for the same period would constitute a double recovery . . . . [A]n award of maintenance [here] would give such a double recovery . . . . The record is barren of any evidence that he intended to follow the calling of the sea subsequent [to this voyage] since it has not been shown that he would . . . be working aboard a ship during his period of incapacity where he would be given his room and board in addition to wages, I determine that no recovery for maintenance should be allowed.

While bare logic may support such an argument, the law of admiralty is not grounded in bare logic. The *Wright* decision presents

102. *Id.* at 742.
103. *Id.* at 742-43.
a sharp departure from the notion that maintenance is one of the most pervasive liabilities of the shipowner and ought not be narrowly confined. It also seems to ignore another fundamental, albeit questionable rationale for the remedy—that is, "the maintenance of a merchant marine for the commercial service and maritime defense of the nation by inducing men to accept employment in an arduous and perilous service."\(^{104}\)

It is difficult to see how narrow interpretations of the availability of maintenance, which preclude a person from its benefits simply because his previous employment was nonmaritime, can be said to induce men to accept such employment. The maintenance and cure remedy provides the injured seaman with a simple and certain allowance to sustain him on shore. Arguably, if the seaman subsequently institutes a negligence suit\(^{105}\) and recovers his previous shoreside wages for the period of his disability in addition to maintenance, he will be recovering more than his actual loss. Nevertheless, cases which have awarded maintenance to seamen who never slept or ate aboard ship, or who paid for their food out of their wage, have permitted just such a "bonus."\(^{106}\)

The Rejection of Wright

Accordingly, the Ninth Circuit chose to reject the holding of Wright\(^{107}\) and adhere to historical precedent and "fundamental" maritime policy in allowing Crooks to recover both maintenance and wages which were largely based on shoreside salary rates. Although the reported decision does not discuss it, the court was apparently influenced by the plaintiff's amicus curiae brief. Essentially that brief argued that if the government's position were adopted, the courts would be forced to engage in a hopelessly unadministrable review of each claimant's preinjury employment record. This would be necessary to determine if the prospective lost wages were of a landed or maritime status.\(^{108}\) Aside from this burdensome task, the amicus curiae noted that if the position contrary to theirs were taken,

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105. As to negligence suits after injury as a means of recovery, Justice Stewart, in Vaughan v. Atkinson, 369 U.S. 527, 537-38, rehearing denied, 370 U.S. 965 (1962), noted the following: "The adequate protection of an injured or ill seaman against suffering and want requires more than the assurance that he will receive payments at some time in the indefinite future. Payments must be promptly made, at a time contemporaneous to the illness or injury. And for this reason the maintenance remedy should be kept simple, uncluttered by fine distinctions which breed litigation, with its attendant delays and expenses."
106. See text accompanying notes 69-79 supra.
108. Brief for Appellee as Amicus Curiae at 4, Crooks v. United States, 459
a seaman who accepts shoreside employment risks forfeiture of his remedy of maintenance, should he later elect to seek shipboard service and then incur injuries. A result of this would . . . tend to discourage future shipboard service (contrary to general policy) . . . . Furthermore, Appellant's position would create an artificial limitation on the remedy between seamen who in the more or less recent past have worked ashore, and those who have worked aboard ship [and] would . . . be unfair. . . .

While policy may have militated in favor of awarding Crooks full maintenance in addition to lost shoreside wages, economics dictated a contrary result. At the time of the injury, the plaintiff-appellee was earning $665.40 per month. The lost wages which he was awarded were $701.97 per month. He was also allowed $240 per month for maintenance for largely the same period. Hence, by virtue of his accident the seaman recovered $941.97 per month as lost prospective wages. Such figures are strong evidence of overlap or double recovery. There can be little doubt that these damages were not merely compensatory. Nevertheless, the court adopted the plaintiff's contention that since the maintenance obligation existed independently from the wages obligation (where wages are sought on a negligence theory), maintenance was due until maximal cure, no matter how lost wages were computed.

A Proposed Alternative and Some Reflections on the Law of Admiralty

The result in Crooks is clearly reassuring for the members of the merchant marine, especially those who have only recently taken to the waves:

F.2d 631 (9th Cir. 1972). The amicus curiae also contended that if the defendant's viewpoint were adopted the following result would occur: the shipowner's duty to provide maintenance in a foreign port would turn entirely on whether, and at what rate of pay the injured seaman had worked in other capacities before the voyage. Id. at 4. This is not necessarily true. The problem would not arise at all if the injured seaman sought no recovery for negligence. Then, he would be awarded maintenance (assuming no wilful misbehavior) without any retroactive inquiry into his prior working record. Furthermore, even if the plaintiff were suing for negligence as well, his maintenance and cure payments could be awarded at once. If negligence were found, appropriate deductions could be made from the compensatory damage award if the court thought that the libellant was being overly compensated.

