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THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING—MAY 4, 1984

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FRANCIS J. O'BRIEN
KENNETH H. VOLK
MARSHALL P. KEATING
RICHARD E. REPETTO

and the following 339 members:

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Professor William Tetley
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Braden Vandeventer
John P. Vayda
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PROCEEDINGS

President Paulsen: Ladies and gentlemen, I think we should get started; we have a busy agenda with a lot of interesting things going to happen today.

This is the 85th Annual Meeting of this Association. The Association was founded in this building eighty-five years ago. It is nice to be back where we started; we have found our roots.

You will notice that in front of me is our fine replica of the Silver Oar of the Vice Admiralty Court of the Province of New York.

This, as you know, was in the exhibit at the courthouse during the winter months. We got it back and we decided to use it, to put it on display whenever we meet as an association.

The question arose as to how it would be displayed. If you look at it, it is rather hard to put anyplace. I discussed this with one of my partners, David P.H. Watson, whom I think many of you know, who has a hobby of doing fine woodwork. He has created this stand and given it to the Association.

I think we should all thank him for that.

You are invited to come take a look, only a look--don't take the oar--just take a look at it.

It will be on display at the dinner meeting tonight.

Let us now start with our usual order, report of the Secretary.

REPORT OF THE SECRETARY

Secretary Volk: Before I give my report, I would remind everybody again to please fill out and hand in a card indicating your presence here. We have two locations for that; one in the room opposite this hall and the other right here on the table in the back of this room.

I would ask that those of you who come to the microphone please give your name unless you are otherwise identified. If you have a paper, a written report to submit, please hand a copy up to me or send it to me as soon as you can.

I would also like to announce that the floating MLA dry goods/haberdashery store is open for business in the room across the hall.

We have a fine assortment of ties including the popular green and rust color ties at $10 each. And for today only two for $24.99.

(Laughter.)

Secretary Volk: There are also blazer buttons and tote bags at $1. These are really fine, well-made canvas bags.

With that, I will get on to business.

Mr. President, the minutes of the meeting for the Fall, November 4, 1983 meeting have been sent to all members and I would ask that they be approved.

President Paulsen: Is there a motion that they be approved?

A Voice: So moved.

President Paulsen: Is there a second?

A Voice: I second.

President Paulsen: Is there any objection?

(No response.)

President Paulsen: Without objection, they stand approved.

Secretary Volk: The minutes of the Executive Committee meeting of March 15, 1984, held in New York, were included in the President's newsletter sent out last month to all members and, to dispense with the reading of those, I would ask that those minutes be aproved.

President Paulsen: Is there a motion that they be approved?

A Voice: So moved.

A Voice: Seconded.

President Paulsen: Is there any objection?

(No response.)

President Paulsen: Without objection, they will be approved.

Secretary Volk: The Executive Committee of the Maritime Law Association met yesterday and the Secretary reported that the indexing of the Maritime Law Association documents is almost complete, but three documents are still missing, Documents Nos. 146, 147 and 533. He requested that anyone having knowledge of or copies of these documents please communicate with him.

Treasurer Keating then gave his report and you will be hearing from him later today.

Membership Secretary Repetto presented his report and you will also be hearing from him later on today.

President Paulsen reported that he attended the Assembly meeting of the Comité Maritime International held in Brussels last month. One of the highlights of the meeting was the presentation to our Past President, Arthur M. Boal, who is with us this morning, of a gold medallion in recognition of his many accomplishments and contributions to the C.M.I.

President Paulsen also reported that he had presented to Francesco Berlingieri, President of the Comité Maritime International, a certificate declaring him to be an Honorary Proctor Member in our Association.

President Paulsen then briefly reported on the forthcoming meeting of the Comité Maritime International to be held in Portugal in May of 1985. He also reported on the participation of the Maritime Law Association in the Expoship Exposition held on Pier 88 in New York last March.

We next heard from Almer W. Beale II, of Jacksonville, Florida, with respect to the present status of HR 3933 introduced by Congressman Tauzin. This Bill would amend the Panama Canal Act of 1979 so as to provide for a remedy for damage to vessels sustained outside the locks. He said that on April 11, 1984 the House Merchant Marine and Fisheries Committee favorably reported out the Tauzin Bill with minor amendments and that on March 8, 1984 Senator John Tower of Texas had introduced an almost identical Bill, S 2314, in the Senate Armed Services Committee. Mr. Beale said that Senator Tower expects to hold hearings within the next ten days.

The Committee approved the draft of a letter to be sent by President Paulsen to the President of the United States, urging the Administration to support the Tauzin and Tower Bills, which is in keeping with the position of the Association as reflected in the resolution adopted by the Committee on November 5, 1982.

The Committee also authorized Mr. Beale to appear and testify on behalf of the Association before Senator Tower's Committee in favor of S 2314.

Mr. Robert M. Hughes, III, Chairman of the Site Selection Committee, reported that the Committee had met and recommended that the Fall Meetings outside of New York be held on odd numbered years rather than even numbered. He said that this would enable the new administrations elected in even numbered years to reorganize in sufficient time so that the out-of-town meetings can be held earlier

in the Fall. He noted that the options available for September meetings are substantially broader than those available for November.

Accordingly, upon motion duly made and seconded, the Executive Committee voted that, commencing in 1989, the Fall Meetings will be held every other year in the Fall of the odd-numbered years.

We next heard from Gerard T. Gelpi, Chairman of the Maritime Personnel Committee, who reported on draft legislation received from Mr. Gerald Seifert, Counsel to the House Committee on Merchant Marine & Fisheries. This proposed legislation would revise Title 46 of the United States Code in many significant areas, including limitation of liability. Mr. Gelpi said that his Committee recommended, with one negative vote, that the Association take a position in opposition to the Seifert Bill.

After full discussion and debate, the Executive Committee unanimously reaffirmed its support of the Biaggi bill dealing with Limitation of Liability, HR 5207, which is based upon the Association's draft legislation of 1979 and opposed the Seifert draft legislation.

The Executive Committee thereupon adopted a resolution which I will present to this assembly at the conclusion of the reading of these minutes.

Mr. James J. Donovan, attending on behalf of Dewey R. Villareal, Jr., Chairman of the Bills of Lading Committee, gave a brief informational report. He said that twenty-four nations have adopted or ratified the Visby Amendments to the Hague Rules and that this represents 21.48 percent of the total value of all United States foreign trade. On the other hand, he said that only nine nations have adopted the Hamburg Rules, representing only 2.2 percent of the dollar value of the United States trade. He noted that the Hamburg rules will not go into effect until they have been ratified or adopted by at least twenty nations. The Bills of Lading Committee is continuing to monitor these developments and will keep the Executive Committee and the Association posted.

The meeting was thereupon adjourned to the India House, where we were honored with the presence of Mr. William Tetley, President of the Canadian Maritime Law Association as our guest. I believe Professor Tetley is here with us again this morning. He addressed the Committee, thanking our Association for its contribution to the development of maritime law and its recognized leadership role in support of the Comité Maritime International.

The Committee took the opportunity to unanimously bestow upon Professor Tetley Honorary Academic Membership in our Association.

Mr. Elliott B. Nixon, Chairman of the Planning and Arrangements Committee for the 1984 Fall Meeting, reported that all was in readiness for our meeting at the Cerromar Beach Hotel in Puerto Rico, from October 29th to November 2nd. He urged the early registration by all those expecting to attend.

Manfred W. Leckszas presented a report on behalf of Robert G. McCreary, Chairman of the Continuing Legal Education Committee. He said that the Committee has studied the possibility of producing video and audio tapes dealing with various aspects of maritime law. After due consideration it was decided that videotapes were impractical but the Committee believes that audio tapes can be of possible value to our members. On a trial basis, he proposed the taping of the Continuing Legal Education Programs to be presented this Fall in Puerto Rico. After editing, the tapes will be reproduced for distribution to those members of the Association expressing an interest.

Mr. Leckszas requested authorization to expend not more than $1,000 for this pilot program and, upon motion duly made and seconded, the Continuing Legal Education Committee was authorized to proceed.

Mr. Francis J. O'Brien rose to extend to President Paulsen the profound gratitude of the Committee and the entire Association for his outstanding leadership of the last two years. This was followed by a presentation to President Paulsen by Mr. Nixon of a framed photograph of the iceberg which was involved in the sinking of the TITANIC.

(Laughter.)

Secretary Volk: The original of this photograph was a part of the Maritime Law Exhibit, which was at the United States Courthouse of New York, to which President Paulsen contributed so largely and for the success of which he is mainly responsible.

President Paulsen thanked outgoing members of the Executive Committee, Messrs. Robert Acomb, Jr., Paul N. Daigle, Robert M. Hughes, III and David L. Maloof for their support and work on behalf of the Association.

He also expressed appreciation to Mr. John W. Sims, Immediate Past President, for his invaluable guidance and assistance throughout this administration.

The meeting of the Executive Committee was then adjourned at 2:00 p.m.

That concludes the Secretary's official Report.

Mr. President, I would now like to present to the membership the resolution which was unanimously adopted by the Executive Committee yesterday concerning the draft legislation prepared by the staff of the House Committee on Merchant Marine and Fisheries.

RESOLVED: WHEREAS, a draft of a bill purporting to state and/or clarify the rights, remedies and responsibilities of shipowners, seamen and certain non-seamen has been made available to The Maritime Law Association of the United States under cover of letter of March 27, 1984 from Gerald Seifert, General Counsel for Maritime Policy for the U.S. House of Representatives Committee on Merchant Marine and Fisheries to President Paulsen and Mr. Seifert has made the specific request that the MLA provide its comments and suggestions concerning this staff draft bill; and

WHEREAS, the staff draft bill in question is in conflict with certain provisions of HR 5207, a Bill seeking "To revise the laws pertaining to limitation of liability for maritime claims, and for other purposes," which Bill the MLA is on record as supporting, and

WHEREAS, the staff draft bill further involves sweeping and drastic changes in the General Maritime Law of the U.S. and is not compatible with several other existing pertinent statutes, and contemplates imposition on the U.S. Maritime Industry of requirements not imposed on other sectors of commerce, including guarantee or insurance/surety requirements which will increase drastically the cost of obtaining insurance, if indeed available at all, to cover the increased exposure presented by this draft bill; and

WHEREAS, any increase in the cost of "doing business" for an already depressed U.S. Maritime Industry would be detrimental not only to vessel owners and operators, but also to the best interests of the U.S. seamen this draft obstensibly seeks to assist; and

WHEREAS, in light of the already serious situation of the U.S. Merchant Marine, this draft bill, by presenting further difficulties for the U.S. Maritime Industry, would create problems relative to national defense and would increase costs to all U.S. consumers of goods transported by sea, thus further depressing commerce;

NOW, THEREFORE, the Executive Committee recommends that The Maritime Law Association promptly advise the staff of the U.S. House of Representatives Committee on Merchant

Marine and Fisheries that the MLA is grateful for the opportunity to express its views, opposes the enactment of this staff draft bill and stands by to assist in drafting legislation affecting the U.S. Merchant Marine and the rights and liabilities of all who are affected by the Maritime Law of the U.S.

Mr. President, on behalf of the Executive Committee I move the adoption of that resolution.

President Paulsen: Thank you very much, Mr. Volk.

Mr. Volk has moved the adoption of a resolution; is there a second?

A Voice: I second.

President Paulsen: Is there any discussion?

(No response.)

President Paulsen: There will be reports from various committees who have considered this as the meeting progresses. This is a very involved affair.

There being no discussion now, are you ready for the question?

(No response.)

President Paulsen: All in favor say aye.

(A chorus of ayes.)

President Paulsen: Opposed?

(No response.)

President Paulsen: You have it.

(The motion was carried.)

President Paulsen: I take it that means approval of the Secretary's Report of yesterday's Executive Committee meeting.

I have one slight objection to what Mr. Volk said.

He gave me more credit than I deserved for the exhibit at the Federal Courthouse. The person who deserves ninety-nine percent of the credit is Elliott Nixon, who did a superb job organizing it, under some very strange circumstances.

