DOCUMENT NO. 638
NOVEMBER 6, 1981

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

# FALL MEETING—NOVEMBER 6, 1981

PRESENT:

JOHN W. SIMS
GORDON W. PAULSEN
MACDONALD DEMING
MARSHALL P. KEATING
JOHN J. SULLIVAN

and the following 267 members:

Robert Acomb, Jr.
Jack L. Allbritton
Cromwell Anderson
Lloyd L. Andersen
David M. Armstrong
Timothy J. Armstrong
Bruno J. Augenti
Terry P. Ayre
James W. Bartlett, III
C. R. Beach, Jr.
Michael K. Bell
Bruce C. Beringer
Waverley L. Berkley, III
Richard C. Binzley
G. W. Birkhead
Tallman Bissell
Ed Bluestein, Jr.
Arthur M. Boal
Lawrence D. Bradley, Jr.
Edward T. Brennan
Charles D. Brown
Richard H. Brown, Jr.
L. J. Buglass
Donald Burke
August C. Burns
Robert S. Burrick
Thomas E. Byrne
J. Edwin Carey
John E. Carlson
James K. Carroll
Joseph D. Cheavens
W. K. Christovich
Michael Clann
Michael Marks Cohen
Randall C. Coleman
Albert S. Commette
D. W. Condeff
Terry J. Coniglio
H. Clayton Cook, Jr.
Ernest J. Corrado
William A. Cotter
Rae M. Crowe

John Crumpler
Philip J. Curtin
James H. Daigle
Paul N. Daigle
Charles R. Dalton, Jr.
Warren B. Daly, Jr.
Robert B. Deane
Dean D. DeChaine
A. Robert Degen
Robert S. DeLange
Douglas R. Denny
M. E. DeOrchis
Brunswick G. Deutsch
Abraham A. Diamond
Theodore G. Dimitry
J. J. Donovan
William R. Dorsey, III
John A. Edginton
J. M. Estabrook
Fritz Faerber
Warren M. Faris
Peter D. Fenzel
Robert J. Finan
Gilbert S. Fleischer
Robert A. Fletcher
R. J. Flinn
William T. Foley, Jr.
John P. Forney, Jr.
Thomas E. Fotopulos
George J. Fowler, III
David R. Frohn
Carter B. S. Furr
George D. Gabel, Jr.
Gerard T. Gelpi
William A. Gillen
Robert S. Glenn, Jr.
Milton I. Goldstein
Stuart M. Goldstein
G. Morton Good
Donald C. Greenman
E. V. Greenwood
John J. Gruber
Harold Halpin
James Hanemann, Jr.
David G. Hanlon
John H. Hanninen
Paul D. Hardy
Emery W. Harper
William B. Harris, III
Fenton F. Harrison
Captain Robert E. Hart
James F. Hart
Eldon T. Harvey, III
Raymond P. Hayden
Reginald M. Hayden, Jr.
George W. Healy, III
Nicholas J. Healy
Nicholas J. Healy, Jr.
Andrew C. Hecker, Jr.
L. C. Hedeen
Charles E. Henshall
R. M. Hicks, Jr.
James J. Higgins
Neal D. Hobson
Donald A. Hoffman
Richard W. Hollstein
Alex T. Howard, Jr.
Thomas R. H. Howarth
Robert M. Hughes, III
R. A. Hulten
Thomas F. Icard, Jr.
Richard R. Jackson, Jr.
Christopher Johnson
Martin R. Johnson
A. Thomas Kajander
Edward C. Kalaidjian
David P. Karcher
E. Michael Keating, III
Robert G. Kelly, Jr.
Mary Jane Keriakos

David C. G. Kerr
Jack Knebel
Donald A. Krach
R. Lawrence Kurt
Kenneth Kuykendall
Edwin F. Lambert, Jr.
Alexander F. Lankford, III
John N. Leach, Jr.
Thomas H. Leach
Manfred W. Leckszas
Walter J. Leger, Jr.
Theodore A. LeGros
Ted C. Litton
Edward J. Locke
Herbert M. Lord
Hilliard L. Lubin
Wilder Lucas
Charles E. Lugenbuhl
Capt. C. E. Lundin
Francis MacLaughlin
Malcolm R. Maclean
Eugene J. Maginnis, Jr.
John Mahoney
Guy E. C. Maitland
Walter E. Maloney
David L. Maloof
G. Edward Martano
Agnes T. Martin
Howard M. McCormack
R. G. McCreary
Roderick McFaull
John C. McHose
Thomas J. McKey
James McNamara, Jr.
Warren J. Marwedel
Howard F. Meek
Hugh S. Meredith
Michael J. Mestayer
Philip G. Meyer
Walter O. Michael
Ann Gray Miller
W. Scott Miller, Jr.
William Jones Miller
Vernon C. Miller, Jr.
William B. Milliken
John C. Monroe
Michael Moore
B. Allston Moore, Jr.
Donald F. Morey
James F. Moseley
Philip V. Moyles
John A. Mundell, Jr.
Joseph F. Murphy
Thomas O. Murphy
John Richard Newton
Elliott B. Nixon
W. E. Noel
Edward W. Norberg
William C. Norwood
Henry R. Nussbaum
Francis J. O'Brien
Brendan P. O'Sullivan
David R. Owen
W. E. O'Neil
Richard Ware Palmer
Scott S. Partridge
Rene S. Paysse
William L. Peck
E. B. Peebles, III
John R. Peters, Jr.
Robert O. Phillips
John J. Picarella
Paul M. Poliak
Charles E. Quandt
Richard F. Ralph
Clayton G. Ramsey
A. Clay Rankin, III
William A. Ransom, III
Stanley E. Rauhut
John H. Reilly

Harry Reineke
S. R. Remsberg
George W. Renaudin
Richard E. Repetto
Allan S. Reynolds
Winston Edward Rice
Theodore C. Robinson
Antonio J. Rodriguez
James E. Ross
James H. Roussel
Thomas S. Rue
Richard G. Rumrell
Michael J. Ryan
Brigitte H. Schramke
James Schupp
Manuel A. Sequeira, Jr.
David J. Sharpe
R. M. Sharpe, Jr.
Robert I. Siegel
Eugene J. Silva
Seymour Simon
David W. Skeen
William A. Smith
W. Stanley Sneath
Daryl Sohn
Richard H. Sommer
Saul Sorkin
Benjamin F. Stahl, Jr.
Merlin H. Staring
Graydon S. Staring
William Stifler
Norman C. Sullivan
Joseph C. Sweeney
Michael D. Sydow
James J. Tamulski
Richard L. Tavrow
Robert C. Taylor
Robert K. Tisdall
Geoffrey S. Tobias
John Toriella
Cornelius G. Van Dalen
Cornelius S. Van Rees
E. D. Vickery
Dewey R. Villareal, Jr.
Kenneth H. Volk
Allen von Spiegelfeld
George L. Waddell
Norman E. Waldrop, Jr.
James Walsh
Guilford D. Ware
John G. Warner
B. Weinstein
F. W. Wentker, Jr.
Ronald L. White
M. Hamilton Whitman, Jr.
David Williams
Reed M. Williams
Robert H. Williams, Jr.
James D. Wise, Jr.
Frank L. Wiswall, Jr.
Harvey Wittenberg
Sidney J. Wolfson
George F. Wood
William E. Wright
James F. Young

## PROCEEDINGS

President Sims: Gentlemen, the meeting is called to order.

Some of you got notices to the effect that the meeting would start at 9:30 a.m. and others that it would start at 10:00.

We will start with a report from the Secretary, and by 10:00 o'clock most of the members will be here.

I will ask Mr. Deming, our Secretary, to report.

## REPORT OF THE SECRETARY

Secretary Deming: Thank you, Mr. President.

The Executive Committee met at the offices of Haight, Gardner, Poor and Havens, 1 State Street Plaza, New York, N.Y. on October 2nd, 1981.

The meeting was called to order by the President, Mr. John W. Sims, at 9:30 a.m.

The minutes of the meeting of April 30, 1981 were approved.

Secretary Deming presented his report, which was approved. By request of Mr. Richard W. Palmer, who had planned to attend but had been prevented by a business emergency, the Secretary presented a brief status report on behalf of The Committee on Limitation of Liability, of which Mr. Palmer is Chairman. You will be hearing from him.

The death of our member, Ralph Bowden of Savannah, Georgia on August 6th, 1981 was noted with great regret.

President Sims: May I interject to advise you of the fact that since those minutes were taken, Walter Carroll, Sr., died about three weeks ago.

He was an outstanding man, a great lawyer, a fine gentleman. I had the privilege, as a young lawyer, of trying a number of collision cases against him.

If I learned anything in the way of collision law it was due in large part to observation of my opponent's great ability and talent in that field. In due course, his name will appear in the formal notices and minutes.

Secretary Deming: The Secretary reported a suggestion made by Mr. Martin Johnson that there be a central meeting place for Com-

mittee meetings conducted in connection with meetings of the Association. It was agreed that this was a useful suggestion; and that plans to adopt it for the May meeting should be considered.

Treasurer Keating presented his report, which was approved. He discussed the changes in procedures made necessary by the newly adopted practice of audit—in particular the requirement of greater detail and specific supports in connection with travel expenses.

Immediate Past President James J. Donovan reported as to the activities of the President's Advisory Committee, of which he is Chairman. He advised that the principal matter discussed since the last meeting was comments received from the membership as to qualification standards for membership. First Vice President Gordon W. Paulsen reported in detail as to suggestions made, as reported to the Executive Committee membership by letter dated September 28, 1981. After discussion the decisions were taken that there should be six categories of membership which were listed; that all members should have the right to vote; that the probationary period for an Associate Member when seeking full Lawyer Membership should be four years.

There was discussion of the question of obtaining a certificate of good standing from applicable Courts; and of the report of Robert G. McCreary, Chairman of the Committee on Continuing Legal Education, concerning fourteen pilot programs which are studying the matter of special qualifications for Federal courts, including seminars and special courses.

President Sims gave his view that it is very important that the Association take the lead in establishing suitable qualification standards, so that it will be evident to the Courts, the Congress and to the Regulatory Agencies that our Association is the authoritative voice to identify the lawyers with expertise in the Admiralty and Maritime fields.

To that end President Sims suggested, and all agreed, that the Resolution for a change in the By-Laws concerning standards for membership, presented to the Association for information and comment at the May 1, 1981 meeting, should be presented for adoption at the November 6, 1981 meeting.

After discussion it was also agreed that suitable standards should be adopted by the Executive Committee at the November 5, 1981 meeting, to be put into effect if the Association on November 6

adopts the new By-laws. In the interval the President's Advisory Committee was instructed to give concentrated attention to all appropriate revisions in the draft.

Mr. James J. Ruddy, Chairman of the Dinner Committee, who was present by the President's invitation, was congratulated by President Sims for the outstanding job being done by his Committee. He then reported as to plans for the November 6th dinner-dance, discussing in particular special plans to be implemented since the occasion is being dedicated to honoring Chief Judge Wilfred Feinberg of the United States Court of Appeals for the Second Circuit.

President Sims advised that Sir Henry Brandon will be invested on October 5th into the House of Lords and will be known as Lord Brandon of Oakbrook.

Immediate Past President James J. Donovan, Chairman of the President's Advisory Committee, reported concerning the activity of his Committee as to the New By-law 17. He reported that President Sims had concluded that it is desireable to establish a procedure whereby the identity of the members of the Committee or Sub-committee involved in an appearance or in testimony be made known by the testifying member at the outset of his testimony. President Sims requested the advice of Mr. Donovan's Committee, which considered the matter and approved it.

President Sims has written a letter to all Chairmen and Vice-Chairmen of Standing Committees, to constitute a continuing request to follow this procedure.

The Advisory Committee, through Chairman Donovan, also made a motion that the Executive Committee formally ratify the action of the President, and adopt the following Resolution as a continuing policy of the Association:

> "Resolved that the President in all appropriate instances shall make a formal request within the meaning of Article 17 as presently written, to all Committee Chairmen and Vice-Chairmen, which could be phrased as follows:
>
> 'Memo to Chairmen and Vice-Chairmen of the Standing Committees of the Maritime Law Association of the United States. Attached is a copy of Article 17 of the By-Laws as amended May 1, 1981. Please comply strictly with its provisions at all times.

It is desirable to establish a procedure whereby the identity of the members of the Committee or Sub-Committee, as the case may be, which is involved in an appearance or testimony as provided therein, may be made known to those present by the testifying member voluntarily and at the outset of testimony. In my capacity as President and Ex-Officio member of all Committees, this constitutes an official and continuing request, as contemplated by Article 17, to all Chairmen and Vice-Chairmen of MLA Standing Committees that any testifying member of a Committee or Sub-Committee at the outset of his testimony shall provide a list of the names of the Committee or Sub-Committee members concerned. If the vote of the Committee or Sub-Committee concerning the position it expresses was unanimous, it shall be so stated; if not, the number of votes *pro* and *con* shall be stated. The individual positions or votes of members should not be stated. Where there is a quorum sufficient to conduct the business of the Committee or Sub-Committee the action of the quorum is controlling.

For your information, it is my present intention to request the Executive Committee at its next meeting to approve the foregoing request, to ratify it and to adopt the request as a continuing policy of the Association until such time as the Executive Committee or the Membership shall take further action, depending upon the experience of the Association and as circumstances warrant.

Your compliance in all respects with Article 17 and my request is expected and will be appreciated. Kindly acknowledge,

John W. Sims, President,
The Maritime Law Association of the United States, September 4, 1981' ".

The motion was duly seconded and unamiously adopted.

Past President Arthur M. Boal, Chairman of the Committee on the Comite Maritime International, who was present by invitation of President Sims, reported as to the following matters:

1) *Proposed new Constitution of the Comite.*

He advised that a number of suggestions by him and others had been adopted by the Bureau Permanent during the Montreal meeting. The Constitution is now in satisfactory form so that no action is needed by the Association at the November meeting.