109. Id. at 4.
110. Reply brief of Appellant at 4, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972). This amount included a $35.00 per month living allowance; therefore the raw wage was actually $630.00.
111. Id.
112. Id.
It is understandable why seamen . . . have fought valiantly to retain their right to maintenance and cure (as well as rights under the Jones Act and other remedial statutes) in preference to any form of compulsory compensation.\(^{114}\)

Nevertheless, the words of Justice Holmes seem appropriate when considering the seaman’s protected status vis-à-vis maintenance and cure as well as numerous other areas of the law.\(^{115}\)

It is revolting to have no better reason for a rule than that it was laid down in the time of Henry IV. It is still more revolting if the grounds upon which it was laid down have vanished long since and the rule simply persists from blind imitation of the past.\(^{116}\)

By way of perspective, it must be borne in mind that maintenance and cure developed at a time when the stricken sailor had no Jones Act, nor the ready availability and understanding of eager attorneys and admiralty judges to help him litigate any claims he might have for common law negligence. Unquestionably, before the days of labor unions and maritime safety legislation, the merchant seaman was easy prey for the ruthless or unscrupulous shipowner. Fortunately, this colorful tableau is not consonant with modern day reality.

While it may be heretical to attack the pervasive nature of the maintenance remedy, with its origins in the ancient sea codes and its continuous support from the Supreme Court,\(^{117}\) the Crooks decision merits criticism. Indeed, the entire philosophy of the judiciary towards the merchant marine might well be scrutinized in view of the technical and legislative advancements of modern times.

Originally, maintenance was designed as compensation for the room and board which the seaman would have received had he remained in the ship’s service. Furthermore, it was an inducement for men to accept arduous and perilous service in the merchant marine. The first justification has been largely ignored since the nineteen thirties;\(^{118}\) cases now uniformly extend maintenance beyond the duration

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\(^{115}\) For example, the seaman may sue in federal courts without prepayment of costs or entering of security. 28 U.S.C. § 1916 (1970). If part of a seaman’s wages are withheld without sufficient cause, he can recover double pay for each day the proper wage is withheld. 46 U.S.C. § 596 (1970). If ill, he is cared for by the U.S. Public Health Service, and the seaman has in effect something better than workman’s compensation in maintenance and cure and something better than an ordinary tort action under the Jones Act, since the defenses of assumption of risk and fellow servant are abolished. The list of seaman’s benefits is considerably longer and includes unusual procedures such as those by which the seaman may be released from contracts. See Lovitt, Things Are Seldom What They Seem: The Jolly Little Wards of the Admiralty, 46 A.B.A. J. 171 (1960).


\(^{117}\) See text accompanying notes 15-25 supra.

\(^{118}\) See, e.g., Calmar S.S. Corp. v. Taylor, 303 U.S. 525, 528 (1938).
of the voyage (the period during which the seaman's room and board were covered) until maximal cure is achieved. Similarly, those decisions allowing maintenance where the shipowner did not provide room and board at all have likewise dispelled this early rationale.

As to the inducement concept, the courts are prone to express it as dogma, ignoring a popular judicial corollary which might be termed the "seaman as utter buffoon doctrine." The riddle may be expressed as follows. Why, if seamen are treated as childlike and improvident in so many areas of their existence can we expect them to know and understand the nature of maintenance, a sometimes complex legal concept, and because of the existence of the maintenance remedy, be induced to accept seaside service? Are seamen sophisticated when it comes to benefits for which they are eligible and morons when it comes to all their other dealings?

The more readily acceptable rationale for the continuation of the maintenance remedy is that maritime service is still an inherently dangerous occupation. It is also an area which is vitally important to the national economy and commercial intercourse of the United States. As to the danger, it is true that many vessels in merchant marine service are World War II castoffs—flotation devices and little more. The salty jargon for these crafts is "widow-makers," an expression which needs no explanation. Furthermore, the ocean is hardly as predictable as terra firma. The safest vessels still subject their crews to the whims of Mother Nature.