We are going to proceed a little bit differently from our usual manner this morning. We are going to have committee reports. We are going to have two talks, one will be fairly early in the game, concerning the Maritime Code of Panama and the Maritime Law

Association there. And then toward the end of the meeting we are going to have a talk by the Deputy Secretary of Transportation, in which, I understand, some very important announcements are going to be made concerning the administration's policy with respect to the oil pollution conventions which are now under discussion in London.

We will proceed right now with the reports, they will be printed in the minutes in the order in which they are given, but there will be an index, as there was the last time around, so if you are looking for a report, look at the index first. Don't go through alphabetically, because it won't happen that way.

Let's start with the very question that was in the resolution which Mr. Volk read.

I call first on Maritime Legislation; I am sorry. I forgot about the Treasurer, good heavens!

Mr. Keating: Better not forget me.

President Paulsen: No.

He said I am the most expensive President we have ever had!

(Laughter.)

REPORT OF THE TREASURER

Mr. Keating: Thank you, Mr. President.

Ladies and gentlemen, we just completed our fiscal year, which ended April 30, 1984 and it pains me to report that we have incurred a fairly substantial deficit for the year.

This is due in large part to the increased expense of mailing and printing and to the extensive traveling done on behalf of the Association.

During the course of the year we had receipts of some $218,000. We succeeded in spending $264,000, which left us with a shortfall of $46,000 for the year.

We have reserves of almost $180,000. So we are still in good financial condition.

It appears for the time being the dues structure is probably adequate. However, a lot would depend on how we are able to control our expenses during the next year or two.

The new dues bills were mailed out in the last day or two; you

should be receiving them shortly. I hope you will pay them promptly.

That is the Treasurer's Report, Mr. President.

President Paulsen: Thank you.

Is there a motion to approve the Treasurer's Report?

A Voice: So moved.

President Paulsen: Is there a second?

A Voice: I second.

President Paulsen: Any objection?

(No response.)

President Paulsen: There being no objection, the Treasurer's Report is approved, with the apologies from the President.

We will now hear from the Membership Secretary, with further apologies.

REPORT OF THE MEMBERSHIP SECRETARY

Mr. Repetto: We have members.

Yesterday the Executive Committee approved and admitted 156 new Associate Lawyer Members, eight Non-Lawyer Members, one Academic and three Judicial Members.

If the 156 new members would promptly pay their dues, Mr. Keating would be a happier man.

That concludes my report.

President Paulsen: Are you going to read the names of those new members?

Mr. Repetto: They will be in the minutes. (See Appendix A).

President Paulsen: Thank you.

Before we go to the next report, I think it would be a good idea if Mr. Repetto would read the names of the new non-lawyer members voted in yesterday by the Committee.

Mr. Repetto: Lucienne Carasso Bulow of New York, Robert J. Fox, Ronald Griebell, Richard A. Peters, Irene Manske of San Francisco, Dante Petrizzo, Charles Roland of Miami and Felix Salgado.

President Paulsen: Then I guess we are ready to get on to the reports.

Mr. Cheavens, of the Maritime Legislation Committee.

REPORT OF THE MARITIME LEGISLATION COMMITTEE

Mr. Cheavens: My name is Joseph D. Cheavens of Houston.

The Committee on Maritime Legislation met yesterday afternoon. We considered the status of three items of old business: (1) A Statute of Limitations Bill dealing with property damage drafted by a Subcommittee headed by Frank Byrne. (2) Proposed repeal of the Act of State Doctrine drafted by Professor Sharpe. Drafts of these items of legislation are awaiting introduction. (3) Almer Beale reported on the status of the Panama Canal Casualties Bill dealing with collisions outside the locks. The status of that matter has just been dealt with in the Executive Committee Report. That legislation is moving ahead.

We also dealt with three topics, one of which has also been referred to which I will deal with last. The two other items that we are beginning to study that are of interest to the members are a tax bill, HR 4561, which also has counterpart provisions in other proposed legislation called the Deficit Reduction Act of 1984, and HR 5029.

The two items of tax legislation, if enacted, would operate to substantially reduce the amount of foreign tax credit available to American taxpayers from income generated from transportation activities. This could well have a very serious and adverse tax effect on many aspects of the maritime industry.

Those of you who are interested in this, I urge you to contact me and I could give you further details.

We also began the study of HR 5029, which appears to be a less controversial bill. It deals with certain amendments to Title 11 relating to MARAD Financing and extending the confiscation risk insurance program for another five years.

Finally, we spent a rather considerable amount of time studying and discussing the draft bill of the House Committee on Merchant Marine and Fisheries which represents an extremely radical departure from many aspects of the law dealing with personal injury, death, limitation of liability, insurance, procedure—it cuts across the entire field. With us at that Committee meeting was Gerry Gelpi, Chairman of the Maritime Personnel Committee, and we certainly appreciated his presence, advice and counsel.

Our Committee meeting, of course, was an open one and as a result of our deliberations we adopted a resolution, very similar to the resolution adopted by the Executive Committee and by the membership this morning. That resolution was unanimously adopted.

Let me read it into the record. I do not think it now calls for any action by the Association in view of the motions which were just passed. Our resolution reads as follows: "The Committee on Maritime Legislation unanimously recommends to the Association the enactment of the following resolution:

RESOLVED: 1. That the Maritime Law Association reaffirm its willingness to work with the Congress and offer the special expertise of its members in advising on legislation dealing with maritime matters.

2. That the MLA reaffirm its support of HR 5207 dealing with certain reforms in the limitation of liability law.

3. That the Maritime Law Association is strongly opposed to the draft legislation of the Committee staff of the House Merchant Marine and Fisheries Committee dealing with various aspects of law of personal injury, death, insurance, limitation of liability and other matters.

Mr. President, I don't believe we need action on that resolution of our Committee in view of the action the Association just took.

A Voice: Mr. President.

President Paulsen: Yes, Mr. Donovan.

Mr. Donovan: I, just quickly, I could be wrong about this, but it seems to me that what the Association approved was Mr. Volk's report as Secretary. If that be the case, I think Mr. Cheavens' proposal should be made as a motion which I will be happy to second.

I could be wrong.

President Paulsen: Mr. Sims.

Mr. Sims: My recollection is that we passed a resolution unanimously which he read a while ago, which was passed unanimously by this membership. We did not merely ratify the minutes.

Secretary Volk: I moved the resolution and it was unanimously approved by this membership.

Mr. Cheavens: That was my recollection.

President Paulsen: Do you have anything further, Mr. Cheavens?

Mr. Cheavens: No, Mr. President.

I will propose that anyone who wishes further details as to this legislation, proposed legislation, if we want to go into it, Mr. Gelpi will deal with that at the time of his report.

President Paulsen: Thank you very much.

There are seats on the side and also some chairs that can be taken down and spread around. There are seats in the front. There is no need to wear yourselves out unnecessarily. There are other various opportunities this week to do that.

REPORT OF THE MARITIME PERSONNEL COMMITTEE

Mr. Gelpi: Thank you, Mr. President.

My name is Gerard T. Gelpi of New Orleans.

The Maritime Personnel Committee met Wednesday afternoon for about three hours. The Staff Draft Bill is something with which a good many of you are probably already familiar. Let me hit a couple of highlights I have on my pad of notes. I will tell you what I tell the jury, these notes are not to read, they exist so I do not stand here and talk all day. Joe Cheavens had his copy of the Bill yesterday and he could not even see the type, he had so many scrawled notes, objections and exclamation points on his copy.

If you go through the Bill, whether you represent owners or if you represent injured plaintiffs, you will see this is not a good Bill for anybody.

One of the things this Bill does is to make virtually everyone on a vessel a seaman or have the same rights as a seaman–if he is "engaged" on a vessel. That could be anything from a stowaway to maritime lawyer to someone who gave his girlfriend a ring.

A vessel would include an offshore structure, drilling platform, pier, dock, even an offshore structure not owned in the United States.

We are not sure what "owned in" means. An offshore platform in Saudi Arabian waters with some ownership in the United States could create a foreign non-resident jurisdiction statute.

The surety or guarantee would require the owners to post security of $600,000 per crew member and $600,000 multiplied by seventy-five percent for all persons on the vessel other than seamen.

If you think about a cruise ship, you are talking about millions and maybe even billions which one would have to post–before any casualty ever happens; moreover, that fund can be attacked directly by an injured plaintiff.

For the QE II, Don Waesche has computed it would be $1,429,500,000.

We are familiar with a direct action statute in Louisiana, but at least it is not discriminatory to apply just to the maritime industry.

If you could even get insurance to cover the liabilities and exposures created by this Bill, the cost would be astronomical. You know who pays the cost. This Bill may be a windfall for maritime lawyers and would create unbelievable litigation. But, would we have a maritime industry to defend or sue after four or five years?

Seaworthiness, liability without fault, without knowledge or doing anything wrong, would give rise to punitive damages. Comparative negligence is out the window; if you violate a statute for the health or safety of seamen, there is no comparative negligence. So, if you violate the Staff Bill, no comparative negligence.

The owner of the vessel, rather than the employer, is liable for all these exposures, including maintenance and cure.

The foreign vessel is subject to this Bill if owned by a person doing "more than incidental business in the U.S." The vessel does not have to be here, the accident does not have to occur here—simply "more than incidental business" by an owner and that vessel is subject to this Bill.

The last note I have is that there is no transfer to another jurisdiction unless the plaintiff agrees. So discretionary transfer, *forum non conveniens* transfers, all of those are gone.

I could go on all day, but I think most of you have the idea.

In addition to supporting and heartily endorsing the Maritime Legislation Committee's position and the MLA's position, I urge you personally, as a lawyer or a representative of an industry, to do whatever you personally think you should with respect to this Bill—on behalf of your own interests and your clients' best interests.

We covered other topics at our Committee meeting and, while some may be of interest, I am not going to go through them now.

Mr. President, we will supplement this with a brief formal report.

I should also mention that our Committee will publish a newsletter, part of which hopefully will be included in a Maritime Law Association's publication. Carl Nelson has volunteered to be the clearing house for collecting information on any interesting ongoing litigation. We need not wait for the litigation to finish, and if you have an interesting wrinkle or a particular problem, get that information to a representative on the Maritime Personnel Committee or to Carl Nelson, to me or to Fred Wentker, so we can circulate that

material within our Committee and get it into the newsletter. We will be a clearing house, so that if you and somebody else have the same problem, maybe you can get together before we have a decision nobody likes.

We can only give back to the Association the input we receive. Advance sheets are available to everybody, but we are trying to find out problems and wrinkles which are developing to coordinate an effort to do something about it and to make available to the membership information as to areas where somebody else has had a similar problem and achieve some cooperation before the cases are decided.

Thank you, Mr. President.

President Paulsen: Thank you very much, Mr. Gelpi.

A Voice: Mr. President.

President Paulsen: Would you state your name, please?

Mr. Rolnick: Bernard Rolnick.

Has the Committee given consideration to the question of the so-called "riding crews" on ships today and their status as maritime personnel?

Mr. Gelpi: If this draft passes, they are seamen, but we have not gotten into that specifically yet; it is something which could be a topic to explore.

Mr. Rolnick: You have not gotten into it?

Mr. Gelpi: No.

Mr. Rolnick: The District Court in the Southern District and Circuit Court is into it. The next step is the Supreme Court. Has anyone given consideration to the question of *amicus curiae* support by the committee?

Mr. Gelpi: Not by this Committee.

President Paulsen: I must admit, I had not heard of that until this minute. I would suggest, Mr. Rolnick, you, Mr. Gelpi, and Mr. McHose of the Committee on Uniformity of U.S. Maritime Law have a conference at the conclusion of this meeting to discuss that.

Mr. Gelpi: Thank you, sir.

President Paulsen: Thank you very much Mr. Gelpi.