2) *Conventions not adopted by the United States.*

President Berlingeri has asked that we provide him with the material needed to answer the question why various treaties were not adopted by the United States. It was pointed out that in this century, only the Salvage Convention of 1910 and the Hague Rules had been adopted. For example, Mr. Truman withdrew the Collision Convention of 1910 from the consideration of the Senate in 1947; and further efforts by members of the Association, including Mr. Boal and Secretary Deming to again present it to the Senate in 1962 and 1963 did not succeed.

Finally Mr. Boal advised that there may be a London meeting of the CMI to consider aspects of the 1969 Pollution Convention and the Fund Convention.

Mr. Thomas J. McKey reported on progress of plans for the 1986 meeting at the new Hyatt in Maui. He reported that President Sims, on his recommendation, has signed a committing letter and plans are proceeding as you will be hearing, with help from George Waddell and others.

First Vice-President Paulsen reported as to financial results of the social activities in Montreal. All agreed that the Reception given by our Association had been an outstanding success, and in particular had strengthened the already good relationship with the Canadian Association.

Past President David R. Owen, Chairman of the Practice and Procedure Committee, who was present by invitation of President Sims, reported as to the activities of his Committee. He advised that although six months have gone by since the filing of a brief amicus, and oral argument, in the *Merchants National Bank* case in the Fifth Circuit, and four months since filing and argument of the Fourth Circuit brief in the *Amstar* case, no ruling has been handed down by either Court on the vital issue of the constitutionality of Maritime arrest.

The meeting was continued at a luncheon at India House, also

attended by Past Presidents J. Edwin Carey and James J. Higgins, and by James M. Estabrook.

First Vice-President Paulsen reported as to Association Document Number 631, which states the Association's Purposes, Organization and Activities. The Document is largely derived from an address by President Sims at the Houston Seminar. It will be most useful in informing Bar Associations and other interested groups. The text of the document will appear in the new directory.

James M. Estabrook, Chairman of the Special Committee on the Rules of the District Courts of the Southern and Eastern Districts of New York, who was present by invitation of President Sims, reported on the activities of his Committee, which cooperated with the Admiralty Committee of the Bar Association of the City of New York, represented by Richard H. Brown. Our Associate Member Judge Charles S. Haight was very active in this matter. The Southern District has now completed the intended Rules revision. The Eastern District has the matter still under consideration and the Committee will keep us advised of its progress.

There being no further business to come before the meeting, it was on motion duly made and seconded adjourned.

The Executive Committee met again on November 5th, 1981 at the offices of Haight, Gardner, Poor and Havens at 1 State Street Plaza, New York City, at 9:30 a.m.

The minutes of the October 2nd, 1981 meeting were approved.

Secretary Deming presenting his report, which was approved.

After discussion, it was unanimously voted to invite to Associate Membership Honorable George C. Carr, Judge of the United States District Court, Middle District of Florida, Jackson Division, and Mr. Joseph M. McLaughlin, formerly Dean of the Fordham University School of Law, who was sworn in as Judge of the United States District Court, Eastern District of New York on October 3rd, 1981.

Secretary Deming reported to the meeting concerning ten proposed new Non-Lawyer Members of the Association, and after discussion, it was voted to admit all ten.

Secretary Deming reported the results of an inquiry as to the possible use of the Seamen's Church Institute as a place for Committee meetings. After discussion it was decided this would be too costly and the present procedure shall continue.

Treasurer Keating presented his Report, which was approved.

Membership Secretary Sullivan submitted his Report, which was approved.

Gerard T. Gelpi, Chairman of the 1982 Arrangements Committee, submitted his Report. You will be hearing from him.

First Vice-President Paulsen reported as to the proposed revised Qualifications for Membership, which were preliminarily discussed at the May 1, 1981 meeting.

The proposed qualifications were discussed, amended in various respects, and approved by the Executive Committee, subject to action today by the Association.

A Resolution amending the Admission Requirements in the By-laws of the Association was discussed. It was the sense of the meeting that action on the Resolution is essential for our Association to take in order to continue to be the leading force in the field of Admiralty.

It was unanimously approved by the Executive Committee to present the Resolution to the Association by First Vice-President Paulsen, who will report the qualifications, of which copies are available on the table outside the meeting.

Mr. Robert G. McCreary, Chairman of the Continuing Legal Education Committee, reported as to the activities of his Committee. He discussed plans for the possible publication of some of the seminars presented at Coranado, after consideration by the Committee.

Mr. Richard W. Palmer, who was present by invitation of President Sims, reported on the Committee on Limitation of Liability, of which he is Chairman.

He reported that his Committee is maintaining close touch with the Staff of the Congressional Committees and other Washington sources. Present indications are that Congress at this time is considering a number of other pressing matters, and that this is not the appropriate time to present the Association's proposed Limitation Bill.

Mr. Palmer also reported that his Committee will shortly be ready to publish and distribute an updated statistical analysis of limitation of liability cases covering the period from October, 1976 to December, 1980, prepared by Donald C. Greenman of Baltimore at the request of the Committee.

This brings up to date the earlier statistical analysis for the period 1953 through October 1976.

Statistics indicate that limitation of liability is being upheld by the Courts more frequently than has been the case in the recent past.

Mr. James J. Ruddy, who was present by invitation of President Sims, reported as to the activities of the Dinner Committee. He reported that a record 1,880 persons will be in attendance and that all arrangements are in hand to make the dinner an outstandingly successful event.

Mr. Thomas J. McKey reported as to the activities of his Committee with relation to the planned Maui meeting.

The semi-annual Cargo Newsletter, prepared by a Sub-Committee of the Bills of Lading Committee, was authorized for distribution to the members of the Association.

First Vice-President Gordon W. Paulsen reported that the Association has acquired a handsome silver scroll, which will be presented by President Sims to Chief Judge Wilfred Feinberg of the United States Court of Appeals for the Second Circuit, at a Reception to be held before the dinner tonight.

Paul N. Daigle reported as to a troublesome jurisdictional problem. After discussion President Sims appointed an Ad Hoc Committee consisting of:

Graydon S. Staring, Paul N. Daigle, and Thomas J. McKey. They will consider this matter and determine whether the Association should file a brief amicus. The Committee was authorized to do so at a time and place determined by it if that proved to be the appropriate action to take.

President Sims circulated a letter he has written to Professor Francesco Berlingieri, President, Comite Maritime International, on behalf of the Officers and the Executive Committee of the Association in connection with new elections soon to be held, ". . . as an expression not only of the great esteem in which we hold you but also an expression of our deep and sincere wish that you will continue to serve as the President of the Comite Maritime International. We believe you to be largely responsible for the present stature of the CMI and your continued service will make it possible for CMI to further its contributions to the cause of uniformity of maritime law.

This letter is prompted in part by information which we trust is untrue, to the effect that you have been seriously considering giving up the Presidency at the expiration of your current term. If such is untrue, it will indeed be pleasant news.

In any event, we hope this letter will serve to convey some sense

of the high regard we hold for you, and should you actually be considering resignation it may be that in some small way our expressions will help persuade you to retain the office.

All of us are completely in accord in believing and wishing you to know that you are an outstanding President; the CMI has prospered under your guidance; and we know of no one whom we would prefer in the office.

"With best wishes from all of us".

The letter was then signed by the President and all the Officers and Executive Committee members and mailed to Professor Francesco Berlingieri.

The meeting was continued at India House.

Reports were received from the following persons present at the invitation of President Sims:

Past President Herbert M. Lord reported as to the activities of the Committee on American Bar Association Relations.

John C. Moore, Chairman of the Committee on Bills of Lading reported as to the status of the Committee's activities in Washington, D.C.

James M. Estabrook reported on the activities of the Special Committee on Rules in the Southern and Eastern Districts of which he is Chairman, in particular as to a Rule now under consideration in the Southern District for the handling of cargo cases.

There being nothing further to come before the Committee, the meeting, upon motion duly made and seconded, was adjourned.

President Sims: I will entertain a motion to approve the Secretary's report.

Mr. Paulsen: I so move.

Mr. Sullivan: Second.

President Sims: All in favor?

Audience: Aye.

President Sims: Any opposed?

Audience: (No response.)

President Sims: The Secretary's report is approved.

I might at this time say a word or two about the dinner tonight. One of the outstanding features of the dinner will be no speeches.

(Applause.)

Since there is a deliberate attempt by the Maritime Law Association to show our respect and regard for the Federal Judiciary in the

New York area, the Eastern District, the Southern District, and in particular, the Second Circuit, there will be, as you heard, a scroll presented to Judge Feinberg, the Chief Judge, at the Reception to be held just before the dinner.

When the dinner starts, the Judges will be seated at various tables.

There will be a fanfare by Joe Carroll's orchestra and a Cue sheet. I will read out the names of the Judges and their ladies and each person will be individually spotlighted.

We will end at the head table, introducing Luis Cova-Arria, President of the Comite Maritime Venezolano as one of our distinguished guests, Joseph Carton, Vice-President of the Canadian Maritime Law Association and the principal honored guest, Judge Feinberg.

We have announced that you will be receiving the minutes of the May 1 meeting in the mail before too long. You will also be receiving the new 1981 directory. We have had technical and personnel problems in connection with these two documents and we are very sorry we were not able to get them to you before the meeting today.

Mr. Keating, will you make your Treasurer's report, please?

## REPORT OF THE TREASURER

Treasurer Keating: Thank you, Mr. President.

Ladies and gentlemen, I am pleased to report that the financial condition of the Association continues to be sound.

During the first six months of our current fiscal year we had receipts of $128,000. Against that we incurred expenses of some $87,000 leaving us with an excess of income over current expenses at this time of some $41,000 which we project should be sufficient to cover the activities of the Association through the end of the current fiscal year.

Included in the $87,000 of expenses is some $31,000 incurred by the Association's delegation in attendance at the CMI meeting in Montreal last May. That $31,000 was charged to the special reserve fund for the Comite Maritime International which we have had for some years now, and which coincidently, amounted to about the same $31,000 figure. So, the special CMI reserve fund has now been exhausted.

As President Sims told you the membership directory is in the

mail and you should be receiving it shortly. If you need additional copies of the directory they are available from the Secretary or the Treasurer at $10 per copy.

That is the report of the Treasurer, respectfully submitted.

President Sims: I will entertain a motion to approve the Treasurer's report.

Secretary Sullivan: So move.

President Sims: Second?

Secretary Deming: Second.

President Sims: All in favor?

Audience: Aye.

President Sims: Any opposed?

Audience: (No response.)

President Sims: The report is approved.

We have at the table outside, as you may have noticed, MLA ties and the silver medallion which was presented by the MLA to the ladies at Montreal. They are for sale at the modest sum of $30. They are very lovely, due largely to Marge and Nick Healy who found the person who could do a fantastic job. They are sterling silver.

Next we have the report of Mr. Sullivan, our Membership Secretary.

## REPORT OF THE MEMBERSHIP SECRETARY

Membership Secretary Sullivan: A total of 200 have been accepted for membership in the Maritime Law Association and the membership of the Association now stands at 3,050.

That concludes my report.

President Sims: Mr. Sullivan is always mercifully brief and I think we ought to adopt that report by acclaimation.

The Audience: Aye.

President Sims: We have come to item 5 on the agenda today which is not routine and which is, I think, a landmark in the history of the Association. I ask that you listen carefully to First Vice-President Gordon Paulsen.

## REPORT AS TO REVISED CLASSIFICATION OF MEMBERSHIP

First Vice-President Paulsen: Thank you very much, Mr. President.

As you have heard from the Secretary's report, this subject has been under discussion for some time. It was brought about largely because of our relationship with the American Bar Association and in response to the proliferating State certification programs which have gone on throughout the country. Since it is the feeling of all of us that there's going to be that kind of thing going on, the MLA is thought to be most appropriate certifying agency.

The matter was considered by the President's Advisory Committee under the leadership of Immediate Past President Donovan, then considered by the Executive Comittee and announced to the membership at the May 1, 1981 meeting. There was discussion in the minutes, pages 266 to 268. It was in Membership Document 630 which asked for responses. A number of responses were received and carefully considered.

Most of these related to the standards for the highest category of membership. That subject was discussed in the report of the Committee on Continuing Legal Education. The entire standard program has been circulated, revamped, and accepted. It was designed to give credit for actual practice, attendance at seminars and courses, committee work, et cetera, and is very, very carefully drawn. You have that material in the papers you received this morning.

There is a slight typographical error: word process machines don't always work right. On page 2 a line fell out. Under the heading of paragraph 3 there should come after the words, "State Bar", the three words, "Computed as follows".

The standards were very carefully considered by the Executive Committee which adopted the standards, subject to passage of the basic Resolution pertaining to membership requirements. Passage of the Resolution pertaining to membership will bring into effect these new standards.

Now for the Resolution itself.

It is basically the same as had been sent out to the membership in Document 630 except for two things. The period for Associate Membership, as you heard Secretary Deming state, is decreased from five to four years. That is the biggest change.

The other is a change in the name of the highest classification of membership. None of us who have been working with this has been happy with the word "lawyer" as the highest classification of membership, either with or without a modifier: It just didn't seem right. We looked at other kinds of organizations, such as the College of Trial Lawyers, and some of the Medical Colleges. We considered the word "Fellow". That didn't quite work. We considered the word "Diplomate", and that also wouldn't work. They don't fit in the way we do things. It came to a number of us that the most appropriate designation would be the historical name, for internal use within our membership, "Proctor in Admiralty" for the highest classification of membership. It is an ancient term which is no longer in official use, but it does seem appropriate.

Elliott Nixon gave us a historical discussion on the subject yesterday and it turns out it was derived from "Procurator" in Roman usage; it is a good sound term for use within our organization.