A final reason for the preservation of maintenance is the recognition of the delays involved in recovering on a tort claim. The seaman who seeks a Jones Act or common law recovery will generally have to wait two to three years before his case is finally adjudicated. The sick or injured sailor is in no position to support himself for such a period. A promptly awarded maintenance allowance will at least insure that he does not starve.

What is not justified, however, is the extension of the maintenance remedy beyond its rational confines. Alternatives to the Ninth Circuit's approach in Crooks could be formulated without doing violence to the judicial propensity for preserving the right of maintenance. One simple alternative which avoids the overcompensation problem is outlined below.

The first proposition would be that a seaman is entitled to prompt

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120. See text accompanying notes 70-79 supra.
121. See text accompanying notes 28-29 supra.
122. The Supreme Court constantly reminds us that the maintenance remedy should remain simple and unfettered with legal complexities. But see, e.g., Farrell v. United States, 336 U.S. 511 (1949).
payment of maintenance immediately after he becomes sick or injured\textsuperscript{123} and is required to support himself on land. There would be no necessity for examining his prior working record at this point; nor would the later institution of a tort suit for lost prospective wages during incapacity have any effect on the sailor’s right to receive maintenance in the hour of his need. Only if the seaman thereafter decided to bring a Jones Act or unseaworthiness suit to recover lost wages during his incapacity would there be an examination of his prior working record. Under these circumstances, there would be two salient inquiries to make. First, what yardstick is being used to determine the quantum of prospective lost wages during the recovery period in the libellant’s tort action? That is, are the seaman’s prospective lost wages computed on the basis of his prior \textit{landed} employment salary, as in the case of one who had only recently accepted maritime employment, or are they based on prior shipside \textit{wages}? Second, if they are based on seaside wages, did the seaman pay for his own room and board while so employed?

If the claimed lost wages fell into the first category, under most circumstances\textsuperscript{124} the amount of tort damages for lost wages during incapacity would be subject to a percentage offset equivalent to the amount of maintenance received for those periods that are based on landed salary rates. For the sake of uniformity the court could examine the libellant’s work record for a two year period before the injury. It should then compute the percentage of time during which the seaman

\begin{itemize}
  \item \textsuperscript{123} This would not apply if it could be shown that the seaman’s own wilful misbehavior or concealment of a prior existing injury or illness caused the accident.
  \item \textsuperscript{124} In unusual cases, as where the seaman’s prior landed salary is \textit{less} than the amount he was earning aboard ship at the time of the injury, injustice would result if the landed salary were awarded and maintenance payments received were deducted from the amount of landed salary. Under these circumstances the trial judge should be given broad discretion to either allow the seaman to recover his landed salary \textit{without} any offset for the maintenance he received, or allow the seaman to recover the average wage he was making aboard ship at the time of the injury as well as the maintenance previously awarded. The system proposed in the body of this note seeks to prevent windfalls; it does not seek to work hardships. Hence, in the \textit{Wright} case where the seaman’s prior landed wage was but $106 a week, he was quite possibly earning a higher salary while working aboard ship. It would be for the trial judge to determine whether the interests of justice required that a different wage scale be used. In any case, the system proposed here would have permitted the seaman to recover maintenance immediately after the injury occurred since the court found that the plaintiff was indeed a “seaman,” albeit a recent one. If the judge thereafter felt that a windfall was occurring by virtue of the maintenance award and the salary granted (the salary being based on \textit{shoreside} employment salary rates) then he could have activated the offset mechanism provided earlier. It seems, however, that the plaintiff’s lost prospective wages during incapacity were computed by examination of such a low landed wage that the interests of justice merited the seaman being allowed to keep maintenance as well as landed salary for the same period.
\end{itemize}
worked shoreside, if any, and at sea. If, for example, seaman X spent one-third of the prior two year period at sea and two-thirds of the time working at nonmaritime pursuits, the two-thirds of his total tort recovery which could be attributed to his landed employment would be subject to an offset equal to the amount of maintenance he received for this period. This result follows since for two-thirds of the time the seaman is recovering shoreside wages which should be sufficient to cover his expenses on land. The remaining thirty-three percent of the maintenance received would be kept by the plaintiff since it corresponded to the time during which the sailor would probably have been at sea.