SUPPLEMENTAL FORMAL REPORT OF THE MARITIME PERSONNEL COMMITTEE

The Committee on Maritime Personnel held an open meeting at 3:00 p.m. on Wednesday, May 2, 1984. Fourteen committee members were present and were joined by thirteen guests/observers, several of whom contributed by participating in discussion of several items on the Committee's agenda. William R.P. Hogan reported on the conference in New York concerning asbestosis litigation. The meeting was attended by various P&I Club representatives and a representative from each of the three New Orleans firms participating in the defense of the Club/shipowners' interests in these cases.

Vice Chairman Fred Wentker reported the status of the class action maintenance suits pending in San Francisco in which oral argument is scheduled this summer on the pending defense Motion for Summary Judgment.

Tom Murphy raised the issue of whether a formal ruling should be sought as to the fact that maintenance was not subject to Federal Income Tax, as the question of withholding tax from maintenance checks becomes more significant as the rate of maintenance increases. A full discussion by those present revealed only one instance where the IRS took the position that taxes should be withheld from maintenance payments, and in that instance, the employer's counsel obtained an IRS Private Letter Ruling that maintenance payments were not subject to income tax. Accordingly, the Committee felt it better to let the "sleeping dog" lie rather than explore the matter on any formal basis. The Committee would appreciate the input of the membership as a whole if there are other instances where taxes are being withheld from maintenance checks based on local IRS rulings to determine whether a formal approach by our Association and/or some other organization would seem in order.

Nancy Jennings reported on recent developments in two New York passenger ship cases, in one of which cases the Committee on Uniformity is considering whether to seek to file a brief *amicus*.

Carl Nelson reported as to how he hoped to gather and disseminate material for possible inclusion in our Committee's newsletter, some if not all of which would be made available to the Association as a whole through appropriate publications.

John Scalia suggested consideration be given to whether some form of worker's compensation scheme would be appropriate for

U.S. seamen, but agreed to defer detailed discussion of that topic in view of the late hour and the anticipated rather lengthy discussion on the U.S. House of Representatives Committee on Merchant Marine and Fisheries Staff Draft of a Bill purporting to codify the existing U.S. maritime laws relative to death and injury.

The full discussion of this proposed Bill demonstrated clearly that the Bill would effect drastic and sweeping changes in the law as it now exists, greatly liberalizing the benefits to death and injury plaintiffs. It was the consensus of almost all those present that this Committee and the MLA should actively oppose this Bill. Accordingly, the chairman was directed to work with other committee chairmen and representatives as directed by the Executive Committee to make certain the problems inherent in this Bill were brought to the attention of the proper persons. In addition, an *ad hoc* sub-committee of Fred Wentker, John Crumpler and Bill Hogan was appointed to conduct a formal analysis of this Bill if it appeared that any action on the Bill was being contemplated by the Merchant Marine and Fisheries Committee.

Respectfully submitted,
Gerard T. Gelpi, *Chairman*

Let's move to Mr. Waesche, the Chairman of the Limitation of Liability Committee.

As you see, these three committees' activities in the last few days and months are closely related.

REPORT OF THE LIMITATION OF LIABILITY COMMITTEE

Mr. Waesche: At the last Fall meeting I reported that there was some progress in having Congress adopt the Maritime Law Association draft Limitation of Liability Act. I am now pleased to report that there has been substantial progress made in that direction.

If I may step back in point of time, in 1976 there was an international convention and a draft was made at that time for a proposed Limitation of Liability Treaty. The United States delegation attended but came back and did not support the draft because the limits were too low, they thought. Shortly thereafter, Mr. Owen, when he was President, appointed a committee of the Maritime Law

Association to draft a bill having in mind and keeping in mind the 1976 treaty and mandating that whatever possible we use the words of that treaty. Nothing really happened after the Maritime Law Association drafted its bill except that the entire membership of the Association did approve the draft.

Recently Congress introduced legislation to change the present Limitation of Liability Act to increase the fund from $60 a ton to $400 a ton. President Paulsen, myself and Mr. Brown went down to Washington and met with the staff and told them we had no objection, I didn't think anybody would have objection to lifting it from $60 to $400, but that was a band-aid approach when what was really needed was a complete revision of the existing Limitation of Liability.

Furthermore, we told the staff that here you don't even have to work. Here is a perfect bill for you, the MLA draft legislation. I am pleased to report that on March 21, 1984 the House Committee did introduce a bill which would completely revise the Limitation of Liability and when Mr. Biaggi introduced that bill, he did so saying, "The bill I am introducing was developed by the Maritime Law Association and is patterned after the convention on Limitation of Liability for maritime claims of 1976."

And, indeed, it is. It does follow our language. There are changes in the phraseology, some of which we don't like too much, but we think we can live with them.

When the Committee on Limitation of Liability met yesterday, we went through all of the changes in phraseology between the MLA draft and HR 5207 and thought we could live with all of them with one exception. I will read that to you.

The MLA draft provides:

"Limitation of liability may be pleaded as a defense by way of answer at any time, in any legal proceeding or arbitration notwithstanding that no complaint for limitation of liability has been filed and that no limitation fund as mentioned in Section 8 has been constituted."

The Biaggi bill reads as follows:

"Section 10. Limitation of liability may be pleaded in a legal proceeding or arbitration even when a complaint for limitation has not been filed or when a limitation fund has not been established."

You will note that the Biaggi bill omits the "at any time" and as we all know there is some dispute between the circuits as to whether or not you can plead limitation by way of answer at the

expiration of six months. Our draft was specifically meant to take care of that situation. The Biaggi draft still leaves it open.

At the conclusion, a motion was made and passed which reads as follows:

That the Limitation of Liability Commitee recommends that the Maritime Law Association approve the text of HR 5207 and recommends its passage with the understanding that the Association will submit to Congress its recommendation that the words "at any time" be inserted between the words "pleaded" and "in" in Section 10 of the proposed bill.

That motion was passed with one dissent.

We also opposed the draft that Mr. Gelpi spoke about. I don't want to go into detail. He already has.

Again, there was a motion to oppose it, it was passed again with one dissent.

I now recommend that the MLA support the passage of HR 5207 and to that end the President, with the advice and consent of the Executive Committee, appoint a subcommittee to achieve that result.

President Paulsen: Thank you very much, Mr. Waesche.

Was that a resolution of your committee?

Mr. Waesche: Yes.

President Paulsen: But not unanimous, I take it?

Mr. Waesche: One dissent.

President Paulsen: Do we have a problem?

Mr. Waesche: Not really.

President Paulsen: We are already on record as approving 5207?

Mr. Waesche: That is correct.

President Paulsen: If your position is that we reiterate our support, which was done at several previous meetings, I think there should be no problem.

Mr. Waesche: Mine goes a little further than that. I am recommending that we do something to support its passage, that something is that a subcommittee should be appointed to achieve that result.

President Paulsen: I think that can be done and will be done without a resolution.

I don't want to get into any problems with our bylaws.

Mr. Waesche: All right.

That concludes my report.

President Paulsen: We have strict constructionists around here.

(Laughter.)

President Paulsen: Thank you very much.

As you can see, there has been a great deal of activity of a very important nature on these subjects.

I think this would be a good time, before we get the report of the Uniformity Committee, to hear from Mr. Patton, Mr. Brett Patton, who is the president of the Panamanian Maritime Law Association.

We are honored to have with us today several people from abroad. I don't think I have all of the names: Mr. Al Murray of Newcastle-on-Tyne, the North of England P & I Club is here; Mr. Ho Chan Shu of Shanghai; Professor Tetley, President of the Canadian Maritime Law Association.

Perhaps these gentlemen would stand and then Mr. Patton will come forward.

(Applause.)

ADDRESS BY MR. BRETT PATTON, PRESIDENT THE PANAMANIAN MARITIME LAW ASSOCIATION

Mr. Patton: Good morning, ladies and gentlemen.

It is a pleasure to be present at this meeting, not only as bringing you greetings from the Panamanian Maritime Law Association, but also attending my first meeting as a member of the Maritime Law Association of the United States.

The Maritime Law Association of Panama was formed in 1979 and ever since has been quite active in pursuing objectives in respect of maritime trade, particularly the passing of laws that ultimately confirm Panama's position or its role which has by tradition been established in the international maritime community.

One such instance of the Association's involvement was in respect of Law No. 8 of 1982, which was enacted to create the maritime tribunals and to establish rules and procedures in respect thereof.

Historically, maritime jurisdiction was exercised by the United States District Court for the District of the Canal Zone. However, upon the disestablishment of the said Court on account of the Panama Canal Treaty of 1977, it became evident that a vacuum

would exist in respect of those services rendered to the maritime community.

Accordingly, a Presidential commission was established as it was felt that the existing laws of Panama did not embody an adequate body of procedural rules for the litigation of maritime controversies. The commission was made up of several lawyers of the Panamanian bar, in particular, those who had experience in litigation in the district courts of the Canal Zone and they were asked to draft appropriate legislation.

The result of their efforts was Law No. 8 of 1982. Pursuant to said law, a Maritime Court has been established on the Pacific side of the Isthmus of the Republic of Panama and is currently in operation.

This Court is accessible at all times to interested parties and has exclusive jurisdiction over cases arising out of maritime commerce and trade occurring within the territory of Panama, its territorial navigable waters, rivers and lakes, and the waters of the Panama Canal. The jurisdiction in respect of this last area is restricted on account of the Panama Canal Treaty of 1977. In addition, the jurisdiction of the Court has certain extra-territorial features which I believe is of importance and interest to many people.

Tulane University had a symposium in Panama this year and we had quite a lot of members of the MLA who attended the meeting as well as members of the Panamanian Maritime Law Association.

The feeling among many of us in Panama was that the international community had not realized that there is a concept of extra-territorial jurisdiction. This arises, for example when an action is directed against a vessel or its owner and the vessel has been seized or attached within the jurisdiction of Panama, irrespective of the grounds which gave rise to the action or irrespective of the parties to the action. The fact that the vessel is in transit allows the court to exercise jurisdiction and decide controversies.

In addition, the maritime court has concurrent jurisdiction with the labor forces of the Republic of Panama at the option of seamen to entertain labor causes related to seamen aboard Panamanian flag vessels.

With respect to the operation and function of the Maritime Court insofar as we are able to assess its performance after a couple of years, we feel that it is important to note that the Court has functioned with a great deal of independence and has been impartial in

deciding controversies which come before it. The Court has proven to be a serious venue for maritime controversies to be decided.

Apart from our involvement in respect of the Maritime Court, the Association has been active in the last year in dealing with several projects of law in respect of maritime commerce. At present, unfortunately due to political activity in Panama and on account of the elections being held on Sunday, the legislative action in respect of these projects is still pending. One such project is in respect to the amendments to various provisions of the Code of Commerce of the Republic of Panama dealing with ship mortgages.

Several matters have been dealt with regarding this subject, particularly in respect of taking recommendations from bankers in the international setting, in respect of current day-to-day financial activities and, in particular, directed towards assuring that ship mortgages may be created to guarantee credit, for instance, where there is a revolving credit facility or in respect of the exercise of options to convert to a different currency. In addition, we have provided in the project of law that a mortgagee may contract to exercise the right of private sale in the event of default.

In addition, we are currently working on a project of law dealing with maritime labor. It is felt that the present structure, labor code structure of Panama, is not sufficient to encompass the particular necessities of maritime seafarers. One area of interest in this project which I think some of you might find interesting is the possibility that a shipowner may obtain a waiver of the requirement presently under Panamanian law that ten percent of the crew be Panamanian. That ten percent requirement, although it is present law, is not readily complied with because in many instances there may be difficulty in being able to hire Panamanian crew because of the lack of availability thereof. The funds to be received from the shipowner for being allowed to contract out of this requirement will be used for the training of Panamanian seafarers.

Aside from this, we are trying to coordinate the publication of cases heard, resolved before the Maritime Court in Panama and hopefully will be able to publish them in English and circulate them among the international maritime community. Should anyone want any particular information concerning this, I will be around after the meeting and will be glad to talk to anyone wanting further information.