The Resolution was discussed fully at the Executive Committee yesterday and it was recommended that the Resolution which you have before you be adopted, and I so move:

RESOLUTION PERTAINING TO MEMBERSHIP REQUIREMENTS FOR CONSIDERATION AT THE FALL 1981 MEETING OF THE ASSOCIATION (AS AMENDED AT THE NOVEMBER 5, 1981 MEETING OF THE EXECUTIVE COMMITTEE)

"RESOLVED, that as of November 6, 1981, so much of Article 3 of the Articles of Association and By-Laws of the Association as reads:

"There shall be two classes of regular membership: active and associate" is amended to read:

"There shall be six classes of membership:

1. Honorary
2. Judicial
3. Academic
4. Proctor in Admiralty
5. Associate Lawyer
6. Non-Lawyer

An applicant for Associate Lawyer membership who may wish

to apply for Proctor in Admiralty (hereinafter "Proctor") status after four years of Associate Lawyer membership in the Association, shall agree in the application for Associate Lawyer membership, which shall be supported by two Proctor members of the Association, to maintain adequate records over a period of four years after election to Associate Lawyer membership in order to assist the Admissions Committee in determining, at the proper time, whether such Associate Lawyer member possesses the qualifications to advance to Proctor membership. An Associate Lawyer member need not apply for Proctor membership, but if such application is made, the applicant must meet the requirements for Proctor membership in existence at the time the application for Proctor membership is passed upon. Proctor, Associate Lawyer and Non-lawyer members are entitled to vote. All classes of membership are eligible to serve on Committees of the Association.

Upon a special showing of possession of the qualifications required for Proctor membership, and upon recommendation of the Admissions Committee, the Executive Committee or the Association may waive the four-year requirement and grant Proctor membership to such qualified applicant.

An applicant for Proctor membership must satisfactorily answer a questionnaire, prepared by the Admissions Committee and approved by the Executive Committee, with respect to experience and qualifications, supported by two Proctor members in such form as may be required in the questionnaire on standards for admission. The applicant for Proctor membership must furnish satisfactory evidence of compliance with such other qualifications for Proctor membership as the Executive Committee shall from time to time require. The Executive Committee in fixing such qualifications shall consider the advice and guidance of the Committee on Admissions and on Continuing Legal Education.

All Lawyer members in good standing as of the date of this Resolution will be designated Proctors in Admiralty and those holding what was previously designated "Associate membership" will become Judicial or Academic members as the case may be. Non-Lawyer members will retain their current status."

* * * *

The balance of Article 3 of the By-Laws would be modified as necessary to be consistent with the proposed changes.

President Sims: Mr. Donovan, will you step up here, please.

Immediate Past President Donovan: Mr. President, I move the adoption of this Resolution. I think it is one of the facets of an overall problem that commenced with the activities of the Advisory Committee with regard to ABA Resolutions and the possible loss of our distinct status.

Thanks to the extremely good efforts of Past President Herbert Lord, and John Castles, that problem was resolved.

The next problem that we sensed was a need for a separate Committee on Continuing Legal Education. That problem was resolved with the appointment of Bob McCreary as Chairman. We felt, however, that in order to add to our image, it was necessary that we demonstrate, not only to the American Bar Association, but to such State Bar activities as might be interested, that we have an ongoing system requiring legal education in order to meet our requirements.

This has been a matter that we have given considerable thought to and so has the Executive Committee.

There may be certain problems having to do with the Administration of it, but I must point out to you that this will not go into effect for about four years. While we are going through this formidable process the warts will be removed and therefore without hesitation I recommend the approval of this Resolution.

President Sims: Thank you, Mr. Donovan.

I think the point he is making, the last point, is that all of you are grandfathers, so you do not have to meet any further requirements. Some of you may be grandmothers.

Mr. McCreary, I think you wish to speak to the motion.

Mr. McCreary: I duly second the motion. Everything we have heard commends a favorable vote today. Certainly the need is well recognized by everyone in this age of specialization that we have to be continually educated in our profession.

I think this is a remarkable example of leadership of the Association, when you consider that this idea saw the light of day only last January. I want to persuade you that it has received the ultimate in due process in that it was thoroughly discussed at the Executive Committee in March in New Orleans, in May in New York, and the membership has had before it by mail, some months ago, the substance of what we are going to vote on today.

I feel that realistically there is every reason why we should vote in favor, but equally important, as a practical matter for us to act

now, will present a shining example to the rest of the profession, the State Bar Associations, and the Federal Judges, that we have a rule for accreditation which no other similar Association has.

Therefore, I commend passage of this important work of the MLA.

President Sims: Can you second the motion?

Mr. McCreary: I do once more.

President Sims: Gentlemen, the motion has been moved and seconded.

Discussion?

Will you please identify yourself and come forward.

(Member does not identify himself). I apologize as I am not a scheduled speaker and in reading pages two and three of the standards, I had a couple of questions about the ratification.

On Page Two, small b., it says, "One (1) point for each class hour of attendance at a postgraduate course in Admiralty conducted by an ABA accredited law school."

I assume there are two hours per week per course and I assume that if you attended that course for half a year you would qualify as a Proctor.

Am I interpreting that correctly or are you referring to class hours as they do in the colleges, the college hour where you get two credit points for a course taken for six months.

First Vice President Paulsen: It is hours of actual attendance.

The Member: That is what I was concerned about.

Is the Association going to be conducting seminars at the MLA Convention or meetings in New York, in other cities?

President Sims: Absolutely.

As a matter of fact, one of the principal responsibilities of our continuing Legal Education Committee, chaired by Bob McCreary, is to plan in advance suitable seminars which will be helpful to the entire Association.

The Member: Upon that representation I have gladly alleviated my concern, and will withdraw any objection that I had.

President Sims: Will you give your name to the reporter.

The Member: Richard Hollstein.

First Vice President Paulsen: In response to the last point, not only will the MLA have a broader and more inclusive program of seminars, but also the thought of the Committee on Continuing Legal

Education was that it would approve seminars run by the ABA or other organizations, all kinds of seminars so there will be lots of opportunities.

President Sims: Bob McCreary and his Committee will carefully consider the different seminars that are available from the different bodies, and certainly, they will not be restrictive or make it difficult for a candidate for Proctor in Admiralty to obtain the necessary hours.

Any further discussion?

A Member: Question.

President Sims: The question has been called. All in favor of the Resolution play please say Aye.

Audience: Aye.

President Sims: Any opposed?

(No Response.)

President Sims: The motion is carried. Gentlemen, I think the Association has moved far ahead.

We will now go through our regular reports. First we will have a very brief report from the Committee on Bills of Lading, Mr. John Moore.

## COMMITTEE ON BILLS OF LADING

Mr. Moore: Mr. President, the report is short and pithy and there are some important things in it.

Mr. Moore then summarized the Committee Report, the full text of which is as follows:

Since the 1981 Annual Meeting, your Committee has held two meetings—a Special Meeting on August 5, 1981 and our regular Fall Meeting today. The status of the subjects assigned to us is as follows:

## INTERNATIONAL CARRIAGE OF GOODS
### Hague/Visby

We have learned that in addition to the 15 States which had accepted the Visby Amendment Protocol at the time of the 1981 Annual Meeting, Bermuda and Hong Kong have become parties. We have also learned that Yugoslavia and Argentina, as well as Finland, had previously accepted the Visby Amendments by enactment as their domestic law, although they have not become parties to the Treaty by ratification or accession. All 20 of the Visby Amendment States are listed in Exhibit A hereof.

We have obtained and examined United States Government records regarding 1980 United States exports and imports by vessel. The table attached as Exhibit A hereto shows the average of exports and imports of the Visby Amendment States as percentages of the total dollar volume of United States trade by sea. As will be seen, the States which have taken the Visby Amendments into their law, either by becoming parties to the Visby Protocol or by domestic enactment, constitute 14.495% of our 1980 export/import trade. Broken down, they represent 17.76% of U. S. exports and 11.58% of U. S. imports. The slight seeming discrepancy between these figures is due to the fact that U. S. *imports* were substantially more in dollar volume than U. S. *exports* and our import and export volumes of trade are not the same for each State with which we trade.

A draft bill to enact the Hamburg Rules as an amended U. S. Carriage of Goods by Sea Act was prepared in the Department of Transportation. It was referred to the State Department Advisory Committee for Private International Law. The purpose was to have a bill ready for use in the event that the United States should ratify the Hamburg Rules. When the proposed bill was circulated for comment, your Committee prepared and submitted a proposed bill to enact the Visby Amendments as amendments to the U. S. COGSA. Because of the timing of the study, requiring a reply by September 15, 1981, the proposed bill had to be put forward on the authority of your Committee without committing the Association. We considered this action by your Committee appropriate in view of the formal approvals of Visby beginning at the Annual Meeting in 1968 and most recently at the Annual Meeting this year, also formally approved by the Association. In drafting the bill, we were careful to preserve the differ-

ences which exist between the U. S. COGSA and the Hague Rules Convention. For the limitation amount, we went a step further than the Visby Amendments themselves and proposed expressing the limitations in Special Drawing Rights (2 SDRs per kilogram or 666.67 SDRs per package or customary freight unit) as in the Protocol of December 21, 1979. As of yesterday, these values correspond to $2.32 per kilogram ($1.05 per pound) and $773.34 per package or customary freight unit.

Representatives of your Committee have met with the new Legal Adviser of the Department of State, Hon. Davis R. Robinson, on this subject and have been informed that no decision on the proposed bills or ratifications is to be expected before the end of the year, as certain special interest groups have yet to be heard from. We have also met with the new Maritime Administrator, Adm. Harold E. Shear, who received us most courteously.

In our meetings with Mr. Robinson and Adm. Shear, we urged that the acceptance of the Visby Amendments, which are already in effect in much of the U. S. foreign trade because of enactments by our trading partners, and which have been supported by The Maritime Law Association of the United States, be favorably considered by the Administration.

## SDR AMENDMENTS

The Protocol of December 21st, 1979 amending the Visby Amendments to substitute Special Drawing Rights for Poincaré Francs, has now been signed but not yet ratified by the following States:

Belgium
Chile
The State of Vatican City
Poland
Portugal
U. K.
Singapore
Switzerland
Syria
Madagascar
Italy

We recommend that the United States of America sign and ratify this Protocol and hereby request approval by the Association of that recommendation.

We shall continue to monitor this Protocol.

In our opinion, the Visby Amendments, which have been publicly and thoroughly discussed for almost 14 years, should be made effective in the United States by suitable amendment of our COGSA and by ratification of or accession to the Protocol of February 23, 1968 and December 21, 1979 without further delay. We request that, by approving this Committee Report, the Association approve that recommendation.

## HAMBURG RULES

Since our report of April 29, 1981, one Country, (Morocco) has become a party to the 1978 Hamburg Rules. That makes a total of six parties, Egypt having ratified its signature (the only one of 27 signatories to ratify) and Uganda, Tanzania, Tunisia, Barbados and Morocco having adhered. As the participation of 20 States is needed for the Hamburg Rules to enter into force, there is no prospect that they will enter into force in the forseeable future.

In connection with the draft bill to enact the Hamburg Rules as amendments to the U. S. COGSA, the Department of Transportation posed 15 questions. Those questions have been referred to an **ad hoc** Subcommittee of your Committee for study and reply.

## THE MULTIMODAL CONVENTION

As we have been reporting, the United Nations Convention on International Multimodal Transport adopted "by consensus" at a Conference at Geneva ending May 24, 1980, has been awaiting action. It was, by its terms, open for signature until August 31, 1981. We checked at the United Nations on September 1, 1981, and learned that the proposed Convention had been signed by only the following States:

Mexico
Morocco
Senegal
Chile
Norway
Venezuela

The Association had approved your Committee's recommendation that the United States not sign the Convention and we were glad that the United States did not do so. On September first we expressed our gratitude to the appropriate Government officials.

The proposed Convention, by its terms, requires at least 30 ratifications or accessions to enter into force After 15 months only six States had signed, and none of those had ratified.

In our opinion the greatest defect in the proposed Convention is that it would violate the Network Principle of simply linking up the regimes applicable to the various segments of a multimodal transport.

The prinicpal advantage of the Network Principle, which has become the international commercial practice, helped by the Rules of the International Chamber of Commerce (ICC Brochure No. 298) and the documentary work of the Baltic and International Maritime Conference (BIMCO Combined Transport Bill of Lading form "COMBIDOC") is that it fits smoothly with separate contracts for the individual segments. It also is a permanent solution, never needing revision, since any revision of the liability regime for a particular segment is automatically incorporated by reference, effective immediately, when the revision takes effect.

## CARGO NEWS LETTER

Submitted herewith is Cargo Law News Letter No. 4. We were glad to hear just a little while ago that the Executive Committee has approved our recommendation that this Cargo News Letter be distributed with the next Association mailing. This Cargo Law News Letter is a perfectly fine job of keeping up to date in developments of cargo law. It is expressed in very concise and entertaining fashion and I am directed by the Committee on Bills of Lading to express our very high thanks and appreciation to our one-man Subcommittee who, with great devotion to duty, has produced that Cargo Law News Letter, Mr. Dewey R. Villareal, Jr.

(Applause).

## COMMITTEE RECOMMENDATION

Your Committee recommends that the Association approve Revision of U.S. COGSA to include the Visby Amendments, with the

limitation amounts expressed in SDRs as in the Protocol of December 21, 1979.

Respectfully submitted,

*William J. Augello
*Clifford R. Beach
*Francesco Berlingieri
Raul Betancourt, Jr.
Arthur M. Boal
*Leonard N. Bouzon
*William C. Bullard
Byron King Callan
*J. Edwin Carey
*Hubert F. Carr
*John H. Cassedy
George F. Chandler, III
*H. B. Chassen
*William John Coffey
*Robert B. Deane
*Dwight B. Demeritt, Jr.
Abraham A. Diamond
James J. Donovan
*Thomas A. Fain
Robert A. Fletcher
*John E. Greene
Donald C. Greenman
E. V. Greenwood
*Harry L. Haehl
*William L. Hamm
Charles E. Henshall
*John O. Honnold
Douglas A. Jacobsen
*Paul C. Johnson
*John D. Kimball
Jack J. Knebel
*Donald A. Krach
*Paul B. Larsen
Thomas H. Leach
*Manfred W. Leckszas
*James R. Lee
*Herber M. Lord
Wilder Lucas
*David Thomas McCune
James R. McNamara
*Michael J. Maginnis
John A. Maher
Guy E. C. Maitland
Elliott B. Nixon
*Edward W. Norberg
*William E. Rapp
Richard E. Repetto
Michael J. Ryan
Gordon D. Schreck
Richard H. Sommer
C. Eugene Spitz, Jr.
Joseph C. Sweeney
Francis L. Tetreault
*Kenneth H. Volk
*John R. Walbridge
*Benjamin W. Yancey
*Peter J. Zambito

Dewey R. Villareal, Jr.
Deputy Chairman
John C. Moore
Chairman

*Unavoidably prevented from attending meeting or otherwise contributing to the report.