In the second classification would fall the seaman who has not been employed during the last two years in a shoreside capacity. As to this group, the same procedure as above would be utilized, except that the court would be looking to that percentage of the two years, if any, during which the libellant was required to pay his own room and board out of his wage. During these periods, the seaside salary is basically the same as a shoreside salary since the sailor is required to house and feed himself at his personal expense. Hence, they would be accorded similar treatment in the system proposed here. Thus, if a particular sailor spent twenty-five percent of the two years under circumstances where he furnished his own room and board, he would be subject to a twenty-five percent offset in his tort claim for lost wages during the incapacity against the maintenance he received for this period.

Application to Crooks

Had the foregoing proposal been followed by the court in the Crooks case, the following result would have occurred. Crooks would have been awarded maintenance upon injury for the duration of his incapacity, subject only to depletion for those times he spent in the Public Health Service hospital. This amount of maintenance was $1200.125 When he later instituted suit for negligence and unseaworthiness, it would be incumbent upon the court to examine the two year period prior to the accident to determine the capacity in which the libellant was previously employed. While the court actually used a fifteen month period,126 for the sake of illustration it will be assumed that the percentages of time spent at seaside and at shoreside tasks were the same as those found in the actual decision—one-third of the period at sea and two-thirds of the period on shore. Hence, $800 of the

125. Brief for Appellee at 2, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972).
126. Brief for Appellant at 10, Crooks v. United States, 459 F.2d 631 (9th Cir. 1972).
maintenance received (two-thirds of $1200) would be deducted from the plaintiff's prospective lost wages recovery during the period of his incapacity.127

Consistent with the foregoing, it is submitted that the awards granted in Richardson v. St. Charles-St. John the Baptist Bridge and Ferry Authority,128 Sylve v. E.W. Gravolet Canning Co.,129 and Hudspeth v. Atlantic & Gulf Stevedores, Inc.,130 are subject to similar criticism. Where a seaman's wages do not include his food and board while in the service of the ship, he should not be allowed to recover this salary in addition to the maintenance he received while incapacitated. The alternative outlined above would not permit this full recovery of the equivalent of shoreside wages (since the seaman was expected to fully care for himself out of these amounts) as well as maintenance for the same period. The City of Avalon131 and Weiss v. Central R.R. Co. of New Jersey132 are distinguishable and their results sound for humanitarian reasons. In each of these cases the seaman did not seek a tort recovery in addition to maintenance; he only sought to qualify for maintenance alone. The proposal under discussion would allow both of these men to qualify for maintenance notwithstanding the fact that neither were supplied room and board while working for the shipowner at sea.

Application of this alternative standard would continue the policy of providing the sick or injured seaman with prompt medical care as well as a living allowance hopefully sufficient to sustain him during his recovery. Thus, the dangerous nature of maritime service is given continued recognition, as is the realization that negligence suits often take quite a long time to finally resolve. In those cases where the seaman's past wages included room and board, there would be no alteration in the existing law; his right to maintenance and cure as well as wages would be undisturbed. In those cases where the quantum of lost wages is determined by shoreside salary rates, or where the past wages aboard ship did not include food and lodging, the availability of maintenance would not be affected during the critical time following the injury; only if a later tort action were instituted would the offset mechanism be activated.

127. Under the system herein proposed, maintenance is granted as of right long before the negligence action is adjudicated. Hence, it is assumed for this example that the ship owner had already granted the plaintiff his full maintenance during his incapacity. Thus, those amounts already received would be subject to being offset against the plaintiff's ultimate lost wages claim.
131. 156 F.2d 500 (9th Cir. 1946).
132. 235 F.2d 309 (2d Cir. 1956).
Conclusion

Presently there is a paucity of case law on the particular fact situation found in the Crooks case. Yet, with the employment mobility of modern America more and more maritime litigation will involve men and women\textsuperscript{133} whose recent employment history is of a landed status. It is sincerely hoped that the courts will take heed of the suggestions in this note and bring a semblance of logic and direction to a chaotic area of the law which has its roots in a bygone era. Some of the staid institutions in the field of maintenance and cure,\textsuperscript{134} as well as those other areas of admiralty so ill-suited to the exigencies of twentieth century maritime service, must be re-examined and brought into step with present realities.

Daniel N. Stein*  

\textsuperscript{133} This is especially true of women, who in the past have been roundly excluded from seaside maritime employment and in the future may be expected to engage in this type of activity more and more.

\textsuperscript{134} On the issue of providing maintenance to “land-based” seamen, see the intelligent discussion in 46 Tul. L. Rev. 877 (1972) which also attack’s the judicial propensity for non-justifiable expansion of the maintenance remedy to those who are not within its logical purview.

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