I thank you, Mr. President, and for kindly hearing this report on the Maritime Law Association activities in Panama.

Thank you.

(Applause.)

President Paulsen: Thank you very much for that very interesting report on how the maritime law of Panama is developing.

And continuing along with the idea of uniformity, let us now hear from the Uniformity Committee, Mr. McHose.

REPORT OF THE UNIFORMITY OF MARITIME LAW IN THE UNITED STATES COMMITTEE

Mr. McHose: Mr. President and members of the Association, a brief oral report and a motion.

We will submit a written supplemental report to the Secretary,

Many of you will remember that last November we unanimously approved a resolution authorizing MLA to file an *amicus* brief and take other action deemed desirable in connection with problems in California having to do with production and transportation of crude oil from oil wells located in the outer continental shelf under leases from the United States government, outside the territorial waters of California.

In a suit in San Francisco in the District Court a motion for a summary judgment has been filed by Exxon. We prepared an *amicus* brief supporting the motion. President Paulsen approved and signed it, I signed it as Chairman of the Uniformity Committee, and it is being filed today in San Francisco.

The brief states that action the California Coastal Commission is considering would be unconstitutional and violate the commerce clause, the supremacy clause, the admiralty clause and the necessary and proper clause.

We have also mailed a letter to the Board of Supervisors in Santa Barbara County which is supporting the recommendations to the California Coastal Commission. If enacted they would prohibit transportation of crude oil produced from wells outside the territorial jurisdiction of California to a point in Texas. This is international maritime transportation.

Our letter advises the Board of Supervisors and the county counsel that MLA believes the action would be unconstitutional.

The matter on which I have been asked to move a resolution

involves an action here in New York. A lady passenger on a cruise ship who sustained alleged injuries on the high seas filed suit in the Supreme Court of the County of New York more than a year after the accident occurred.

A motion for summary judgment dismissal was filed but was denied by the trial court on the basis that a New York statute, CPR 4544 called the "consumers contract clause" contains a provision (enacted to protect personal family and house problems) which requires such contracts to be printed in a type size larger than the time to sue clause in the passenger ticket.

The Court held the New York statute controlled. The validity of the time to sue clause is within the control of the federal government and no State statute should be declared to supersede well established general maritime law.

I have the following resolution to propose:

It is moved that the Association authorize the Uniformity Committee, upon approval by the President, to file an *amicus* brief or briefs supporting the established policy of the Association to promote and protect uniformity in the maritime law of the United States, in connection with the litigation pending in New York involving the validity of terms of a contract for transportation of a passenger injured on the high seas, which would be valid under maritime law and authorized by 46 United States Code, Section 183(b), but has been ruled invalid under the New York Consumer Contracts Law.

The Uniformity Commitee believes federal maritime law has preempted and should control over state statutory law.

I make that motion.

A Voice: Seconded.

President Paulsen: There is a second. Is there any discussion?

(No response.)

President Paulsen: All those in favor say aye.

(A chorus of ayes.)

President Paulsen: All those opposed?

A Voice: Nay.

President Paulsen: Is there a nay?

A Voice: Yes.

President Paulsen: Could we have your name?

Mr. Sorkin: Saul Sorkin.

Do you want a comment?

President Paulsen: If you want to give it.

Mr. Sorkin: It is not a question of uniformity, it is a question of notice. There are other cases involving transportation, particularly under the Warsaw Convention where small print has been held not to be adequate notice.

I don't know that we should adopt a resolution without further study. I think there are cases under COGSA.

President Paulsen: Thank you, Mr. Sorkin.

Did you want to comment further, Mr. McHose?

Mr. McHose: Only to say, what we are talking about, is that federal maritime law should control a situation such as this and not state law, which is contrary to it.

President Paulsen: Thank you very much.

FORMAL REPORT OF THE UNIFORMITY OF MARITIME LAW IN THE UNITED STATES COMMITTEE

The Committee met on May 2, 1984 with nine of the twenty-eight members present.

The Chair reported that, pursuant to authority given at the November 1983 meeting, an *Amicus* Brief, signed by President Paulsen and the Chair, was being filed with a motion to permit filing, in the District Court in San Francisco in *Exxon vs. The California Coastal Commission*. The Brief supports Exxon's Motion for Summary Judgment on the basis that the action under consideration by The California Coastal Commission involves transportation of crude oil from wells on outer continental shelf U.S. leases off Santa Barbara County, beyond the three mile limit, to a Texas refinery. Control of such marine traffic has been federally preempted.

It was also reported that a letter to the Santa Barbara County Board of Supervisors and County Counsel had been prepared, signed and mailed by President Paulsen. It stated that MLA believes action recommended to The California Coastal Commission which would prevent transportation of offshore oil by tanker in interstate commerce would be unconstitutional in violation of the Commerce, Supremacy, Admiralty and Necessary and Proper clauses.

Recent legislation in Washington and California affecting liability of pilots for damage caused by pilot negligence was also discussed.

It was agreed that uniformity with respect to pilotage throughout the United States continues to be important as respects MLA policy and further study is desirable.

The Committee had also received a request to consider seeking Association approval to file an *Amicus* Brief in the *Colgate Palmolive/ Global Terminal* case decided by the Fifth Circuit in which a Petition for Certiorari was pending. The request had been received too late for action to be taken in support of the Petition and on May 1, 1984 the Supreme Court denied the Petition. Therefore no action appears possible.

The Committee also discussed the *Chevron/Hammond* case recently decided by the Ninth Circuit and reported at 726 Fed. 2d 483. The decision approved an Alaska statute prohibiting cleaning tanks of oil tankers in Alaskan territorial waters. The Committee had not been advised whether a Petition for Certiorari will be filed. If it is, further consideration of the possible effect of the decision as regards uniformity can be given.

The Committee also considered a case recently decided by the District Court in New Jersey and reported at 573 Fed. Supp. 203 referred to as the *Bass River Houseboat* case. Following discussion it was agreed that at the present stage of this litigation no action should be recommended to the Association.

There was also discussion concerning recent publicity with regard to the United States objection to reference of the Nicaragua port mining case to the World Court. It was pointed out that this does not involve uniformity of United States maritime law and is not within the jurisdiction of the Committee.

Finally, the Committee considered a delivered letter requesting that an Amicus Brief be filed in support of an appeal from denial of a Motion for Summary Judgment in a case in the Supreme Court for the County of New York in which the Court denied a Motion for Summary Judgment on the basis that a New York statute requiring a minimum size of print in consumer contracts for personal, family or household services controlled over the well-established rule of Maritime Law that passenger contracts can require suits for passenger injuries aboard ship to be brought within one year after the injury occurred.

It was unanimously agreed that marine transportation of passengers is governed by the general maritime law, particularly 46 USC 183b, and a resolution should be presented at the annual meeting on

May 4 seeking approval by the Association for the filing of an Amicus Brief.

John C. McHose, *Chairman*

President Paulsen: Let us hear from the CMI Committee, Mr. Healy.

Before Mr. Healy speaks, I think it would be nice to recognize Mr. Boal, who is the recipient of a very splendid award.

Did you bring the medal with you, Mr. Boal?

He will be glad to show it to you.

Would you please stand?

(Applause.)

President Paulsen: Mr. Boal was ninety-five years old on St. Valentine's Day. He proceeded to Brussels in April to get this award and it was a very splendid occasion.

It is very nice of you to meet with us today.

Mr. Lucien Ray is also a longtime member. He tells me that next year he will be a member for fifty years.

Where are you?

There you are.

(Applause.)

President Paulsen: Mr. Boal, would you like to say something?

Mr. Boal: Yes, please.

I am very glad to speak to you because I have been a member of this Association for more than sixty years. Now we have had excellent presidents in this Association going back as far as Nick Healy—

(Laughter.)

Mr. Boal: But Gordon Paulsen has done an exceptional job as president, both in connection with domestic affairs as well as working with the CMI. He deserves a lot of credit for the work he has done, the time he has put in on it, the expenses he has incurred—I am sure he has incurred a lot of them.

I suggest we give Gordon Paulsen a strong vote of confidence and thanks.

(Applause.)

President Paulsen: Thank you very, very much, Mr. Boal. I

appreciate that much more than I can say—it means a lot to me. We have worked together, we have understood each other, we have traveled together. Arthur Boal has done a superb job on the CMI.

He tried to submit his resignation from the CMI Executive Council, but they would not accept. They were right in not accepting it!

Mr. Healy.

REPORT OF THE COMITÉ MARITIME INTERNATIONAL COMMITTEE

Mr. Healy: Mr. President, ladies and gentlemen. I want to mention two of the topics that were discussed at the meeting of our Committee held yesterday.

One is the luncheon for Mr. Boal at the Assembly meeting of the CMI. John Moore, who is a member of the C.M.I. Executive Council, reported on that. He said that the topics of Mr. Boal's little speech of thanks for the tribute paid to him and for the medal given to him ranged from reminiscences of his early life and career, among them his meeting with President Abraham Lincoln's Secretary of War when Mr. Boal was a young boy, to remarks about the future of the Comité Maritime International.

Also discussed at the meeting yesterday was the plenary session of the C.M.I. which will be held at Lisbon May 19th to 26th, 1985, as Mr. Volk has stated. Mr. Moore reported that a limit of 250 delegates had been set by the Executive Council, but that it might be increased to 350.

In any event, because of hotel limitations at Lisbon, it will very probably be necessary to limit the number of delegates from this Association. The Committee voted to recommend to the Executive Committee that whatever the number finally set might be, the delegates should hold a meeting in New York at the time of the May 1985 meeting of this Association in order to prepare the Association's position on the topics to be considered at the Lisbon plenary session.

The date suggested was the Monday before the May meeting and the time about 3:00 P.M. This would enable some of the delegates, at least, to leave their homes as late as Monday morning and still be in New York in time for their meeting. On the other hand, it would not conflict with committee meetings, which are usually held on Wednesday and Thursday of the May meeting week, or with any

program which might be held at the Association of the Bar, similar to the ones held this year and last year.

Thank you, Mr. President.

President Paulsen: Thank you very much, Mr. Healy.

Let us now hear from the Navigation and Coast Guard and Pilotage Committees.

I believe Mr. Stahl is going to give the report for both; Mr. Moseley was unavoidably kept away from the meetings yesterday.

Mr. Stahl, your report.

FORMAL REPORT OF THE NAVIGATION AND COAST GUARD COMMITTEE

A meeting of the Committee on Navigation and Coast Guard was held on May 3, 1984. The discussion doubtless suffered from a lack of beef as a result of the Chairman, Vice Chairman and a number of members being absent because of conflicting commitments resulting in my being asked to continue in the chair after the meeting of the Subcommittee on Pilotage.

There was discussion of the Coast Guard's variability of decision with respect to enforcing the requirement that a tank barge take a federal pilot upon arrival at the sea buoy.

There was similar variation reported, even by different officers within the same district, on the use of the Motor Boat Act to discipline pilots. Vigorous opposition was considered the mandatory defensive action.

Warren Ashley Hines, with subsequent confirmation by Mr. Paulsen, commented on the difficulty of framing a more definitive rule as to where to apply the Narrow Channel Rule with many variables, especially on the Mississippi River, relating to the size of vessels and the stage of the water. A desirable modification is believed to have been reached with respect to Rule 14 by permitting the vessels to agree to meet starboard to starboard.

Arrangements were made and carried out by Stephen Rible and Robert Parish to have members of the MLA take the ferry to Governor's Island for a presentation concerning the Coast Guard's twenty-five year participation in the AMVER Program. This has achieved considerable success in securing data on vessel movement

and location with fast, accurate retrieval and advice as the information can be helpful to other shipping.

Mr. Moseley also asked me to comment that the Committee, along with Mr. Deming, has written a report to CMI on collision damages. This appears in last week's report of Mr. Owen; you should be sure to read it.