**EXHIBIT A**

| *Country* | *Date of Ratification (R) or Accession (A)* | *Effective Date* | *% of dollar value US Export/ Import Trade by Sea* |
|---|---|---|---|
| Belgium | Sept. 6, 1978 (R) | Dec. 6, 1978 | 1.775 |
| Bermuda | Nov. 1, 1980 (R) | Feb. 1, 1981 | .003 |
| Denmark | Nov. 20, 1975 (R) | June 23, 1979 | .365 |
| E. Germany | Feb. 14, 1979 (A) | May 14, 1979 | .300 |
| Ecuador | Mar. 23, 1977 (A) | June 23, 1977 | .550 |
| France | Mar. 10, 1977 (A) | June 23, 1977 | 2.435 |
| Gibraltar | Sept. 22, 1977 (R) | Dec. 22, 1977 | .000 |
| Hong Kong | Nov. 1, 1980 (R) | Feb. 1, 1981 | .012 |
| Lebanon | July 19, 1975 (A) | June 23, 1977 | .105 |
| Norway | Mar. 19, 1974 (R) | June 23, 1977 | .975 |
| Poland | Feb. 12, 1980 (R) | May 12, 1977 | .390 |
| Singapore | Apr. 25, 1972 (A) | June 23, 1977 | .915 |
| Sweden | Dec. 9, 1974 (R) | June 23, 1977 | .850 |
| Switzerland | Dec. 11, 1975 (R) | June 23, 1977 | .655 |
| Syrian Arab Republic | Aug. 1, 1974 (A) | June 23, 1977 | .105 |
| Tonga | June 13, 1978 (A) | Sept. 13, 1978 | .005 |
| U.K. | Oct. 1, 1976 (R) | June 23, 1977 | 3.855 |
| Argentina | Domestic Legistlation | | .685 |
| Finland | Domestic Legistlation | | .24 |
| Yugoslavia | Domestic Legistlation | | .275 |
| | | Total: | 14.495 |

President Sims: Thank you very much.

Approved?

A Member: I second that.

President Sims: All in favor, say Aye.

Audience: Aye.

President Sims: Any opposed?

Audience: (No response.)

President Sims: The report is approved.

Mr. Francis J. Gorman: My name is Frank Gorman from Baltimore and I have what I hope is a common sense question. We know about the $500.00 per package limitation but it is not so easy when you say "Special Drawing Rights." What will that mean in

terms of dollars per package? Is there any way to state that now or does it fluctuate?

Mr. Moore: Should I take one minute or one half minute.

President Sims: You can have one minute.

Mr. Moore: The Special Drawing Right is an invention of the International Monetary Fund and it would keep the limitation amounts of the law in various countries on a uniform basis, so that it takes care of the differential rates of inflation in various countries. Now, the Hague Rules limitation was £100 sterling in gold per shipping unit, and was converted into National Currencies which have gone way up. The dollar has held up about the best of any. I believe the Spanish Peseta got down to something like $15.00 per package so it has to be restandardized somehow.

The International Monetary Fund devised the Special Drawing Right for other purposes but the Warsaw Convention for air travel, for instance, took it as a standard.

It can't be as readily understood as the dollar. It is described as a "basket" of sixteen currencies, of which the dollar is the most important, each of which is assigned as a certain percentage of the "basket". The value of an SDR has fluctuated in recent years between something under $1.20 per SDR and something over $1.30. So a limitation of 2 SDR's per kilogram or 666.67 SDR's per package, as in the Protocol of December 21, 1979 to the Visby amendments and Hague Rules, would mean, at $1.20 per SDR, a limitation of $2.40 per kg ($1.09 per lb.) or $800 per package, assuming, of course that the contents of a container had not been "enumerated". If on a particular day the value of an SDR is more or less than $1.20, the arithmetic can easily be done. The dollar value of the SDR is published every Tuesday, Wednesday, Thursday and Friday in the *Journal Of Commerce,* and in leading financial journals in other countries.

Frank, I hope that answers your question.

Mr. Gorman: Yes.

Our next report is the Committee on the Comite Maritime International, Mr. Arthur M. Boal.

Mr. Boal: Mr. President, I have one suggestion, that at the dinner tonight you point out the fact that this is a unique organization founded by Judges, and at the present it has thirty Judges, and is still an organization of lawyers and Judges.

President Sims: Thank you.

## REPORT OF THE COMMITTEE ON THE COMITE MARITIME INTERNATIONAL

Mr. Boal: We reported at the May meeting that we received a Committee's draft of a new Constitution for the C.M.I. too late to take to take a position on it in the 1981 meeting of the Assembly. We also stated that when we received a copy of the Constitution as adopted by the Assembly we would report at this meeting our recommendation for any amendments we considered desirable.

We had examined the Committee's draft and considered a number of amendments that we considered desirable.

When we received a copy of the Constitution as adopted by the Assembly, we found that all our objectives had been met, and the defects in the Committee's draft which we thought should be corrected had been corrected. A copy of the new Constitution was mailed to each member of our Committee with the request for suggestions as to any amendments that we might propose.

We received replies from a number of our Committee's members, all of whom believed that no amendments should be proposed.

In our opinion the new Constitution is an excellent working document and we do not propose any amendments to it.

I therefore suggest that no action by this Association be taken on the Constitution. We do suggest that it be printed in our Yearbook.

President Sims: Thank you Arthur.

Mr. Boal: Now, the other Committees dealing with the CMI.

First I call on Mr. Richard W. Palmer, for the Limitation of Liability Committee.

## REPORT OF THE LIMITATION OF LIABILITY COMMITTEE

Mr. Palmer: Thank you Arthur. I have arranged with our Secretary to give our report, which has already been delivered by Mr. Deming.

President Sims: Thank you, Mr. Palmer, indeed.

Mr. Boal: Next is the report of Mr. Edward C. Kalaidjian.

President Sims: Mr. Kalaidjian was in charge of the MLA Task Force on Salvage at the Montreal Meeting of the Comite. He did a fantastically good job.

Mr. Boal: The Salvage Convention, as adopted at Montreal, was presented to IMCO on October 1st of this year by the President of CMI, Francesco Berlingieri.

## REPORT OF THE COMMITTEE ON MARINE INSURANCE, GENERAL AVERAGE AND SALVAGE

The Comite Meeting in Montreal had two items for consideration. One was the Salvage Convention and the other was Hazardous Substances. It was a very stimulating experience for me to lead the American Delegation on the Salvage Convention because I had the support of a very large, knowledgeable and interested group and I want to say that all of them gave me a lot of help.

Basically, the Convention that was brought to the Comite Meeting was the one that had been drafted in the Comite Subcommittee. The Convention, as adopted after a week of discussion did not fundamentally alter what the Subcommittee had submitted, but there was one very significant accomplishment. We had trouble with the question of what to do about enhancing an award of Salvage to protect the environment. There had been much consideration and discussion in the CMI Subcommittee of the concept of liability salvage, which we finally concluded was not workable; and at Montreal the Salvage Interests and the Insurance Interests came together on a formula which may resolve the problem.

The principle of the formula is that if a salvor has attempted to protect the environment and he has as a result received no award for property salvage, or the award for salvage property is less than his expenses to protect the environment, he would receive as a minimum his expenses for protecting the environment whether he has succeeded or not. If the salvor can demonstrate that he succeeded in protecting the environment, then the award of expenses is subject to an increase up to double.

So much for salvage.

As far as the Committee on Marine Insurance, General Average and Salvage is concerned, in addition to the project on the Salvage Convention, we are monitoring the discussions going on in the Committee to revise the British form of Policy for hull and cargo. That work is

well along, but will probably require considerably more time to conclude.

President Sims: Thank you, Mr. Kalaidjian.

Mr. Boal: Also presented at the Montreal Meeting was a proposed Convention on the Carriage of Hazardous and Noxious Substances by Sea.

The task force in our Montreal Delegation on that subject was led by Mr. Thomas R. H. Howarth.

Mr. Howarth.

## REPORT OF THE COMMITTEE ON TRANSPORTATION OF HAZARDOUS SUBSTANCES

Mr. Howarth: I would like to reiterate Mr. Kalaidjian's comments about the great support that both he and I had at Montreal.

The delegation was divided into two groups, one of which was principally involved in the discussions of the Salvage Convention and the other of which was principally involved with the Committee's comments that were to be presented by the CMI to IMCO as to the draft Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea.

The net result of the discussions at the CMI meeting in Montreal as to the HNS Convention was the production of a series of comments and recommendations to be presented to IMCO at a meeting of the Legal Committee of IMCO in the Fall.

Our Delegation was very active. We participated quite a bit in floor discussions. All of our suggestions which were presented on the floor were approved by vote of the Conference and we also participated to a large extent in the drafting of the comments and recommendations.

I was appointed to the Drafting Committee and spent all day Wednesday in the Drafting Committee while other people were floating down the St. Lawrence River and other places.

The net result was a document termed HNS Montreal Document No. 8, which contained the comments and recommendations.

I am not going into this Document. It will be attached to our next report, the written report that will be submitted to enable our Association to take a position on the Convention when finalized. However, I

should like to point out that it consists of a series of different recommendations.

Appropriately, the Convention provides for strict liability without fault for the ship owner and the "shipper", with a limitation fund for each, with the shipowner's limitations being the same as provided for in the 1976 Limitation Convention.

As a prefix, it was stated that the report did not constitute an agreement that there should or should not be a Convention, but it was assumed that a Convention would ultimately be approved by IMCO.

Similarly, it was assumed that IMCO would proceed on the basis of both ship owner and shipper liability and that most of the comments would be pointed throughout the report on the question of who the "shipper" might be.

Similarly, it was not considered as to whether or not packaged cargo should be included or explosions in oil tankers in ballast should be considered.

Also it was assumed that the Convention would apply not only to pollution and spills but also to fire and explosion risks.

The basic conclusions were, one, that the opinion was that the ship owner should bear the primary liability under the Convention. The next, was that the shipowner's liabilities should be limited according to the 1976 Limitation Convention, and there should not be a separate fund for HNS liability.

The third was a very lengthy discussion of defining who the shipper may be, how his insurance could be established and who should control that insurance. It runs about four pages which go up and down the hill, and in and out of the doors several times, as any discussion of this nature would.

The conclusion of the report is that shipper's liability insurance can be made available, that the practical legal problems flowing therefrom be further explored, and that the control of both the ship owner and the shipper insurance should be a Governmental task.

We have been monitoring developments since that time, mainly through discussions with Dr. Frank Wiswall, who is the Chairman of the Legal Committee of IMCO, and a member of our Association. He has been very helpful in furnishing us with much information.

Since that time there was held the forty-seventh session of the Legal Committee of IMCO, at which the CMI recommendations and comments were presented by Dr. J. G. Schultsz of the Netherlands, who is the chairman of the CMI Committee.

Basically, it looks as though the alternative of both shipowner and shipper strict liability with two funds, the '76 fund for the shipowner and a separate fund of some type for the shipper, will be established.

It was also voted, contrary to the views of the French Delegation to IMCO, that the packaged substances would be not included in the Convention.

There will be a further session of the Legal Committee at the end of February. This Committee decided at a meeting yesterday that it would keep in touch with Dr. Wiswall and also, in conjunction with our Executive Committee and our President we shall keep in touch with members of the United States Delegation to IMCO to see whether or not there can be any input in that regard.

At this time the Committee does not have any recommendations to make. What we intend to do is see what comes out of the next session. Frank Wiswall says that a draft Convention for Consideration by a Diplomatic Conference will emanate from that session and will be presented to the Diplomatic Conference in 1982, or possibly 1983 or 1984. At that time this Committee will make a complete report and recommendations to the Association for action.

Thank you very much.

President Sims: Thank you, Tom.

As a point of information, all of you who were registered in Montreal will receive in the mail at some reasonably convenient date a copy of the publication called 1981 "Montreal II". It contains the draft Salvage Convention and the observations of the CMI on Noxious Substances.

For those of you who might be interested in obtaining copies, they can be obtained for 450 francs or $10.00 by writing Henry Voet-Genicot, at Antwerp, Belgium.

The next report is the report on Compulsory Arbitration which will be given by Mr. James F. Young of Philadelphia.

## REPORT OF THE COMMITTEE ON COMPULSORY ARBITRATION

Mr. Young: Thank you Mr. President. Compulsory Arbitration is still alive in the Eastern District of Pennsylvania, the Northern District of California and in Connecticut.

Some say it is well and others disagree. It has had the support of our Chief Judge and two other Judges who monitored the cases and have assembled some statistics to prove something. We are not too sure what they have proven but here are a few:

Fourteen thousand civil cases were filed and twenty per cent have been referred to arbitration. Of the two thousand eight hundred seventy-five in the program, two thousand one hundred forty-five were terminated leaving some seven hundred and thirty remaining.

Your Committee would ask how this compares to the three year period prior to the program and it would also ask what happened to the other eleven thousand cases.

I have a further breakdown, if you would like to see it.

There were twenty-seven panels which entered Judgment. Of these eleven found for Plaintiffs and were affirmed on Appeal. Ten panels found for the Defendants and were sustained on Appeal. Six panels that found for the Plaintiff were reversed on Appeal. At least one of these Defendants has asked, "why do I have to go to prove my case twice."

It is up to you to form your own opinion. The Committee thinks that the jury is still out.

President Sims: Thank you very much, Mr. Young.

The next report will be Martin R. Johnson's Committee on Fisheries.

## REPORT OF THE COMMITTEE ON FISHERIES IN THE UNITED STATES

Mr. Johnson: Thank you Mr. President.

We had a brief meeting in New York yesterday. The Committee on Fisheries plans to have a panel discussion in May concerning fishing vessel classification and applicable Coast Guard Regulations.

The United States Coast Guard will make its experts available at the panel discussion. Interested persons should write to Paul Poliak in Seattle or Martin Johnson in Portland, Maine.

President Sims: Thank you very much.

Next will be the report of James J. Higgins' Committee on Marine Ecology.

## REPORT OF THE COMMITTTEE ON MARINE ECOLOGY

Mr. Higgins: Mr. President and members of the Maritime Law Association: this report, more accurately "remarks" of the Committee will be, I trust, of interest to some of you who may represent tankers, tankers carrying oil in bulk, and the tugs that assist them.

Specifically we are referring to the Deep Water Act of 1974.

We were informed on December 1, this year, the United States Coast Guard will publish in final form its Rules and Regulations governing the operation of these vessels at a deep water port. The publication date is tentative.

The activity of the Coast Guard has been given emphasis by the fact that as recently as only two weeks ago the Loop operation was dedicated and put into operation. The reference is to the Louisiana Off Shore Oil Port. I am not aware whether there is another deep water port presently in operation but, of course in the future there will be more. If you are interested, please see the Federal Registry, between December and March.

In conclusion, I should express appreciation to the President for suggesting Nick Healy, Gordon Paulsen and me to attend, on behalf of the CMI the informal meeting in Washington last summer between IMCO and the State Department where we informally, and I emphasize the word informally, had an ongoing discussion with a view towards a possible adoption by the United States of the 1969 CLC and the 1970 Fund Conventions.

This of course involves possible amendments to those Conventions, and it is too early, in any event, to report on any amendments. This is simply to let you know that such discussions will continue and we trust we will be in a position soon to present to you a formal report of what may be stirring in that area.

Thank you, Mr. President.

President Sims: The next report will be that of Mr. Emery W. Harper, Chairman of the Committee on Marine Financing.

Mr. Harper: Mr. President your Committee has no report to make at this time.

President Sims: Thank you very much on behalf of those in attendance.

The next report will be that of Francis J. O'Brien, Chairman of the Committee on Maritime Arbitration.

## REPORT OF THE MEETING ON MARITIME ARBITRATION

Mr. O'Brien: Thank you, Mr. President.

I am pleased to report that this Committee continues its work with the Society of Maritime Arbitrators with the purpose of refurbishing and up-dating the Society's rules in order that they might conform with the recent trends in the industry as well as judicial decisions. The work is nearing completion and should be at an end during the first half of 1982.

Given the fact that we use as guidelines the rules set down by the American Arbitration Association and the International Chamber of Commerce, as well as other bodies, it is your Committee's view that the end product of our joint effort with the Society of Maritime Arbitrators will receive acceptance both by the Bar and the commercial interests involved.

From October 20 to 23, 1981, there was held here in New York the 6th Congress of International Arbitrators. The session took place at the Vista International Center located at the World Trade complex.

I might say the Congress was a glittering success. There were over 200 in attendance from some 30 countries. Many members of this Association gave papers which were well received and merit the attention of all concerned in the field of maritime arbitrations.

The affair was keynoted by the address of Chief Justice Wilfred Feinberg of the Second Circuit who advised us as to his views as to the commercial practicability of arbitration. I believe it safe to say that this mode of determining disputes meets with some judicial satisfaction given the burden of litigation in the courts.

Several firms in New York City engaged in the field of maritime arbitration sponsored a cocktail party reception for the delegates attending the Congress. I might say our efforts in this regard were well received, and that whiskey was not barred at this event.

I did tell a story at the Congress, which I think I should tell you.

It seems there was a sea wall between heaven and hell and one day part of the sea wall crumbled. In due course surveyors were brought on and the sea wall was repaired.

A few days later, God was sitting in his office and a letter arrived from the devil stating "Your share of repairing the wall is $200,000.00." God took the letter, tore it up and threw it away. A day or so later, the devil again wrote and said "Since I do not

have your remittance I have no other recourse but to turn the matter over to my proctors in admiralty and call for arbitration."

The very next day the devil received a letter from God stating, "Enclosed is my remittance. I have no other choice but to pay because one, there are no proctors in admiralty on my side of the wall, and two, even I don't know the outcome of an arbitration."

(Applause)

President Sims: Let the record note substantial applause.

Next is the report of the Committee on Maritime Legislation, Michael M. Cohen.

## REPORT OF THE COMMITTEE ON MARITIME LEGISLATION

Mr. Cohen: Thank you, Mr. President. The Committee on Maritime Legislation is continuing to make progress in its work on legislative proposals to provide for appeals from appellate decisions of Pacific territorial courts and for new statutes of limitations. We are also working on repeal of the Public Vessels Act and to establish a forum for litigation of casualties that occur outside of the Panama Canal locks.

Another of our projects focuses on problems under the new bankruptcy code, especially the preservation of priority for maritime liens. The most recent development, that we are keeping an eye on, is a decision of a District Court holding unconstitutional certain provisions of the Code, including the one which confers admiralty jurisdiction on the bankruptcy courts. The case is being appealed directly to the Supreme Court.

Our proposal for optional recording of maritime liens, hopefully, will be ready for consideration by the Association at the May meeting.

Finally, as expected, a new bill has been introduced in the Congress to eliminate Jones Act remedies for aliens employed on off shore oil rigs in foreign waters.

Although we have some doubt about the form of the bill, we intend at the May meeting to seek a Resolution supporting the object of this bill in general.

President Sims: Thank you, Mr. Cohen.

The next Committee to be heard from is the Committee on Navigation and Coast Guard Matters. This will be given by Kenneth H. Volk of New York.

## REPORT OF THE COMMITTEE ON NAVIGATION AND COAST GUARD MATTERS

Mr. Volk: Thank you, Mr. President. We met yesterday jointly with the Committee on the Western Rivers and Waterways. The primary subject of discussion was Title 46 of the United States Code which, as you know, is a compilation of Federal laws dealing with shipping and vessel safety.

In fact, it is not the law. The law is not found in the United States Code which we all rely upon, but it is found in the Revised Statutes and the Statutes at Large.

Since the Coast Guard is largely responsible for implementing Title 46, last year the Commandant undertook to revise and consolidate the provisions of Title 46, which has been described as a hodge podge of sometimes incomprehensible and sometimes inconsistent provisions. This attempted revision has been the subject of discussion for many, many years, and in fact, an effort was made in the sixties to effect a change.

However, all prior endeavors have come to nought and now the Coast Guard has determined upon a final push to get these revisions through. This effort has resulted in a redrafted Title 46 dealing with all the provisions of 46 and in fact of some of the other Titles as well. The Coast Guard has sent this proposed revision to the Maritime Law Association and last Summer our First Vice-President distributed copies to the various Committee Chairmen asking that they review the proposed revisions and submit comments.

My Committee attempted to do this when we were given three or four of the chapters to review and found that there were great difficulties, because the source material was not clearly defined and the purpose of the review was not clearly defined.

Accordingly, yesterday at our meeting, we were honored to have two Coast Guard officers, Commander Paul Versaw, who is the Chief Officer in International Maritime Law and Lt. Robert E. McDaniel, who is on a special project in the Office of Merchant Marine Safety.

They came up from Washington first to tell us a little history of the

revisions of Title 46 and then to tell us how we, as members of the Maritime Law Association, can assist in this project.

They made it very clear that the purpose was not to change in any way the substantive law. That was the guideline within which they worked. Their efforts were merely to reassemble into coherent chapters the various laws and statutes which are found in Title 46.

In some cases, they have revised the wording, but they insist they have not intended to change the substance.

What they hope to do is present this to Congress and have it enacted as the law rather than merely as a code reflecting what the law is as now contained in the various Statutes at Large and Revised Statutes.

It will be of immense help to the shipping industry and all of us to have a more comprehensible form of Title 46.

When we asked the Coast Guard how members of the Maritime Law Association could help in this project, they said that they would welcome comments on any errors or substantive changes which we think have crept into their proposed draft.

They would like to have our comments in letter form, that is to say, asking our members to comment and sending such comments directly to the Coast Guard, because they have a deadline of January 1982. In view of this deadline, I am taking the time now to tell you all about this today and I would like to emphasize the importance of the project. As most of you have undoubtedly received copies of the proposed revision of Title 46, you are asked to give it your attention and write directly to Lt. Robert E. McDaniel at the Coast Guard or to me and I will see that it forwarded so that they will have some input from our Association on this very important work.

Mr. President, we would like to submit also a formal written report.

President Sims: We will be glad to print it.

## FORMAL REPORT OF THE COMMITTEE ON NAVIGATION AND COAST GUARD MATTERS

The Committee met on November 5, 1981 in a joint meeting with the Committee on Western Rivers and Waterways.

The primary subject for discussion was the proposed revisions to Title 46 of the United States Code prepared by the United States

Coast Guard. The Committee was honored to have present for the meeting Commander Paul Versaw, Chief of the Maritime and International Law Division of the United States Coast Guard, and Lt. Robert E. McDaniel of the Special Projects Staff, Office of Merchant Marine Safety, United States Coast Guard.

Lt. McDaniel outlined the history of the proposed revisions, making it clear that it was not intended to involve any substantive change of existing law. He said that the Coast Guard would welcome any comments from the Committee regarding the proposed legislation and would act upon all such comments which are aimed at maintaining presently existing statutory provisions. With respect to that portion of the proposed revisions dealing with the Jones Act, he emphasized that no changes whatsoever have been made. Lt. McDaniel conceded that in many areas the language of the original statutes has been changed or modified, but always with the purpose of retaining the intent of the original legislation. He asked that the Committee members, in reviewing the proposed revisions, keep this in mind and therefore limit their comments to the overall substance rather than the details of the language. In some instances, the proposed revisions contain new provisions which have no source in existing statutes, particularly those involving definitions. But here again he pointed out that the definitions are derived from well established interpretations long accepted by the Coast Guard and the industry. He emphasized that no substantive change was or is intended.

Commander Versaw commented that other segments of the maritime industry have been sent copies of the proposed legislation for comment, but there has been very little response. He expressed the hope that the MLA will provide the desired comments before the proposed legislation is sent to the Congress.

Paul N. Daigle then gave a brief report regarding conflicts between the United States Coast Guard and OSHA in connection with safe working conditions aboard tug boats. Litigation is pending in the Ninth Circuit and he advised the Executive Committee had appointed a study group to follow this litigation with authorization to appear *amicus curiae* on behalf of the MLA in favor of exclusive Coast Guard jurisdiction.

Austin P. Olney then gave a report on the IMCO Tonnage Convention of 1969 which is about to come into force. Although the United States has not ratified this Convention it will have a profound effect on the measurement of vessels particularly vessels in the 200 to

1600 tons range and vessels of the shelterdeck type. He indicated that the Coast Guard is exploring means of delaying the effect upon United States flag vessels.

President Sims: Thank you very much, Ken.

The next report will be that of the Committee on Merchant Marine Programs, MacDonald Deming, Chairman.

## REPORT OF THE COMMITTEE ON MERCHANT MARINE PROGRAMS

Mr. Deming: Thank you Mr. President. Your Committee has a strong sense of deja vu.

For many years the maritime community has heard from spokesmen of Administrations of all parties to the effect that a major maritime program is under study and will be soon revealed.

Therefore, it is with some sense of familiarity that your Committee greeted the words of Secretary of Transportation Drew Lewis on October 16, 1981. Secretary Lewis, as you know, now has within his department the Maritime Administration with its new Administrator, Admiral Harold Shear. Secretary Lewis said:

"One, this Administration is firmly and fully committed to revitalizing the Merchant Marine." "Two, in late August a policy formulation team began reviewing all maritime policies and regulations. We expect to have the Reagan Administration's maritime policy on the table within four months. It will be a realistic pragmatic workable policy."

One pending Bill of interest is the Port Development Bill, HR4627, which has now been reported out of the House Merchant Marine and Fisheries Committee, and referred to the House Public Works and Transportation Committee. It contains amendments relating to cargo preference.

Other Bills contain the usual policy disagreements. Thus, Conferences may be open or may be closed. Individual carrier rate action within a conference may be voluntary, or, may be not. In most Bills the application of the Anti-trust Laws to agreements among carriers appears to be sharply limited, but both the FMC and the Department of Justice appear to be resisting. Shippers' Counsels are apparently favored, but what they are to do is a matter of some debate.

In the air, as you know, the Civil Aeronautics Board is scheduled

for what is politely termed "sunset." In the twilight preceding sunset domestic air routes have been opened to all carriers, a policy familiar to you as having applied to international sea routes since time immemorial.

On the other hand, while the ICC continues to certify truckers, it does so with a lavish deregulated hand.

The real situation is somewhat different. The laborious and ineffective ICC supervision of rail rates has been loosened. At the same time, the rate conferences of railroads are rapidly losing their jurisdiction. Also, the Staggers Act conducts a quite radical experiment by allowing railroads complete freedom to make contract rates, without tariffs, without strictures against debates and indeed substantially without any regulatory control by the ICC. But even here there is a proviso that the anti-trust laws apply in full force—surely a small dark cloud in the newly invigorating railroad atmosphere.

In short, we are in a time of deja vu. We are not just waiting as usual for the newest maritime program. More generally, in all forms of transportation, we are seeing a repetition of the debates of a hundred years ago, with fears of monopoly abuse contending with fears of regulatory stultification. For the moment, the trend is clearly toward whatever remedy can be called a deregulation prescription.

An ancient Chinese curse declares: "May you live in interesting times."

We surely do.

President Sims: Thank you, Mr. Deming.

Next the Committee on Ocean Liner Conferences, by Vice Chairman John R. Mahoney.

## REPORT OF THE COMMITTEE ON OCEAN LINER CONFERENCES

Mr. Mahoney: Thank you, Mr. President. I am John Mahoney, and I am Vice-Chairman of the Committee. Unfortunately, Ron Capone is unavoidably absent today and asked me to pinch hit for him.

The original mission of our Committee was that of following all of the developments which led to the enactment of the UNCTAD Code of Conduct for Liner Conference Practice.

In this area I can dispose of the last six months almost summarily.

The Code has been ratified, as reported to you by Ron in May by more than the minimum number of Countries necessary.

However, there is still an insufficient number of signatory Countries possessing the required liner tonnage to bring the Code into force.