Respectfully submitted,
Benjamin F. Stahl, Jr.
Acting Chairman

FORMAL REPORT OF THE SUB-COMMITTEE ON PILOTAGE OF THE NAVIGATION AND COAST GUARD COMMITTEE

A meeting of the Sub-committee on Pilotage of the Navigation and Coast Guard Committee was held at the Seamen's Church Institute in New York on May 3, 1984.

In attendance were six members and, by invitation, two who wish to become members and the Presidents of the New York and New Jersey Sandy Hook Pilots Associations.

The principal topic was limitation of pilot liability, whether by statute, as recently enacted in Washington and Oregon, or as a possible supplement to the federal act, or a separate federal act for uniformity. Thomas McKey reported on the Washington statute, commenting that it is still too early to know whether it will survive attacks on its constitutionality that will doubtless be made.

Alex Parks, author of the Oregon bill, discussed that statute. He also recognized that the question of constitutionality might be raised, but pointed out that he was not aware of any suits having been brought on this issue since enactment of such a law in England. In addition, he queried the impact of the new London Hull Clauses.

Paul Kirchner, Washington, D. C. counsel for the American Pilots Association, recognized that MLA membership represented many facets of maritime industry, some of which, like some legislators in Congress, might not be disposed to grant additional benefits to pilots. He accordingly suggested that any effort to secure federal legislation should not be sought without the endorsement of the MLA and the maritime industry. This area will be the subject of continuing evaluation before action is initiated.

There was also discussion of the extent of the obligation of a Pilot Association to seek out and disseminate relevant information to its members, and the extent that some dissemination might enlarge the obligation to seek out more. This area will also receive continuing attention by the Sub-committee.

Respectfully submitted,

Benjamin F. Stahl, Jr., *Chairman*

President Paulsen: Let us hear from the River and Ocean Towing Committee, Mr. Murphy.

FORMAL REPORT OF THE RIVER AND OCEAN TOWING COMMITTEE

In early April, Gordon Paulsen, President of the Maritime Law Association and Chairman of the Rules of the Road Advisory Counsel (RORAC) called Joseph A. Murphy as Chairman of the River and Ocean Towing Committee and asked if representatives of that Committee could appear and attend a hearing to be held by the RORAC in Washington, D.C. on April 26 and 27.

RORAC was established by Congress by charter and drafted the Unified Inland Navigational Rules which were enacted into law in December 1980.

It was Mr. Paulsen's thought that the input from this Committee of the MLA together with representative members of the towing industry that operated on the Western Rivers would be beneficial to RORAC in considering whether any changes in Rules 9 and 14 of the Rules of the Road were advisable.

A recent collision on the Western Rivers called into question whether the new unified rules 14 and 9 were clear enough as to whether vessels meeting in the instant case were in a narrow channel or not, who had the right-of-way, and if a similar situation occurred which of the two rules: Rule 9 or 14 would be applicable.

Pursuant to such suggestion from Mr. Paulsen, the Committee did invite certain representatives of the towing industry to appear at the RORAC hearings in Washington on April 26 and 27, 1984 and those in attendance were the following:

Captain E. A. Poe
Port Captain
Nilo Barge Lines, Inc.
St. Louis, MO;

Captain Gerald A. Tinkey
Vice President-Operations
Mid-American Transportation Co.
Fairview Heights, IL;

Captain D. L. Beaver
Vice President-Operations
The Valley Line Company
St. Louis, MO;

Captain Lloyd H. Eneix
Senior Vice President-Operations
Agri-Trans Corporation
St. Louis, MO;

and

Captain Jim Robinson
Vice President-Operations
Inland Waterways Division, Pott Industries
St. Louis, MO.

Your Chairman and the five above individuals engaged in a panel discussed the afternoon of April 26, 1984 in which their views were presented to the members of RORAC.

Later that afternoon a meeting of the panel members was held at which were also present Captain Bill Whittenberg of Baton Rouge. Louisiana, Captain Mark Delesdernier, Jr. of Baton Rouge, Louisiana and Committee member Warren Ashley Hines.

After the above discussion the panel members continued to meet and discuss the rules and then drafted proposed changes in the rules to be submitted to RORAC the morning of April 27, 1984 with the suggestion that the Committee adopt the rules as amended in lieu of the then present rules.

The following morning after lengthy discussion and participation by your Chairman as well as Mr. Hines with the members of RORAC the motion was made and adopted by RORAC that the Coast Guard submit to Congress the proposed changes in the rules.

These changes are as follows:

The Inland Navigational Rules, enacted by section 2 of the

Inland Navigational Rules Act of 1980 (33 U.S.C. 2024(i)), is amended by inserting "Unless otherwise agreed" at the beginning of Rule 14(a), and adding a new rule 14(d), "Notwithstanding paragraph (a) of this Rule, a power driven vessel operating on the Great Lakes, Western Rivers or waters specified by the Secretary, and proceeding downbound with a following current shall have the right-of-way over an upbound vessel, shall propose the manner of passage and shall initiate the maneuvering signals prescribed by Rule 34(a)(i), as appropriate." Rule 9 would remain unchanged.

As of August 9, 1984 it is your Chairman's understanding that the proposed amendments to Rules 9 and 14 have been adopted by the House and are presently and will become the subject of a committee meeting between the House and the Senate and be later introduced into the Senate.

Respectfully submitted,

JOSEPH A. MURPHY
Chairman
River and Ocean Towing Committee

President Paulsen: We will now hear from the Practice and Procedure Committee, Mr. LeGros.

REPORT OF THE PRACTICE AND PROCEDURE COMMITTEE

Mr. LeGros: The Practice and Procedure Committe met yesterday with thirty-three members in attendance representing fourteen different judicial districts.

The principal topic of discussion was the proposed amendments to the Supplemental Admiralty Rules.

We now can see the fruition of eight years of labor in this area. The Committee was originally formed by President Owen in 1976 with Graydon Staring as Chairman. The first mandate given to the Committee was to undertake a study of constitutionality of maritime attachment and arrest resulting from the Sniadack line of cases.

Since that time, the Committee has devoted considerable energy to research in that area. With the approval of the Executive Committee, the Committee has participated in the writing of *amicus* briefs

in various litigated cases with quite successful results in all instances. This was in 1978 and 1982.

Beginning in 1982 through this year, the scene shifts to the Supreme Court and its Advisory Committee on Civil Rules and with particular emphasis on proposed amendments to the Supplemental Admiralty Rules.

During this time, a remarkably close relationship has developed between the Maritime Law Association and the Supreme Court's Advisory Committee, especially the Sub-committee chaired by Judge Mansfield of the Second Circuit who has the chairmanship of the Sub-committee on the proposed amendments to the Admiralty Rules.

At the request of the Committee, the President designated two members of the Association to appear at the public hearing in Washington in January of this year to advance the position of the Maritime Law Association as to the proposed amendments to the Supplemental Admiralty Rules.

David Owen and David Sharpe appeared so as to present the Committee's position.

In February, President Paulsen, at the request of the Committee, appointed Robert Fletcher and Francis MacLaughlin of Santa Monica and Los Angeles, to appear at the public hearing in Los Angeles. Mr. MacLaughlin was unable to appear but Mr. Fletcher appeared and presented again the views of the Association.

As I say, we are now reaching the point where we can see the end of the road as far as the amendments to the Supplemental Admiralty Rules are concerned. The position of the Association as adopted at the last meeting as to Supplemental Rule B was approved by the Advisory Committee so that Rule B requires the garnishee to be named in the process rather than in the complaint.

This will obviate the necessity of successive judicial reviews of complaints after you have ascertained that there is an additional garnishee. You can now accomplish that by simply getting out a new process. You have had your initial judicial review, that is all that is required.

Rules C and E were amended. The amendment to C and E are to bring the Supplemental Rules into conformity with Rule 4 as amended and to also preserve the requirements of Rule E that service of process be made by a marshal. This has been accomplished in this manner: Rule 4 as amended says that process may be served by the

marshal or some person specially designated. That has now been incorporated into Rule C and Rule E.

If you are proceeding under Rule C for the attachment of property, the amendment to Rule C now reads:

> "Upon the filing of the complaint, the Court shall forthwith issue a warrant for the arrest of the vessel that is the subject of the action and deliver to the marshal for service. If other property, tangible or intangible, is the subject of the action, the warrants shall be delivered by the Clerk to the marshal or a person specially appointed by the court for service."

You can see that if you are going to attach or arrest a vessel under the rules as they are proposed, you will require the service of a U. S. Marshal. Any other process can be by a marshal or person specially designated.

Judge Mansfield, who is the principal author of the amendments, has solicited the advice of this Association in the presentation of the proposed amendments to the full Advisory Committee.

As to Rule B, as announced, I think there is no question as amended;

Rule C, which will require the use of the U. S. Marshal if a vessel is involved, is a somewhat different position than that originally adopted by the Association by resolution in 1981.

However, after considerable further study and after reviewing the exhaustive report of the Admiralty Committee of the Bar Association of the City of New York and having read the comments which Judge Mansfield has attached to his proposed amendments, the Practice and Procedure Committee unanimously felt that the amendments as now proposed are fully in accord with the present views of the Association and that the Committee unanimously passed and asked that the following resolution be submitted to the Association:

> RESOLVED, that the Maritime Law Association of the United States fully supports the proposed amendments to the Supplemental Rules B, C and E as now drafted and urges their adoption by the Advisory Committee on Civil Rules, the Judicial Conference, the Congress and the Supreme Court.

On behalf of the Committee, I would make that motion.

President Paulsen: Thank you very much, Mr. LeGros.

A Voice: Seconded.

President Paulsen: Any discussion?

(No response.)

President Paulsen: Therefore, without objection, the motion is approved.

Mr. LeGros: As I previously stated, this has been the result of eight years of labor. How we arrived at where we are is going to be fully detailed in the forthcoming July issue of the Journal of Maritime Law and Commerce. The research assistant to the Advisory Committee, with editorial assistance from David Owen, has prepared this paper which will fully detail the work of the Advisory Committee in reaching this result and how the MLA participated in the action of the Advisory Committee.

I think you will find that the Advisory Committee has leaned heavily on the expertise of this Association.

The Practice and Procedure Committee also considered a draft model set of Local Admiralty Rules. With the forthcoming amendments to the Supplemental Rules, a number of districts are considering amendments to their Local Admiralty Rules.

The first draft was considered by the Committee yesterday and, with thirty-three nitpickers present, the proposed draft was gone over word by word and sentence by sentence and colon by colon. We hope that, at the Puerto Rico conference, the Practice and Procedure Committee can put on an open meeting where a revised draft of local rules can be considered. We hope to get a greater representation of membership so we can turn out a product which will not be an official MLA document but will be a work product of the Committee that we can submit to various local district admiralty committees for their consideration.

The Subcommittee on Judicial Compensation, through its Chairman Dwight LeBlanc, reported that no action was taken on judicial compensation, this being an election year.

The Practice and Procedure Committee also considered the problem given to us by President Paulsen; that is, the problem resulting from unpublished opinions. Statistical studies have indicated that sixty percent of the Appellate case load is resolved by unpublished opinions. Only a very small fraction of that sixty percent involves admiralty cases. The Committee, therefore, felt that it would be un-

wise for the Association to undertake independently any effort to effect a change in the various circuit court rules as to unpublished opinions, but it requested that the Association, through its Liaison Committee with the American Bar Association, ascertain whether or not the American Bar Association has under consideration this problem and, if so, what action it is taking so that we can coordinate our activity with it.

One problem that did arise, however, in the discussion was the "do not cite rule", which most of the circuits have as a part of their "do not publish rule". It was felt by the Committee that, with the wide dissemination of unpublished opinions through various services and with the ability of the circuit court to control the use of unpublished opinions by proper safeguards, the "do not cite" provision of the "do not publish rule" should be stricken. The committee asked that the following resolution be presented to the Association:

> RESOLVED, that the Maritime Law Association of the United States urges the various circuits to strike from their 'do not publish rule' the prohibition against citing unpublished opinions.

On behalf of the Committee, I would move that resolution.

President Paulsen: That was unanimously adopted by your Committee?

Mr. LeGros: Yes.

President Paulsen: Is there a second?

A Voice: Seconded.

President Paulsen: Is there any discussion?

A Voice: Yes. I would like to make a comment. My name is Bernard Rolnick. I think these unpublished opinions are a subterfuge for bypassing many of the statutes of the United States, bypassing the uniformity which is desired in the maritime field, and is an excuse or method, rather, used to escape publishing an opinion which would be challengeable in the Supreme Court of the United States.

I have just learned that up until recently they would not grant certiorari on one of these unpublished opinions, but I think the Supreme Court has now changed its rules in view of the fact that this unpublished opinion situation has pervaded in the atmosphere of the circuit courts. I think the Association should take a very strong stand on this subject.

Mr. LeGros: I might state you have reflected views considered

by the Committee. However, we felt that because of the small percentage of admiralty cases we should not go forward by ourselves in this field, but should attempt to find out what other associations, particularly the American Bar, are doing, if anything, on the problem. I assure you that the matter is under consideration and will be kept under consideration.

President Paulsen: What you are really doing is looking for allies.

Mr. Rolnick: I think we should take a strong step and strong determination to let the courts know that we are on to what they are trying to do.

President Paulsen: Thank you, Mr. Rolnick.

Mr. Sims: I do not know to which circuits Mr. Rolnick has referred. At the 5th Circuit Judicial Conference last year, I brought up the question of "do not publish", "do not cite" because I was interested in knowing whether there was any prohibition against my forwarding these opinions to AMC.

I was pleased to learn that the Firth Circuit, in its judicial conference, said the reasons they said "do not cite" "do not publish" was because the opinions had no serious precedent value, that the number of the opinions coming out of the Fifth Circuit was horrendous, and it could save the taxpayers a substantial sum of money when, in the judgment of the Court, it was felt not necessary to publish. They did immediately grant full permission to send everything on to AMC and we have been doing so.

That is the 5th Circuit.

President Paulsen: Even though it said do not publish?

Mr. Sims: Absolutely, positive.

I have clearance from the judge and the clerk.

President Paulsen: Mr. Nixon.

Mr. Nixon: I have been taking a risk by publishing Second Circuit unpublished opinions that I thought had merit. It is surprising. Perhaps we are better judges than the Circuit of what is of interest to maritime lawyers. I can't do anything about whether you can cite them. We published a little note that they can't be cited, but there it is, amusingly. You find reference to unpublished opinions, for instance, of course, to which I cannot refer.

President Paulsen: Mr. Higgins?

Mr. Higgins: Mr. President, we have a unanimous report of a

Committee here. These comments are extremely interesting. However, I suggest we move the question.

President Paulsen: Okay. Are you ready for the question? All in favor say aye. (A chorus of ayes.)

President Paulsen: All those opposed?

A Voice: Nay

Mr. Paulsen: Who said nay?

Mr. Peck: William Peck. I am satisfied that the question was moved, but I don't think this is the way to approach the problem.

President Paulsen: Perhaps you and Mr. LeGros could talk afterwards.

Mr. Jim Burnley, the Deputy Secretary of Transportation, of the United States has just arrived and I would like to call on him now to give his comments.

Mr. Burnley is a graduate of Yale University and has a J.D. from Harvard. There has been a great deal of publicity in the *Wall Street Journal* and the *New York Journal of Commerce* concerning changes and new positions by the administration concerning the international oil pollution conventions and domestic legislation. I think that, among other things, is what Mr. Burnley is going to talk to us about.

ADDRESS BY DEPUTY SECRETARY OF TRANSPORTATION MR. JAMES BURNLEY

Mr. Burnley: I came in just a few minutes before that exciting debate and I was very pleased to hear that the subject of the debate was not the executive branch.

(Laughter.)

President Paulsen: I would just note for those who are from the executive branch, whatever you wish to say about the judicial branch, we certainly agree with wholeheartedly.

(Laughter.)

Mr. Burnley: And I also want to say, Gordon, thank you very much for letting me interrupt the proceedings. When I got your invitation, the timing on it was all wrong. There were things that had to be done in Washington and all sorts of things. But it seemed to me

that the import of this organization and the import of the issues that you deal with day by day simply require that I come visit with you for a few minutes and be able to tell you what we are thinking, what we are up to. You follow us, I know, and have done so closely.

And most of the time what you see in the *Journal of Commerce* and the *Wall Street Journal* and other periodicals is pretty close to right, but sometimes it is a little off, so I appreciate the opportunity to come and say it myself and if you will then let me get out before the death of the executive branch, I would appreciate that as well.

I welcome this opportunity to talk with people of like vision and purpose. I couldn't agree more strongly with the Maritime Law Association's stated objectives: "to advance reform of Maritime Law of the United States . . . to facilitate justice in its administration (and) . . . to bring about greater harmony in Shipping Laws, regulations and practices of different nations."

Those are goals the Administration also shares with you. I would like to review our progress to date, explore ways we can work together and discuss the challenges ahead if we are to achieve a strong and healthy maritime economy.

I have in mind four subjects: The U. S. posture as the U.N. Liner Code is being implemented, the significance of the Shipping Act of 1984, a number of regulatory changes being made by the Department of Transportation, and the oil pollution liability and compensation initiative Secretary Dole announced last Monday.

Before addressing those subjects, let me congratulate you on your outstanding job in advocating uniformity and updating of basic maritime law. You were among the earliest and strongest advocates of recodification of many Coast Guard statutes in Title 46. This was accomplished last August when President Reagan signed into law a bill culminating more than fifty years of effort to make these laws more understandable. Two hundred years of piecemeal legislation, usually enacted in response to disaster and described by the Supreme Court as a "maze of regulation," was molded into one coherent set of laws organized under functional categories.

With completion of this step, much of the maritime recodification effort has been accomplished, and work on the other portions is under way. But even more pressing issues compete for our attention today. One of those is the U.S. position as the U.N. Code of Conduct for Liner Conferences is being implemented by its signatory nations.

As I'm sure you know, the Code became effective last Fall. It

permits bilateral trading partners to specify the shares of their mutual conference trade that will be carried by their respective national-flag ships as well as what–if anything–is allocated to carriage by ships of third countries. The Code permits those national shipping lines of bilateral trading partners that are conference members to share equally in the traffic they carry in the conference trade. If third-country shipping lines participate in the conference, the Code provides them a right to acquire a "significant" share of the trade.

The United States has always opposed the legitimizing of cargo-sharing arrangements in historically competitive trades. We consider it unwarranted government interference in the international marketplace. In the long run, competition increases employment in the U.S. by enhancing the saleability of U.S. products in overseas markets. It also encourages new investment in U.S.-flag shipping. We did not sign the Code when it was adopted in 1974, nor do we intend to ratify it now.

We tried, unfortunately without success, to dissuade our European community trading partners from ratifying this agreement, which ordinarily reserves no more than twenty percent of the Conference trade for third-flag carriers. Instead, as you know, they decided to ratify the Code with a reservation package that allocates forty percent to participating Less Developed Countries (LDCs), and the remaining sixty percent for their closed conference system.

So, we have now turned our attention to safeguarding U.S.-flag shipping interests in a "Codist" world. We want to make sure that the Code does not eliminate an increasingly competitive U.S. merchant marine from the cross-trades between Europe and Japan and the LDCs. We have approached our European and Japanese trading partners who belong to the Consultative Shipping Group, seeking to clarify mutual obligations and guarantee as much competition as possible in the world's liner shipping industry, Code or no Code. We have had several sessions, and we plan to meet again in Washington during the week of May 14. We don't know if either side can or will make the kinds of concessions and assurances necessary for a formal agreement. However, be assured that the interests of both the U.S.-flag liner industry and the U.S. shipper community will be vigorously advanced at this meeting, as was true at previous sessions.

A U.S. delegation went to Japan last month to attempt to influence the Japanese ratification of the Code. We would like to see the Japanese issue a strong reservation guaranteeing access of inde-

pendent carriers to trades in which both bilateral partners are Code signatories. The ratification instrument has not yet been submitted to the Japanese Diet.

But what, you may ask, of bilateral agreements?

In recent months, we have been approached by several developing countries, some requesting agreements establishing some form of cargo-sharing. Perhaps our own decision not to sign the Code has encouraged some of our LDC trading partners to consider the bilateral route as an alternative. We have strongly resisted any unilateral imposition of cargo-sharing in our trades, and have not negotiated any new bilaterals with developing countries since the Code went into effect.

The Philippines presents a case in which a developing country has attempted to impose cargo-sharing on our carriers unilaterally. We are attempting to resolve our differences diplomatically; meanwhile the Federal Maritime Commission has proposed a suspension of the tariffs of Philippine-flag carriers in retaliation for the Philippine Government's cargo-sharing scheme. We will be filing our comments before the FMC next Wednesday.

In contrast, our discussions with Malaysia seem to be proceeding from a position of fundamental agreement on the importance of keeping that portion of liner traffic not carried by carrier conferences open to competitive access by independent carriers. Malaysia has expressed no desire for a cargo-sharing arrangement with us. We have reached agreement on a number of articles in a proposed bilateral agreement and anticipate further discussions on the remainder of the text.

Again, it's a formidable challenge. Our own approach differs markedly from that of the LDCs. Any bilateral arrangements we might ultimately reach would be designed to place minimum constraints on trade and preserve maximum marketplace competition. They would also include both free access without governmentally imposed barriers for national flag carriers, and a significant role for cross traders. Our objective is to limit the amount of trade that is arbitrarily or governmentally reserved to the flag carriers, while providing equal access to reserved cargo. Natually, our resistance to bilateral pressure will be tempered by realism and the need to protect our carriers' interests as well as our broader shipping and general trading interests. In this connection, Section 13(b)(5)) of the Shipping Act of 1984 offers us additional tools to protect our carriers in their foreign-to-foreign cross trades.

A second field of challenge and change is regulatory reform of the international ocean liner shipping industry. The Shipping Act of 1984 is the most important maritime legislation in many years. This landmark legislation was a long time in the making. The President's leadership and a willingness in the industry and Congress to seek consensus allowed us to unite behind the enactment of a new regulatory framework. Because of the attention given the bill by your organization, I won't review the substance of the legislation—except to note several changes which, I hope you agree, are particularly significant to those who will be working with the law.

Those changes establish the predominance of the new Shipping Act in regulating ocean and intermodal shipping, ending an era of duplicative regulation under the Shipping Act of 1916 and the antitrust laws. The intent of the new law is to reduce regulation and inspire more marketplace competition. While the legislation continues a limited government role, to the extent that government must act, it must do so promptly.

We do have a built-in check, however, to determine whether the improved framework created by the new Shipping Act law is working to the benefit of all, as we have predicted. The Act provides that the FMC, with assistance from DOT and the Federal Trade Commission, will collect data for five years after enactment. They will then submit a report to a specially created Advisory Commission that will reexamine the regulatory policy underlying international ocean transportation. Reliable empirical data about trends and practices in the industry will be valuable in weighing the effectiveness of the new Shipping Act's reforms. Any future debate on regulatory policy will benefit from the availability of this information.

The Shipping Act will bring about increased competition and greater price and service flexibility to the benefit of shippers as well as carriers. We have already seen the dramatic service innovations and cost benefits resulting from reduced Federal oversight of air, truck and rail transportation. We are confident that similar results for the liner industry will follow from the intermodal service authority, service contract and independent action provisions contained in the Act.

The Shipping Act also makes major changes in the procedure for government review of carrier agreements. Under the old Act, the parties to an agreement could not proceed until the agreement was approved by the FMC—and there was no time limit on FMC review

of a proposed agreement. Under the new law, agreements go into effect automatically forty-five days after filing, unless they are specifically enjoined or the FMC requests additional data from the parties to the agreement.

These and other changes in the Act will vastly improve the regulatory environment at the FMC. I hope you will work with us in providing the FMC with assistance in implementing this new Act. As you know, the FMC has already announced a schedule for obtaining public comment on procedures for administering it. Many of you will participate in the large number of scheduled rulemakings in the next few months as the new shipping law takes hold. You can be sure we will follow those rulemakings very closely and cooperate with the FMC, your Association and other maritime organizations to ensure that this important piece of legislation is given a chance to work.