For the past six months there has been significant pulling among the European and Japanese as to whether the Code will become effective on terms considerably more applicable for traffic within the European community, and I presume this to mean the United States and the European community, more than was envisioned by the Conference that was really responsible for the enactment of the Code.

During the last half year there has been, to the best of my knowledge, little, if any, examination of the impact of the Code, either on existing U.S. legislation or on American shipping.

As to the other principal responsibilities of the Committee, which is monitoring legislation involving ocean liner conferences, there has been little action in the last six months.

As I stand here and report to you, I can't help but feel that when you hear or when you read the report which I left out on the table, or hear a summary which incidentally bears very little relationship to the report, many of you in the audience must be reminded of the French maxim, "Plus ca change, plus c'est la meme chose."

On the legislative front, because the balance of power has changed as a result of the Republican victory in the Senate there have been significant changes in objectives.

Senator Gorton of the State of Washington has become Chairman of the Senate Sub-Committee on the Merchant Marine in place of Senator Inouye.

Although Senator Gorton is a freshman, he gives every evidence of wanting to run with the ball and push through substantial revisions of the Shipping Act which hopefully would restore the historical purpose of the Act in respect to the antitrust laws and would expedite, simplify and clarify its regulatory requirements.

Despite the fact that Congress first in 1916 and again in 1961 gave a strong affirmative intent to foster an effective regulatory Commission for International Shipping free from any antitrust concepts, the Federal Maritime Commission have systematically undermined that Congressional intent during the past two decades. Furthermore, the Courts have been too responsive, I think, to a degree, of a standards taken by the Antitrust views of the Depart-

ment of Justice with the effect that the transportation systems have been truly immobilized plus being subject to the whims of the FMC.

As a result of the hostility of the Department of Justice, the United States, in so far as transportation is concerned, has acted in a manner contrary to almost every other civilized nation in the world.

Our report tracks the Bills that are under consideration by number. I will today simply draw a few conclusions concerning the legislative activities of the last few months and of the present Congressional session.

First, clearly, any proposed legislation designed to clarify the powers of the regulatory armory of the American Government, the FMC, should not include any promotional provisions for the American Shipping Industry.

Congressman Murphy introduced legislation in 1979 and 1980 which encountered vigorous opposition from commercial and legislative interests. The intent of the bill was most commendable, but it covered too much territory.

Secondly, Congressman Murphy's bill covered a subject of interest not only to the Subcommittee on Merchant Marine and Fisheries but also the Interstate and Foreign Commerce Committee, responsible for domestic rail and truck transportation, making it inevitable that any proposed legislation designed to regulate intermodal transportation would lead inevitably to a fight between those two Committees.

The experience in the last few years has shown clearly if there is going to be any meaningful legislation addressed to intermodal transportation, it can only emerge after there have been joint hearings before the several responsible Committees, and more important, that the views of the commercial interests must coincide if there's going to be any progress.

Last, in the past several years the Committee rendered a real service to the various Congressional Committees when it prepared a legal analysis of the proposed legislation. This was one of the most effective works accomplished by the Committee, which was initiated by our Chairman and was prepared by a Subcommittee chaired by my partner Elkan Turk, Junior, of the history of the Congressional Laws in relation to ocean shipping. That particular piece of work was distributed as MLA document number 615 which was attached to the Report of the Association Meeting of May 5, 1978, and once again, just a few weeks ago, was the basis of a submission to Senator Gorton in an analysis of proposed Bill, S. 1593, which Mr. Turk's Subcommittee

prepared and which was forwarded to the Committee by Mr. Capone on October 27th. This appears as an enclosure to the Committee Report.

Mr. Mahoney then submitted the following

## FORMAL REPORT OF THE COMMITTEE ON OCEAN LINER CONFERENCES

Last May, our Committee submitted a report on developments affecting ocean liner conferences, including the status of the UNCTAD Code, legislative activities, litigation involving the Federal Maritime Commission's authority to regulate concerted through intermodal ocean/land transportation, and Interstate Commerce Commission deregulation of railroads transporting containers and trailers on flat cars and related litigation. The situation remains unchanged except as noted below.

On August 3, Senator Gorton, Chairman of the Senate Subcommittee on Merchant Marine of the Committee on Commerce, Science and Transportation introduced bill S. 1593 for himself and Senators Stennis, Kasten and Inouye. In his introductory remarks, Senator Gorton stated that the purposes of the bill are to revise the Shipping Act, 1916, as amended, in order to clarify regulation of international liner shipping in the U.S. Trades, to restore the historical Congressional purpose vitiated by Court and Regulatory Agency decisions of disapplying the antitrust laws and philosophy to conference and other activities regulated under the Shipping Act, including intermodal transportation arrangements; also to authorize establishment of shippers' councils, affirm the validity of the conference system, inject commercial standards and market mechanisms into every facet of the U.S. liner shipping policy to the extent they will work as well or better than direct regulation, to authorize limited conference membership, simplify and expedite agency regulation, including procedures in approving or disapproving pooling and other arrangements to rationalize vessel capacities and services in the various trades, place upon complaining interests the burden of establishing that concerted action arrangements would violate the standards set out in the bill, harmonize U.S. shipping practices with those of its major trading partners, and generally by the revisions of the Shipping Act to revitalize the U.S.-flag merchant marine. However, unlike S. 2585 which the

Senate passed in 1980 and its identical sucessor S. 125 introduced by Senator Inouye early this year (see our May 1, 1981 and previous reports on the latter), S. 1593 does not include promotional provisions, e.g., presumptive approvability of carrier arrangements implementing cargo preference bilateral agreements between the U.S. and its trading partners.

The Senate Subcommittee has held a number of hearings on S. 1593 and S. 125 at which those having a direct interest in international liner shipping, U.S. and foreign shipowners and shippers, labor conferences, and the Federal Maritime Commission, testified or filed comments. All generally endorsed S. 1593, particularly the need to immunize liner shipowners from the reach of the antitrust laws, although some objected to one or another concept or suggested changes in the text of various provisions in the bill.

Our Committee concluded, as it had in previous years in regard to similar legislative proposals, that it should leave discussion of the economic and political issues to those directly affected. However, our Committee has sent a letter, dated October 26, 1981, to Senator Gorton suggesting revisions in certain provisions of S. 1593, primarily those of paramount and continuing interest relating to and restoring antitrust immunity. A copy of our October 26 letter is appended to this report.

It should be added that the designated spokesman for the Reagan Administration, the Secretary of Transportation, has not yet submitted the Administration's comments on S. 1593. Submission has been delayed until the cognizant Cabinet Council, the Secretaries of Transportation, Justice, State, Treasury and the White House agree upon the Administration position. The dialogue among them is quite active. Decision is expected momentarily. However, until then, Senator Gorton's Subcommittee strongly prefers holding up final action on the text and reporting out a revised S. 1593.

On the House side of Congress, Congressman Biaggi, Chairman of the House Subcommittee on the Merchant Marine, on August 4 also introduced a bill, H.R. 4374, to amend the Shipping Act. The proposed amendments are substantially more limited than those contemplated in S. 1593, and, indeed, significantly more limited than the Omnibus Bill, H.R. 6899, which, it will be recalled, was vigorously opposed and in the end emasculated last year by revisions of the House Judiciary Committee.

The Biaggi bill would among other things expedite regulatory pro-

cedure at the Federal Maritime Commission, authorize consultations and agreements between shippers councils and conferences on certain matters, permit conferences to limit carrier membership, and place the burden of showing that concerted activity agreements should be disapproved upon the Federal Maritime Commission or other department or agency of the U.S. that may oppose the agreement.

It also proposes to delete the "public interest" standard currently in Section 15 of the Shipping Act as a basis for disapproving or modifying concerted action agreements between carriers. This deletion is intended to overturn Court and Federal Maritime Commission decisions, particularly the *Svenska* doctrine, which have imported the anticompetitive philosophy of the antitrust laws in deciding whether to approve agreements between carriers. However, the bill would not restore original Congressional intent to immunize conference and other concerted carrier activities regulated under the Shipping Act. Neither would the bill immunize intermodal operations by conference carriers, or clarify Federal Maritime Commission jurisdiction to regulate such activities under the current Shipping Act. (See our May 1, 1981 report for reference to litigation on this jurisdictional issue in the *Gulf-United Kingdom Rate Agreement* case which is still pending before the Court of Appeals for the District of Columbia Circuit.) In short the bill would not cure several of the most serious problems that have beset the liner carriers in recent years.

Congressman Biaggi's Subcommittee has recently held several hearings on H.R. 4374. The witnesses' testimony and comments, while tailored to the particular bill, generally reflect the attitudes expressed to the Senate Subcommittee on S. 1593. Here, too, the Reagan Administration position is awaited. It is not possible at the moment to make a judgment, substantively or as to timing, concerning the Subcommittee's final action on H.R. 4374.

Our last report noted that petitions had been filed with the Court of Appeals for the Fifth Circuit by ocean carriers and other interests to review and set aside ICC orders in Ex Parte 230 (sub-5) deregulating railroad transportation of trailer and container cargo movements in the foreign trades. Several weeks ago, the Fifth Circuit rendered a decision upholding the ICC's deregulatory action. At this point we don't know whether petitioners will seek Certiorari.

Senator Gorton's Subcommittee still hopes S. 1593, no doubt revised to reflect suggestions from industry and the Administration, can be reported out before the end of 1981. Regardless, further legislative

activity on the subject is expected to continue into 1982. Accordingly, there will still be need for our Committee to follow, and as appropriate to participate in and report upon, Shipping Act legislation, as well as the UNCTAD Liner Code.

Finally, because of its obvious implications in respect to regulation of ocean liner conferences, our Committee has most recently taken under consideration whether a submission should be made to the Senate Committee on the Judiciary in respect to S. 432, a bill introduced February 5, 1981 by Senator Mathias to establish a Commission to conduct a study and make recommendations concerning the international aspects of the antitrust laws of the United States and related court and administrative procedures. Senator Mathias most probably will hold a hearing on this bill very early in December of this year.

October 27, 1981

Senator Slade Gorton
Chairman, Subcommittee on Merchant Marine
Committee on Commerce Science & Transportation
United States Senate
Washington, D.C. 20515

Re: *The Ocean Shipping Act of 1981 — S. 1593*

Dear Senator Gorton:

I am writing to let you have certain observations of the Committee on Ocean Liner Conferences of the Maritime Law Association of the United States with respect to the above bill. Because of the time factor, our Committee has not had an opportunity to obtain the views of the Association generally.

As you are probably aware, this Committee, several years ago, undertook a study of the erosion by judicial and administrative decisions of the antitrust exemption contained in the Shipping Act, 1916, as well as the injection of antitrust standards into the process of approving agreements pursuant to the Shipping Act. Widespread concern over these problems was a motivating factor in the regulatory reform legislation which was introduced in the previous Congress, but which did not proceed to enactment.

It is gratifying to note that the sense of urgency over shipping regulation reform has survived the substantial changes which have taken place in the makeup of the Congress. Because the subject of antitrust exemption has been the principal focus of this Committee's concern, we will deal first with that subject.

The exemption provision of §8 of S. 1593 would, doubtless, be adequate if one could feel sure that it would be interpreted in accordance with its spirit. However, our studies and the experience of a number of our members is that antitrust exemptions enjoy considerable judicial disfavor and that courts tend to reach for any potential ambiguity in statutory language and any unfortunate expressions in the course of legislative history to support a restrictive interpretation of exemptions.

This being so there are several aspects of §8 which seem to us to require strengthening. For example, paragraph (a) states that the antitrust laws shall not apply to any agreement or activity described in §4. Section 4(a)(6) authorizes ocean common carriers and other persons subject to the Act to enter into agreements "to control, regulate, or prevent competition *among themselves*." Let us assume that a conference reduces a number of rates in 1981, and that in 1982 a non-conference competitor goes bankrupt and the trustee in bankruptcy sues the conference under the antitrust laws for treble damages on the theory that the conference was "guilty of predatory pricing." If there is any evidence that the conference rate reduction was made to "meet," "deal with," or "regain lost cargo by reason of" non-conference competition, it is not difficult to conceive of a court ruling that the rate reduction was an anticompetitive activity having the intent and effect of preventing competition between the conference and the outsider and, therefore, outside the scope of the antitrust exemption of §8. In this same situation a court might rule that the conference's reduced rates were so unreasonably low as to be detrimental to the commerce of the United States and in violation of §12(a)(5) and, on the theory of the *Sabre* decision could not constitute lawful activities under the Shipping Act and, therefore, could not enjoy the exemption. Antitrust exposure could, on the same reasoning, also continue in respect to the other activities prohibited in Section 12 of the bill.

If the intention of S. 1593 is to make ocean common carriers and other persons subject to the Act answerable only to the commands of S. 1593, which we understand to be the objective, we believe that the

bill must contain a forthright statement to that effect if it is to achieve its intent.

While there might be several ways to clarify this situation, we suggest as the simplest and clearest the substitution of the following for all of paragraph (a) of §8:

> "(a) the requirements, standards, penalties and civil liabilities provided in this Act, shall, as to the activities of all common carriers by water conferences, shippers' councils, and other persons subject to this Act, which are regulated under this Act, whether by way of authorization, authorization subject to filing with the Federal Maritime Commission, outright prohibition, or prohibition upon the making of specified findings by said Commission, be exclusive of all other laws, including specifically the antitrust laws; neither shall the antitrust laws apply (i) to any agreement that concerns or involves joint or through intermodal transportation, or other transportation and related services between or within any foreign country or place, or (ii) to consultations with or activities of shippers' councils situated outside the United States."

We also believe that paragraph (b) of §8 may inhibit the adoption by conferences of through intermodal tariffs. It is our impression that inland United States carriers are most reluctant to deal with a steamship conference on the subject of division of the through rate and other details regarding the interchange of cargo moving on a joint through route. This reluctance is ascribed to fear of antitrust involvement. We suggest that domestic inland carriers be given antitrust immunity when dealing with ocean common carriers or conferences thereof. We believe that this can be done without creating an antitrust immunity which would interfere with the current program of deregulation and greater marketplace competition in the domestic transportation area. This could be done by changing the period at the end of paragraph (b) to a coma and adding:

> "except with respect to their participation in joint through intermodal and transportation rate arrangements, agreements, and tariffs with ocean carriers or conferences thereof in accordance with §4 (b) of this Act."

To complete the tightening of the antitrust immunity, we urge the elimination from §4(a)(6) of the words "among themselves." To do so would not go beyond the authorization of the original §15 of the Shipping Act prior to the gloss on that section in *Federal Maritime Board v. Isbrandtsen.* This also would be consistent with other portions of S. 1593 which obviously contemplate concerted limitation of the competition of carriers not parties to the agreement—such as the authorization to limit conference membership and the authorization of strengthened loyalty contracts.

Section 6(a) authorizes the Federal Maritime Commission to "reject" any agreement that does not conform to the requirements of §5. This provision does not require notice and hearing. There might well be litigable issues regarding the conformance of an agreement to §5. Agreement parties should have the opportunity to present their case.

Also, in §6, the elimination in paragraph (b)(1) of the "contrary to the public interest" basis for disapproval is a vast improvement. So, also, is the provision of paragraph (c) that the burden of proof in any proceeding under this section shall be on the party opposing the agreement. However, this benefit might prove illusory if the Commission applies the doctrine that the burden should be on the party in the best position to have knowledge and evidence on the particular issue, as was done with Supreme Court approval in *Svenska,* notwithstanding the burden of proof provision of the Administrative Procedure Act and the Commission's own rules. It might be helpful to insert after "party", in paragraph (c), the words "including the Commission and its counsel," so that in a proceeding where no private party opposes approval the Federal Maritime Commission cannot put the burden on the proponents on the ground that they are the only "party" to the proceeding. Also very helpful is the provision of paragraph (d) that the Commission "shall not" on its own motion limit the duration of an agreement's effectiveness. This does seem to leave open the right so to limit at the instance of a protestant. Whether it should be sought to eliminate the words "on its own motion" may be a matter of judgment.

Section 9, which would replace most of the present §18(b), contains no specific provision that it shall be unlawful for an ocean carrier to charge a greater, lesser, or different compensation than that provided in its tariff. Such a provision would be most helpful in

attacking the rebating problem and should appear in the bill somewhere.

We have tried to keep these suggestions brief and limited to important issues. If you should desire our views on any other provisions of the bill, or an amplification of what has been said above, we would be pleased to render whatever additional assistance might be desired.

Respectfully submitted,

The Committee on Ocean Liner Conferences
Ronald A. Capone, Esq., Chairman
John R. Mahoney, Esq., Vice-Chairman
Edward S. Bagley, Esq.
Nathan J. Bayer, Esq.
William J. Coffey, Esq.
Ernest J. Corrado, Esq.
Robert Dembia, Esq.
F. Conger Fawcett, Esq.
Leonard G. James, Esq.
Thomas E. Kimball, Esq.
Albert E. May, Esq.
John W. McConnell, Jr., Esq.
Geoffrey V. Parker, Esq.
Edward D. Ransom, Esq.
Stanley O. Sher, Esq.
Elkan Turk, Esq.
George L. Waddell, Esq.
Edward W. Wellman, Esq.
David C. Wood, Esq.

Thank you, Mr. President.

President Sims: Thank you very much, John.

The next report will be a report of the Committee on Practice and Procedure, Past President David R. Owen.

## REPORT OF THE COMMITTEE ON PRACTICE AND PROCEDURE

Mr. Owen: Mr. President, fellow members, we have one important and urgent matter today that requires some advice and consent by the Association.

There is currently a manpower crisis in the Marshal Services, and it is evidenced by problems in securing the assistance of Marshals to serve process in attachment and arrest cases.

Apparently, it varies from district to district and in some districts there is no problem, such as our district, the District of Maryland.

In the Central District of California, which includes Los Angeles and Long Beach, there is absolute crisis, I am told.

In any event, the Advisory Committee on Civil Rules to the Judicial Conference has put this matter at the head of its agenda and ahead of other pending matters and has rendered an urgent report to the Standing Committee.

As a matter of fact, they are holding hearings today in Los Angeles on the subject. Written comments are solicited, to be submitted by November 16th. Since we do have comments emanating from our Committee and there is an urgency about this, I will give you the details of it.

The problem stems not only from the crisis in the Marshal System, but from the unfortunate propensity of the Courts, the Advisory Committee to the Judicial Conference and others to make general statements about matters of practice and procedure without realizing that these comments and statements have an application in the Maritime field where the speakers and writers have no knowledge whatsoever. That is not just a casual off the cuff statement. All you have to do is read the Supreme Court decisions or opinions and you can see what I am talking about.

Our Committee met yesterday and it was very well attended and discussion had. The subject was brought up for the first time yesterday but we have been corresponding about it. There were present at our meeting yesterday members of the Committee from fifteen different Judicial Districts, including almost all of the important Maritime Districts.

As a matter of fact, the only two not represented yesterday, were Northern California, which is San Francisco, and Eastern New York, which is Brooklyn and Long Island. I say that because the wide representation of the Committee has a bearing on this report.

We discussed the crisis in the Marshal Service from the standpoint of geography and the areas I have mentioned. We also discussed the proposed amendment to Federal Rule 4 which would greatly liberalize the procedure for service of process.

Now, this is a letter of transmittal from the Chairman of the Advisory Committee which states in so many words, that it is intended to take the pressure off the Marshal's Service in the service of process in Civil cases and to amend Rule 4 which is being recom-

mended by the Committee. It would indeed do that in ordinary Civil cases. But they have left a little time bomb in their recommendations with respect to Maritime cases, particularly cases involving arrest and Maritime attachment.

Both the letter of transmittal and the Advisory Committee notes indicate that the amendment to Rule 4 encourages, if indeed it does not require, service of complaints, subpoenas, and summonses by registered mail, special process server and other extra Judicial means. Nevertheless, the transmittal letter and the Committee report says that service of restraining orders, attachments, arrests, orders for Judicial sale, arrests, orders for Judicial sale, and so forth, would continue to be made by Marshals or persons specially appointed by the Court for the purpose.

Now, that language is broad enough to include Maritime attachments and Maritime arrests.

What the Committee apparently failed to consider was the supplemental admiralty Rules, particularly B, C and E, which specifically call for service of process in attachment and arrest cases by Marshals. Indeed, the language is different from that in Civil cases governed by Rule 4. The gimmick is that the last sentence of Supplemental Rule A specifically provides that in cases of inconsistency with the general Federal Rules, the Supplementary Admiralty Rules will prevail.

Therefore it follows that only a Marshal, and not a private process server, and not a person specially appointed by the Court, can serve process in a Maritime arrest and attachment case.

That is the way it is now, as our Committee reads it. That is the way their proposal would leave it, because apparently, it is not adding anything to Supplemental Rules C and E.

The basic feeling, as I emphasize, of the Committee which was widely representative of different geographical areas, was that in admiralty cases there should be greater flexibility, and the Rules should be amended to permit process in attachment and arrest cases by the Marshal or his deputy or a person specially appointed by the Court for that purpose.

That would not mean that this would be mandatory if you foresaw a situation where you thought you had to have a Marshal, and there are such situations occasionally. I have had a situation where I had an armed Marshal plus an armed Coast Guard detachment accompany me to the arrest of the vessel. That can happen occasionally,

and the liberalization of Supplemental Rule E and Rule 4 would leave room for you to do that if the occasion arose. The difficulty with this amendment however, is and our members were unanimous in this, that the liberalization should be across the board. We feel this should be called to the attention of the Advisory Committee by the date of November 16th.

I would like to take a moment not to have any more discussion of the subject but simply to invite any suggestions or comments, very briefly, from those present here who are not on the Committee who have anything to add which might form the background for the Committee's comment which I think should go to the Chairman of the Advisory Committee within the next ten days.

Would anyone like to add anything to this, because I am going to ask for a resolution on the subject.

Mr. McGee: I am Terence K. McGee of the District of Washington.

I am curious, Dave, as to the effect on Marshals of using persons specially appointed to arrest the vessel.

Mr. Owen: Are you speaking about the insurance policy?

Mr. McGee: Yes, that has been a hangup in our District. Getting the Marshal to appoint a substitute custodian has gotten some rather bad results, fooling around with the service rules. I think it might change the Marshal's own insurance policy somewhat of coming up with either assets sufficient to cover the value of the vessel being arrested or a special insurance policy for the appointed Marshal.

Mr. Owen: That subject was raised at the Committee meeting yesterday. We really don't have an answer to it. For example, we don't know what liability a special appointed person would have. He could have a liability.

We had a case in our District some years ago where the United States Marshal was moving a vessel under arrest and it got into a collision and the United States was sued and the Marshal was held to be at fault.

As a result, I think this is what led to the blanket policy that the Marshal Service carries, not only hull and machinery, but also running down and so forth. What liability coverage would be extended to special persons, I do not know. None of our Committee members knew.

I should add, however, that the thought of our Committee was that if a person specially appointed served a process in an arrest or

attachment case, he would do only that. The *res* would be turned over to him, and the *res* or the ship would probably be covered by the Marshal's Blanket Policy for risk, port risk and so forth, and after service was effected, the *res* would continue under the old practice, namely under the supervision and control of the Marshal, but we don't have the answer to the question of the full line coverage.

Mr. McHose: Mr. John C. McHose, Central District of California. I don't know if it would be helpful. I was a member of the Supreme Court Advisory Committee on Admiralty Rules and I can say for our Committee that none of us at any time ever thought that the amendments required personal service by Marshals. In our experience in Northern California, and Southern California, I don't know that the Marshals have ever gone down and made attachments. I am surprised that this has developed.

(At this point Mr. Owen read Rules 4(a) and (c)).

Mr. Owen: Our Committee has put all these things together and has come to the conclusion that the literal construction requires service of process in these two instances by the Marshal and not by a special process server.

President Sims: David, if there are no further questions, do you have a Resolution? I don't want to cut off the discussion or questions, but if that is the last one if you have a Resolution, I suggest you put it forward.

Mr. Owen: Thank you, Mr. President.

The Resolution would be that the Association approves in principle the objective of the Advisory Committee to permit service of process in arrest, attachment, injunction in other types of cases, by the Marshal, by his deputy, or by some person specially appointed by the Court for that purpose. The Association feels however, that literally—the proposed amendment to Rule 4 would not permit this to be done in cases of Maritime arrest and attachment. We would recommend to the Advisory Committee that it consider a similar amendment to supplementary rule E.

President Sims: Is there a second?

Mr. Paulsen: Seconded.

President Sims: The Resolution has been moved and seconded. Any discussion? The question has been called. All in favor, say aye.

The Audience: Aye.

President Sims: Any opposed?

The Audience: (No response.)

President Sims: The motion is carried.

Next is a report of the Committee on Stevedoring and Terminal Operations, Francis J. Gorman, Chairman.

## REPORT OF THE COMMITTEE ON STEVEDORING AND TERMINAL OPERATIONS

Mr. Gorman: Thank you, Mr. President. Good morning ladies and gentlemen.

Our Committee met yesterday and we have a number of subjects on which I can report to you.

We reviewed our draft of the report on exculpatory and limitation of liability clauses in terminal operator tariffs. We were able to give a copy of the draft to the Executive Committee. The final report will be submitted in March of 1982. In consultation with the Executive Committee, we hope to find a way to make it available to the membership at large. Just how, we do not know yet.

We considered some topics for the Fall 1982 seminar, and these topics will be passed on to Bob McCreary. Bob, I will be in touch with you about those.

We discussed the proposed amendments to the Longshoremen's Act. This is a hot topic these days. Two bills have been introduced, S. 1182 in the Senate and a comparable bill in the House, HR 25.

I would like to outline some of the features of S. 1182. It restores coverage to the *Jensen* line, i.e., the water's edge. There would be no federal coverage if a state can provide coverage. There would be no more unrelated death benefits under the Longshoremen's Act. It would repeal the Section 20 presumption of coverage. It would repeal Section 41 and the Regulations pursuant to that section which state that the employer has the duty to provide a safe place to work. The Bill was developed and submitted to Senate Committee staff personnel by a Committee of management groups, employers, shipyards, stevedores, etc. Even within this group, the interests are at times diverse and complex. For example, many stevedores are also vessel owners, and some shipyards prefer uniform coverage throughout the country under the Longshoremen's Act because it tends to equalize all U.S. shipyards as far as compensation costs are concerned. If the shipyard workers in one state are covered under a compensation

statute with high benefits, that shipyard would be at a disadvantage in competing with another shipyard in a state with a statute providing workers with lesser benefits.

At a recent seminar meeting in San Francisco, labor's position was made clear by Mr. Herman of the International Longshoremen's and Warehousemen's Union. He basically said two things. "First, you made a deal with us in 1972 and now you are trying to get out of it. Second, you are trying to run around us because of the current political climate." He made it clear that labor did not intend to sit by idly and watch the Longshoremen's Act be amended. So that is where we stand on proposed changes to the Longshoremen's Act.

I might mention that Senator Nichols, from Oklahoma and Senator Hatch, from Utah, head the Committees in the Senate that will be considering S.1182. By the way, the San Francisco meeting in October was sponsored by the Industrial Claims Association, whose President is a member of the MLA, Jim Finnegan.

We also discussed the effect of the *Santos* decision on third-party actions. Several of our members, Al Commette of New York, Ron Coleman of Baltimore, and Ed Vickery of Houston, discussed some of the fallout in their Circuits caused by the *Santos* decision. Some of the Federal Circuit Courts are simply remanding all cases to the District Courts for further consideration in light of *Santos*. Also, we noted that *Santos* seems to indicate that the Restatement Second is no longer the only source to which the Courts can look for guidance in developing the negligence standard in a Section 905(b) action. There was complete agreement on one point, namely that the three separate opinions in the *Santos* decision will generate substantial confusion and that the Supreme Court missed an opportunity to clearly develop and state the law on this point. The *Santos* decision is undoubtedly not the last word on the standard of care to be applied in Section 950(b) actions. Thank you very much.

President Sims: Thank you. The next report is that of the Committee on Undersea Development and Exploration, Chairman, Jack L. Allbritton.

Mr. Allbritton: The Committee has no report at this time.

President Sims: Thank you, Jack.