In addition to regulatory reform and recodification, many other rules and procedures have become just as outdated. To correct this problem, we have initiated several proposals to revise existing administrative programs intended to maintain and promote a U.S.-flag merchant marine suitable for both trade and national security. For example, the Coast Guard has revised its "Buy America" rules for the documentation of vessels for the coastwise trade, and the Maritime Administration is reviewing its Buy America regulations, to improve efficiency and reduce costs for shipyards and vessel operators.

Other proposed revisions involve an on-going review of MARAD's Operating Differential Subsidy regulations, vessel financing regulations under the Title XI loan guarantee program, and regulations applying the cargo preference laws to the subsidized carriage of bulk cargoes. These are proceeding with an appreciation for the need to obtain comments from interested industry representatives and practitioners in the field.

To put it quite frankly, our whole thrust is away from the failed policies of the past. The maritime industry provides a stark example of the result of too much government intervention. Over the years, the unintended effects of subsidy and regulation have seriously undermined the industry.

Experience has shown that an approach which relies on government intrusion into the market does not serve the long-term interests of the merchant marine. It is for this reason that we will continue to oppose legislation, as well as other initiatives, which call for greater

government intervention, such as HR 1242, the Boggs cargo reservation bill. This legislation would not only create a new layer of bureaucracy, but it would increase shipping costs, have a severe adverse effect on U. S. trade and have a negative effect on our foreign policy. And, in the long run, it would not bring about the efficiencies that our maritime industry needs in order to survive.

We are confident that our approach represents a new and healthy course for the maritime industry. We are pleased that progress is being made, but there are still many statutes and regulations in need of revision. Our mutual challenge is to move as quickly as possible to complete the job.

Certainly not a new issue, but one that continues to challenge lawyers and lawmakers alike, is the scheme for allocating liability for oil spills. You have a committee addressing the issue. Gordon Paulsen, among others, has expressed a strong interest in the subject. Last Monday, Secretary Dole, on behalf of the Reagan Administration, endorsed a proposal based in large measure on the principles embodied in HR 3278, a bill developed by the House Merchant Marine and Fisheries Commitee.

That proposal would implement two international conventions on tanker source oil pollution liability and compensation that we hope soon to revise and improve through diplomatic efforts. The approach we're advocating is supported by nearly all affected private interests, including the oil companies and the environmental community.

Let me caution that Administration support for HR 3278 is conditioned upon two fundamental changes in the bill. First, the liability limits must be raised. Although an improvement over current law, the liability limits in HR 3278 do not provide adequate compensation for anticipated removal costs. Second, the scope of damages must be narrowed. The integrity of the Trust Fund cannot be maintained if it is allowed to become a "deep pocket" for multitudinous claims. The Administration feels several other changes in the legislation are needed as well.

Presently we lack a single, clear, efficient system for establishing liability and providing compensation for clean-up costs and other damages incurred from vessel oil spills, including those from offshore and deepwater port facilities. The United States is pursuing revision of the two international conventions at the International Maritime Organization meeting in London this month. Once properly revised,

the conventions could provide the world with an effective and enforceable system for establishing liability and providing compensation for tanker-source oil pollution damage.

Further, we favor the integration of an international regime with a simplified domestic scheme. At present, we have four separate domestic programs, each with a separate liability, financial responsibility and funding system. Our goal is to merge these into a single program with one trust fund. U.S. payments to the international fund would come from the domestic fund.

How would the domestic fund be operated? Or, the big question, "who pays for what?"

Those responsible for oil spills must first pay certain amounts for damages and clean-up costs. Our proposal properly places this burden on responsible parties under a strict liability theory. In the past, some vessel owners and operators were able to avoid paying the greater part of the clean-up costs resulting from their oil spills because the liability limits were so low. Under our proposal, liability limits would be increased, measured on a per ton basis for all categories of vessels engaged in the carriage of crude oil by water. We are recommending liability limits of $1,000 per gross ton to a maximum of $75 million. Increased liability limits will encourage safer operations while insuring the adequacy of coverage for oil pollution costs and damages.

Clean-up costs exceeding the liability limits of vessel owners would be paid out of a single U.S. trust fund combining the four existing funds. Financed by a 1.3 cent/barrel fee assessed on oil imported or received at a U.S. refinery, the Trust Fund would also provide compensation for some property damages. We believe such compensation to be appropriate, but we strongly oppose paying compensation for purely economic damages from the Trust Fund.

In a related area I note with interest that attorneys from the MLA have drafted legislation to revise our seriously outdated laws on liability limitations for maritime claims. As the MARINE ELECTRIC disaster illustrated, these limits are vastly inadequate. We applaud your efforts. Legislation to simplify the system and guarantee adequate compensation is most desirable. Various bills are pending that would accomplish these goals. We have just received a copy of HR 5207 and we will be reviewing your legislation with great interest.

Another area where revision is long overdue is COGSA, the

Carriage of Goods by Sea Act. Our contacts with shippers, carriers, admiralty lawyers, and insurers reveal strong agreement that the Act should be updated to reflect today's needs. The MLA has been active in this effort. We have tried to facilitate the process of bringing the various interest groups together by drafting a compromise proposal. We urge you to participate in the efforts to reach a common solution.

This Administration will continue its efforts in working with the Congress and all segments of the maritime industry to resolve the issues still before us.

We will continue to work with the Congress to reach agreement on much-needed legislation to maintain and improve the Nation's ports.

Progress continues in the Administration's efforts to increase seafaring employment opportunities for civilian merchant marine officers and seamen aboard Navy support vessels. Over 2,000 actual and prospective seagoing jobs have been designated for private sector union crews on the ships of the Navy's Military Sealift Command. Efforts are under way at this time that would crease an additional 1,400 seagoing jobs.

Our Naval shipbuilding program, which is the largest shipbuilding program since World War II, is on track, but the economic plight of the shipbuilding industry is still one of the problems before us. We are considering a number of possible new initiatives aimed directly at the problems of our shipyards.

In addition to the regulatory actions I have mentioned, we are also considering several legislative proposals.

I will cite only one example. The Federal Maritime Commission has limited administrative exemption authority with respect to the regulation of liner rates and practices in the U.S. domestic trade. It is considering a proposal to reduce the level of regulatory oversight in the Puerto Rico/Virgin Island trade. We have filed comments before the FMC in support of this proposal. The extent of its authority to exempt rates from utility type-rate regulation, however, is subject to disagreement. Thus, DOT is considering a legislative proposal to fully deregulate the domestic trade.

We cannot address all the industry's problems in one legislative session or even in a single Administration, but we are embarked on a course that can ultimately lead to a strong, rejuvenated maritime industry. However, we must have your help. No one has all the

answers to the industry's problems, but together we can work through them. So keep your creative processes in high gear, and be sure you keep the pressure on both government and the industry to continue the search for permanent solutions rather than temporary bandages.

(Applause.)

President Paulsen: There are copies of Mr. Burnley's address available.

Mr. Burnley, we do appreciate what you have said. I think it is very vital, it shows a deeper knowledge of maritime things than many of us thought there was in Washington.

We are sorry that Mr. Burnley could not stay for the dinner this evening, but his schedule is very tight. However Mr. Garret Brown of MARAD will be here.

Let's proceed with the reports.

The Bills of Lading Committee, Mr. Villareal.

REPORT OF THE BILLS OF LADING COMMITTEE

Mr. Villareal: Mr. President, the report of the status of the Hamburg Rules, the Visby Rules, Visby Amendments, you have already heard from Mr. Volk.

I am not going to talk about the story on the Hague-Visby, Hamburg Amendments.

As to the compromise proposal that the U.S. Government has in mind, which has just been mentioned by the previous speaker, we had heard that there is such a second compromise proposal in the works, but we have not yet seen a copy of it. We are watching for it and we will report when we see it.

A few highlights of things that have come to the Committee's attention this year include the fact that the four Scandinavian countries have denounced the Hamburg Rules. You see that in the CMI newsletter for one place.

The reason for the denunciation was to give fuller effect to the Visby Amendments, which all of the Scandinavian countries have now adopted.

In January of this year President Paulsen led Messrs. Moore, Donovan and myself into a close quarters situation with a number

of the staff of the House Committee on Merchant Marine and Fisheries. To make a long story short, we presented draft legislation designed to modify the U.S. Carriage of Goods by Sea Act in such a way as to implement the provisions of the Visby Amendments.

The Committee staff members with whom we actually met seemed receptive and friendly and took the papers. Shortly thereafter we gave them a section-by-section analysis at their request and since then, that is since late January, they have been considering it and we have not heard anything of any conclusions they may have reached.

Because of the impending new compromise proposal, or whatever, the Bills of Lading Committee has concluded that it ought to undertake the preparation of a full written explanation of the background, foreground and sidegrounds of The Hague-Visby-Hamburg triad which has been in the germinating stage at least since 1968.

The Committee proposes to do that and get the background paper out to all of the membership as soon as possible, and certainly before the next meeting at which the Association may again be requested to consider a resolution in this connection.

Six nations have ratified the SDR Amendments to the Visby Amendments. Anybody who needs to know details should look for them in the CMI news.

We have followed from afar the doings of the Stevedoring and Terminal Operations Committee as relate to better Himalaya clauses, or other Himalaya clauses. For this meeting it will suffice to say the decision of the Second Circuit Court of Appeals in the *Colgate-Palmolive/Global Terminal* case certainly amounts to a wind shift as far as the utility of Himalaya clauses to protect stevedores are concerned. Probably you will hear more about that from Boyd Reeves or somebody from his Committee in due course.

Two other things. We collaborated on a brief *amicus* in connection with the *American Argosy* case urging reversal and about two weeks ago the Second Circuit reversed the Southern District in this case.

We are watching the subject of sea waybills, which is a new sort of bill of lading that is being urged more in Europe than here.

In a nutshell, the traditional bill of lading which told how many bags of whatever was loaded is not as useful as it used to be because of containerization. And because of the high speed of ships and the slow speed of banks in getting the documents from the loading port

to the discharge port by the time the ship gets there. The sea waybills and some electronic transfer of information and possibly central registration of title to goods, as is now reflected in the bills of lading, are measures under consideration to cure the problems experienced in using traditional bills of lading.

We are watching and will keep you up to date on those subjects as the opportunity offers.

That concludes the highlights of the Bills of Lading Committee's Report.

FORMAL REPORT OF THE BILLS OF LADING COMMITTEE

Since the November, 1983 meeting, your Committee has dealt with the following matters:

1. *Activities in the United States and Abroad Related To The Visby Amendments To The Hague Rules, The SDR Amendments To The Visby Amendments, and The Hamburg Rules.*

These activities included a meeting of the Organization for Economic Cooperation and Development in Paris in late October, 1983 at which, according to the Summary Record of the Maritime Transport Committee Meeting, those attending agreed that it was too early for coordination of efforts looking toward the early and harmonized ratification of the Hamburg Rules, that the subject should be raised again in one or two years, that the Secretariat should provide the Committee with a status report in 12 months and that "Delegations, in their national considerations, should give particular attention to the use of the Visby Rule as a halfway house and to the possibility and desirability of introducing a system of automatic indexation for the liability limits".

As of April, 1984, the situation is:

As to Visby – The 20 nations which have ratified/adhered, and the 4 nations which have adopted as domestic law, are listed on Exhibit A.

21.48% of the dollar value of U.S. foreign trade by sea was to or from those 24 nations in 1982. The 1983 figures are not yet available.

Note: Great Britain has advised that the Visby Rules have been extended to British Antarctic territories, Virgin Islands, Caimans, Falkland Islands and dependencies, Montserrat, Caïcos & Turks Islands with effect from January 20, 1984.

As to Hamburg – The 9 nations which have ratified/adhered are listed on Exhibit B.