Next will be a report of the Committee on Uniformity of United States Maritime Law. Nicholas J. Healy of New York.

## REPORT OF THE COMMITTEE ON UNIFORMITY OF UNITED STATES MARITIME LAW

Mr. Healy: Thank you, Mr. President. Mr. President and fellow members: I have only a very brief informal report.

First, the bad news. It seems to be a fact that there is no possibility at the present time of the enactment of any Superfund Bill, that is, any Bill which would unify the law relating to liability for water pollution and create a single national fund to compensate victims over and above such compensation as they might receive under the liability provisions of such a bill.

The present Administration, as you know, feels that there should be as little Federal spending as possible, and that whatever spending is to be done, should be done by the States. So I think we can unfortunately forget about HR 85 and its counterpart in the Senate, or any other Superfund Bill, at least for several years.

A bit of good news: The third and final phase of the litigation in the State of Alaska case has been concluded. Judge Hammond of the Federal District Court has decided that the provision of the Alaska Tanker Law which would have empowered the State authorities to search and inspect vessels without warrant in order to see whether or not they were equipped properly for fighting oil pollution was held unconstitutional. The provision in question was actually in the old Alaska Tanker Law, which was superseded by the 1980 statute, but the parties agreed—and the Court went along with their agreement—that the case should be presented as though it had to do with the comparable provision of the 1980 statute. The result is that that provision is now invalid under the 1980 statute, as well as under the old statute.

Yesterday, at the Executive Committee luncheon, I learned from Ed Bluestein, John McHose and one or two others that in some areas there is concern about possible attempts to make applicable to maritime causes of action, State law provisions such as those relating to so-called deceptive practices and provisions concerning punitive damages. This is something which I think our Committee should look into, and so, if any of you have any information concerning this problem I would be obliged if you would pass it on to me or to the Vice-Chairman, John McHose.

President Sims: Thank you, Nick.

Next is the report of the Committee on Western Rivers and Waterways, Chairman, Joseph A. Murphy.

## REPORT OF THE COMMITTEE ON WESTERN RIVERS AND WATERWAYS

Mr. Murphy: Thank you, Mr. President. Our Committee held a joint meeting with the Committee on Navigation and Coast Guard Matters. All of the matters covered by the joint Committee meeting of the two Committees were adequately covered by Ken Volk, Chairman of the Committee on Navigation and Coast Guard Matters and do not need to be repeated by me at this time.

Thank you Mr. President."

President Sims: Thank you, Mr. Murphy.

Next is the report of the Committee on ABA Relations, Chairman, Past President Herbert M. Lord.

## REPORT OF THE COMMITTEE ON ABA RELATIONS

There are a number of matters which could be of considerable importance to our Association expected to appear on the Agenda for the Mid-Winter Meeting of the House of Delegates to be held at Chicago in February. It was thought that the best time to hold a Committee meeting would be after the Agenda has been published—expected to occur in late December or early January. The Committee has therefore not met prior to this meeting, but is expected to report at the MLA Spring Meeting in May.

Once again I had the honor of attending as your Delegate the meeting of the House of Delegates at New Orleans on August 11-12. As usually is the case, there were a number of housekeeping matters which occupied a major part of the attention of the House, including further amendments to the Constitution, none of which were considered to be of substance except procedures for election of state delegates.

Other matters in the House of interest to us included a report of the Committee on Judicial Selection, Tenure and Compensation, urging the creation of additional Judgeships in the Federal District

Courts and in the Court of Appeals, which, of course, passed without adverse comment.

One matter which stirred the House was a proposal of the Section on Legal Education and Admissions to the Bar concerning accreditation of O.W. Coburn School of Law of Oral Roberts University. The ABA Standards for Approval of Law Schools has long included a provision which would deny accreditation to a law school if admission or tenure of the law student is limited on grounds of race, color, religion or sex. The Coburn School required all applicants to give an oath that they would observe what might be termed the religious ethic of Oral Roberts University, and for this reason the Section withheld approval of the law school. An action had been brought by the school against the ABA and the Section in Oklahoma and a Federal District Judge had granted the school a temporary injunction in effect requiring the approval of the school on the ground that it had met all other standards and that the basis assigned for disapproval breached the students' Constitutionally protected right of free exercise of their religion.

The debate in effect was a contest between Constitutionally protected rights of free exercise of religion and due process. The Judge had brought pressure on the House by postponing the effectiveness of his order until the end of the meeting of the House of Delegates. The House voted in favor of an amendment to the Standards by a margin of 147 to 127, which, as amended, now provide in substance that nothing in the Standards shall be deemed to apply to "programs and policies having to do with the school's religious traditions". The House was asked to approve the law school on the ground that it was now in complete compliance with the Standards. As evidence of the intensity of the debate, that motion was approved by approximately the same narrow margin.

Many within the House viewed the amended Standards as opening the door to discrimination and it is anticipated that the matter will again be debated, perhaps as early as the Mid-Winter Meeting in 1982.

It seems to us important that this Association express to the House its voice on matters of general interest to the bar and not just those directly affecting maritime practice. It is for this reason that the Committee intends to review the agenda for the Mid-Winter Meeting and perhaps suggest a procedure under which the views of this

Association on matters of general interest to the bar may be presented to the House of Delegates.

The House adopted a resolution approving associate status for law office administrators and, by Constitutional amendment, admitted into the House of Delegates the National Conference of Federal Judges and the Conference of Administrative Law Judges.

I wish to express my appreciation for the privilege of having served as this Association's Delegate to the House of Delegates.

President Sims: Thank you, Mr. Lord. Next will be the report of the Committee on Intergovernmental Organizations, Chairman, Past President J. Edwin Carey.

## REPORT OF THE COMMITTEE ON INTERGOVERNMENTAL ORGANIZATIONS

Mr. Carey: Mr. President, fellow members, I think it is fair to say that our small Committee is a watch dog and reporting Committee in respect of the several Intergovernmental Organizations which deal with and have an influence on Maritime matters.

There is necessarily an overlap in respect of the work of our Committee with other Committees of our organization dealing with specific subjects.

With that caveat, I can say we do have a report which contains general information with respect to certain work of the several intergovernmental organizations which I will submit to the Secretary for printing and inclusion in the minutes of this meeting.

Our report being informative in nature does not contain recommendations requiring any action by the Association. I would like to thank the members of the Committee for their work and input.

Mr. Carey submitted the following report:

### *INTER-GOVERNMENTAL MARITIME CONSULTATIVE ORGANIZATION (IMCO)*

The Legal Committee of IMCO continued its work on the draft Convention on Liability and Compensation in Connection with the Carriage of Hazardous and Noxious Substances by Sea (HNS) during its 46th Session 21-25 September 1981. At the outset of its delibera-

tions, the Committee heard from Professor Schultsz, Chairman of the CMI International Subcommittee on HNS, regarding the consideration given to the subject by the recent CMI Assembly in Montreal. Taking these comments and others into account, the Legal Committee completed its third review of the draft substantive articles. In the course of this review, an "indication of views" (vote) was taken concerning the French proposal to incorporate fire and explosion of unladen oil tankers as a hazard to be covered in the draft Convention; the proposal was defeated, and it appears likely that France will bring the issue up separately at the diplomatic conference. A revised text of the draft Convention as at 25 September, together with all proposals relating thereto not yet considered by the Legal Committee, is currently in preparation by the IMCO Secretariat and is expected to be distributed in early December.

An inter-sessional working group of the Legal Committee will continue drafting work on the HNS Convention at IMCO Headquarters in November.

At its 45th Session in March the Legal Committee agreed to remit consideration of proposals for increase of the limits and other amendments of the 1969 Convention on Civil Liability for Oil Pollution Damage and the 1971 Fund Convention to an ad-hoc group of interested governments and international organizations in consultative status with IMCO. The first meeting of this group was held in Washington, D.C. from 2-5 June, and a report on its results was made to the 46th Session of the Committee; the Committee has decided that there will be another session of the ad-hoc group, which will meet in Stockholm from 7-11 December. The CMI is among the organizations in consultative status which has indicated it will send representation to the Stockholm meeting.

The Legal Committee of IMCO will convene in a double sitting early next year—the 47th Session from 22-26 February to complete its work on HNS, and the 48th Session from 1-5 March to begin work on the possible revisions of the 1969 CLC and 1971 Fund Conventions, to establish its work program for the biennium 1982-83, and to elect officers.

The amendments to the IMCO Convention, adopted by the general Assembly in 1975, have achieved a sufficient number of ratifications for entry into force on 22 May 1982. The next report of your Committee will detail the changes in structure of the Organization,

but it is not too early to become familiar with the new name which IMCO will acquire on that date:

"INTERNATIONAL MARITIME ORGANIZATION" (IMO)

All of the basic documents concerning these IMCO matters are presently or will in due course become available to your Committee.

*INTERNATIONAL LABOUR ORGANISATION (ILO)*

The Convention on Minimum Standards in Merchant Ships, 1976 (ILO No. 147) enters into force in 18 November 1981. Convention 147 is essentially a port state control Convention, obliging member States to enforce the provisions not only upon its own vessels but upon any foreign-flag vessels in its ports which are the subject of complaints or evidence that the vessel is not in conformity with the standards laid down in the Convention. All of the EEC member Countries are States Parties to Convention 147; neither the United States nor the Soviet Union is a party. There may be interesting diplomatic exchanges if port States attempt rigorous enforcement of Convention 147, which makes mandatory a number of important provisions of other ILO Conventions.

Your Committee has the text of Convention 147 and has access to the records of the 1976 diplomatic conference.

*UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)*

At the 9th Session of the Shipping Committee held in Geneva from 27 May-6 June 1981, a vote was taken (at 1:00 a.m. on Saturday morning 6 June) on the question whether the Committee should recommend that its parent, the Trade and Development Board, form a preparatory group to draft an international convention on principles and conditions for ship registration, with the evident goal of phasing out open registry shipping. An overwhelming majority of the Group A (developing/third world) countries and all of Group C (socialist bloc/Eastern Europe) voted in favor of the resolution; all voting members of Group B (free economies/developed countries) voted against, with three abstentions. The United States delegation strongly opposed the vote, since all previous decision had been reached by consensus. In September the United States Government

circulated a diplomatic note to all Group B members calling upon them to "refuse to participate in the Intergovernmental Preparatory group in order to discourage future attempts by developing countries to decide unresolved issues by majority vote rather than through consensus." It is too early to say whether the United States will succeed in blocking this latest UNCTAD maneuver, but it does appear that in any event the Intergovernmental Preparatory group will meet in Geneva from 13-20 April 1982.

Your Committee has access to the relevant UNCTAD documentation.

*UNITED NATIONS CONFERENCE ON THE LAW OF THE SEA (UNCLOS III)*

The 10th Session of UNCLOS III resumed in Geneva from 3-28 August 1981. Virtually the entire sitting was devoted to debate over the sea-bed provisions and the strong opposition of the United States to adoption of the previous text of the articles related to sea-bed resources, principally Part XI of the draft Convention. While no changes of substance were made in other areas of the Convention, the Conference has issued a new revised document incorporating all recommendations of the Drafting Committee which have been approved by the Plenary; a corrected version of this document (A/CONF.62/L.78) is in preparation and is expected to be issued momentarily.

The Informal Plenary of the Conference has taken a final decision that the International Sea-Bed Authority will be situated in Jamaica, and the International Tribunal for the Law of the Sea will be situated in the Federal Republic of Germany.

Your Committee has access to the revised draft Convention and all previous documentation.

*EUROPEAN ECONOMIC COMMUNITY (EEC)*

Your Committee understands that the regulations for application of ILO Minimum Standards Convention (No. 147) have been formulated by the European Commission (the EEC Secretariat), but these are not yet public as they have not yet been presented to the Council of Ministers. All maritime affairs within the European Commission fall under the brief of the Commissioner for Transport, who is currently a Greek national appointed following Greece's recent entry

into the EEC. It is too early to say what effect the outcome of the recent election in Greece may have in this regard.

Respectfully submitted,

J. Edwin Carey, Chairman
F. L. Wiswall, Jr., Vice-Chairman
Ernest J. Corrado
Gordon L. Becker

President Sims: Than you, Mr. Carey.

The Committee on Planning and Arrangements for the 1982 Palm Beach Meeting, Chairman, Gerard A. Gelpi of New Orleans.

## REPORT OF THE COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1982 FALL MEETING

Mr. Gelpi: Thank you Mr. President.

We have no formal report, but there are a few remarks I would like to make.

We had a meeting at David Maloof's office Wednesday afternoon, after we on the Arrangements Committee made the trek down to Palm Beach, at great risk, to inspect The Breakers. I am pleased to report The Breakers still exists and is still a delightful place as those of you who have passed through know. In any event, I think we will be able to work out the arrangements with The Breakers, and The Breakers are looking forward to having us and working with your Committee; I think you will find you will end up with a fine meeting.

There are two things I would like to mention—one is attendance which has continued to grow so that I urge everyone to mark their calendars and respond when you get the mailer. Even if we have the entire facility, it will probably be pretty well taxed. Two, we will get a discount from Eastern of thirty percent. Eastern will provide the most transportation for us in the Fall, and they will provide information to us not only for Eastern, but for other flights. I would again suggest you get your reservations in right away.

President Sims: Thank you, Mr. Gelpi.

One of the things we discussed at the Executive Meeting yesterday was the possibility of starting the meeting on a Monday instead of a

Tuesday. That is something that Jerry has to explore with the hotel. The purpose would be to make it possible to have our seminars and meetings without too much conflict.

The Planning and Arrangements Committee for the 1984 Fall Meeting, Elliott B. Nixon.

## REPORT OF THE COMMITTEE ON PLANNING AND ARRANGEMENTS FOR THE 1984 FALL MEETING

Mr. Nixon: Thank you, Mr. President. Puerto Rico is still there, the hotel is there, the political situation seems to be relatively quiet, and my Committee is looking forward to welcoming you about three years hence.

President Sims: Gentlemen, that concludes the formal reports. If there is no further business I will entertain a motion to adjourn.

A Voice: So moved.

Second Voice: Seconded.

(Whereupon, at 12:15 P.M. these proceedings were adjourned.)