2.24% of the dollar value of U.S. foreign trade by sea was to or from those 9 nations in 1982.

Note: Visby is in effect in the 24 nations mentioned above, Hamburg will not become effective until a total of 20 nations have ratified/adhered.

The SDR amendment to the Visby Rules has been ratified by Australia, Belgium, Spain, Norway, Sweden, the United Kingdom (and Bermuda, British Antarctic territories, Virgin Islands, Caimans, Falkland Islands and dependencies, Gilbraltar, Hong Kong, Isle of Man, Montserrat, Caïcos & Turks Islands (extensions) and has been adhered to by Denmark.

Denmark, Finland, Norway and Sweden have denounced the Hague Rules as of March 1, 1984, with effect as of March 1, 1985. A memorandum explaining the significance of these denunciations is attached as Exhibit C.

2. *Enactment of Hague Visby Rules and SDR Amendment as U.S. Statute Law.*

At a meeting on January 9, 1984, attended by President Paulsen, President emeritus Donovan, Chairman emeritus Moore, and the Chairman of your Committee, Staff Members of the House Committee on Merchant Marine and Fisheries received the Ocean Carrier's Cargo Liability Modernization Act, a Bill to amend the Carriage of Goods by Sea Act by incorporating the changes provided by the Visby Rules. Subsequently, we drafted a section by section analysis of the proposed Act and sent it to the Staff of the House Committee.

At last report, the Staff was considering this proposed legislation.

In anticipation of possible activity on the legislative or treaty fronts, the Commitee will prepare a full written explanation of the roots out of which the Hague, Visby, Hamburg triad has arisen, including the contentions and objectives of the several interest groups involved, and the resolutions adopted by the MLA, with a view to distributing the resulting document to the membership on the MLA as soon as possible and soliciting comments from the membership.

3. *Considered, Reacted and Reported To The President Regarding The Following Other Subjects:*

a. *Report of the Stevedoring and Terminal Operations Himalaya Subcommittee.*

The Committee has considered the report of the Himalaya Subcommittee of the Committee on Stevedoring and Terminal Operations and has referred that report to a special subcommittee to consider modifications which might be desirable and report to the Committee in due course.

b. *Colgate Palmolive Company* v. *SS DART CANADA—question of Himalaya Protection for Stevedores.*

The Committee was polled for its members' opinions as to the desirability of The Maritime Law Association of the United States seeking leave to intervene as amicus if certiorari is granted in the case of *Colgate Palmolive Company* v. *SS DART CANADA, her engines, etc. Dart Containerline, Ltd., Global Terminal & Container Services, Inc., Lansdell Protective Agency, Inc., et al.* For the facts in the case, see The MLA Report, Document No. 650, January 10, 1984, page 7815. Of those responding, 13 were in favor of attempting to intervene and 8 were opposed. The matter has been referred by the President to the Committee on Uniformity as being one which more appropriately fits under its area of responsibility than under that of this Committee. By letter of April 30th to counsel, the Clerk of the Supreme Court advised that certiorari was denied.

c. *Submitted an Amicus Brief in The AMERICAN ARGOSY (which has just been reversed).*

The Association, primarily through the efforts of Committee Members Repetto and Ryan, submitted a brief *amicus curiae* to the United States Court of Appeals for the Second Circuit on behalf of the Maritime Law Association in the case of *Insurance Company of North America* v. *SS AMERICAN ARGOSY, et al.* last October 24th. For the facts in the case, see The MLA Report, Document No. 650, January 10, 1984, page 7814.

On April 11, 1984, the Court of Appeals for the Second Circuit reversed the district court decision, noting that The Maritime Law Association of the United States, along with several others, as amici, urged reversal.

4. *Drafted Responses To Assigned Portions of CMI's Questionnaire Relating to Private Maritime Law in USA.*

Your Committee was assigned 10 questions from the questionnaire on Private International Maritime Law sent by the Chairman of the CMI International Subcommittee regarding Private International Maritime Law to President Paulsen. Draft responses were prepared by an *ad hoc* Sub-committee and have been submitted to the members of the Committee for comment and suggestions for modification, which are under consideration.

5. *Registry to Facilitate Transfer of Title to Cargo Shipped under Negotiable Bills of Lading.*

"SeaDocs" is the Chase Manhattan Bank's trademark for the Seaborne Trade Documentation System. The system, which was created by the Documentary Committee of INTERTANKO (the International Association of Independent Tanker Owners), contemplates the deposit of original bills of lading and associated documents in a central Registry. The Registry would serve as agent for the shipper and for the chain of buyers and sellers, being instructed, through secure banking channels, to endorse and negotiate within the Registry the bill of lading, delivering the bill of lading from itself

as agent for the shipper to itself as agent for the buyer and eventually surrendering the bill of lading to itself as agent for the carrier. Representatives of SeaDocs manifested an interest to the Committee to make a presentation to interested members of the Association. The presentation was made on the afternoon of May 2nd. Forty-nine members or guests attended.

6. *CMI's Draft "Uniform Rules on Sea Waybills".*

Under date of January 1984, the CMI and the International Chamber of Commerce promulgated draft uniform rules on sea waybills, having noted increased use of such waybills in maritime liner trade for the purpose of facilitating documentation. A "sea waybill" has the same effect as a straight bill of lading would have in the United States. The need for an international set of rules on sea waybills was recognized and the draft was the result. There are nine rules, plus an incorporation clause. Interested members may obtain copies from the Chairman of this Committee.

A subcommittee of the Bills of Lading Committee is undertaking an analysis and watching brief with respect to the proposed uniform rules.

7. *Bills of Lading Newsletter.*

Messrs. Repetto and Ryan have continued their informative (and entertaining) preparation of the Bills of Lading Newsletter, the latest edition having come out on January 10, 1984. The next edition will be published in the next MLA Report.

May 2, 1984

Respectfully submitted,

James J. Donovan, *Vice Chairman*
John C. Moore, *Past Chairman*
Dewey R. Villareal, Jr., *Chairman*

EXHIBIT A

VISBY AMENDMENT COUNTRIES
As of October 6, 1983

Country	*Date of Ratification (R) or Accession (A)*	*Effective Date*	*% of 1982 dollar value US Export/ Import Trade By Sea*	
Belgium	Sept. 6, 1978 (R)	Dec. 6, 1978	2.04	
Bermuda	Nov. 1, 1980 (R)	Feb. 1, 1981	0.05	
Denmark	Nov. 20, 1975 (R)	June 23, 1977	0.40	
E. Germany	Feb. 14, 1979 (A)	May 14, 1979	0.11	
Ecuador	Mar. 23, 1977 (A)	June 23, 1977	0.62	
Egypt	Jan. 31, 1983 (R)	Apr. 30, 1983	0.94	
France	Mar. 10, 1977 (A)	June 23, 1977	2.42	
Gibraltar	Sept. 22, 1977 (R)	Dec. 22, 1977	0.02	
Hong Kong	Nov. 1, 1980 (R)	Feb. 1, 1981	1.79	
Lebanon	July 19, 1975 (A)	June 23, 1977	0.09	
Netherlands	Apr. 26, 1982 (R)	July 26, 1983	3.51	
Norway	Mar. 19, 1974 (R)	June 23, 1977	0.83	
Poland	Feb. 12, 1980 (R)	May 12, 1980	0.12	
Singapore	Apr. 25, 1972 (A)	June 23, 1977	1.06	
Sri-Lanka	Oct. 21, 1981 (A)	Jan. 21, 1982	0.08	
Sweden	Dec. 9, 1974 (R)	June 23, 1977	0.98	
Switzerland	Dec. 11, 1975 (R)	June 23, 1977	0.67	
Syrian Arab Republic	Aug. 1, 1974 (A)	June 23, 1977	0.06	
Tonga	June 13, 1978 (A)	Sept. 13, 1978	0.01	
United Kingdom	Oct. 1, 1976 (R)	June 23, 1977	4.45	20.25
Argentina	Domestic Legislation		0.66	
Finland	Domestic Legislation		0.24	
Liberia	Domestic Legislation		0.07	
Yugoslavia	Domestic Legislation		0.26	1.23
		TOTAL		21.48

20+4=24

EXHIBIT B

HAMBURG COUNTRIES
As of October 6, 1983

Country	*Ratification (R) or Accession (A)*	*% of 1982 dollar value US Export/ Import Trade By Sea*
Barbados	(A)	.05
Chile	(A)	.56
Egypt	(R)	.99
Lebanon	(A)	.10
Morocco	(A)	.12
Romania	(A)	.22
Tanzania	(A)	.03
Tunisia	(A)	.10
Uganda	(A)	.07
	TOTAL	2.24

EXHIBIT C

MEMORANDUM TO: JOHN C. MOORE

FROM: C. JOHAN BOMAN

SUBJECT: THE JOINT NORDIC DENUNCIATION OF THE 1924 CONVENTION ON BILLS OF LADING–THE REASONS AND THE EFFECTS
Our file: 9999-18

DATED: MAY 1, 1984

On March 1, 1984, Denmark, Finland, Norway and Sweden advised the Belgian Ministry for Foreign Affairs of their denunciations of the 1924 Convention. The denunciations will be effective as of March 1, 1985.

Each of the countries at issue has its version of the Convention, contained in a Bill of Lading Law. Separate from these, they have Maritime Codes which, in the Chapters on Carriage of Goods, con-

tain the Convention as amended by the 1968 Protocol. Denmark, Norway and Sweden are parties to the Protocol.

The present situation is in broad outline that – were, e.g., a Swedish Court to be considered the proper forum – the application of the Convention as amended by the Protocol would be mandatory to all domestic and inter-Nordic maritime transports, to all maritime transports under B/L outbound from Protocol countries, and to all maritime transports under B/L inbound to Protocol countries from countries not party to the Convention nor to the Protocol. At the same time, Sweden has continued to be obliged under public international law to apply the original Convention to maritime transports under B/L inbound from Convention countries. Finally, in all other cases of maritime transports under B/L, the Convention as amended would apply absent an express or implied agreement to the contrary between the parties.

The creation of this dual system was reasonable in 1974, when the Protocol was effective only in the Nordic countries.

Today the situation is different, with other adjacent countries– Great Britain, The Netherlands, Belgium, France, GDR and Poland– also being parties to the Protocol. In this context, it is consistent to denounce the Convention in its unamended form, in accordance with Article 7 of the Protocol:

> As between the Parties to this Protocol, denunciation by any of them of the Convention in accordance with Article 15 thereof, shall not be construed in any as a denunciation of the Convention as amended by this Protocol.

The future situation will broadly be that Denmark, Norway and Sweden (presumably also Finland, however at present not a party to the Protocol) will apply the Convention as amended by the Protocol, as being mandatory to all domestic and inter-Nordic maritime transports, and to all inbound and outbound international maritime transports under B/L. Regarding all other maritime transports under B/L, the Convention as amended will apply absent an express or implied agreement to the contrary between the parties.

(It is to be noticed that the application of the Convention as amended, contained in the Chapter on Carriage of Goods in the Maritime Codes, also entails the application of other sections of the Chapter. These include regulations of sub-carriage, through Bs/L and acquisitions in good faith of Bs/L.).

President Paulsen: Thank you very much, Mr. Villareal.

Let us hear from the Marine Ecology Committee, Mr. Lawrence Cohen.

This is one of the subjects that Mr. Burnley referred to, now under debate in London.

Mr. Cohen: Mr. President, our Chairman, Admiral Sidney A. Wallace also is now in London attending the International Conference dealing with Civil Liability and Fund Conventions, will be submitting a formal report to be included in the minutes of this meeting.

Immediately after him, Mr. Howarth will report on hazardous substances transportation.

President Paulsen: Thank you, Mr. Cohen.

FORMAL REPORT OF THE MARINE ECOLOGY COMMITTEE

Since MLA's 1983 Fall Meeting, the two principal items on the Committee work program have been (1) consideration of HR 3278, a Bill to provide a comprehensive system of liability and compensation for oil spill damage and removal costs, and (2) preparation for the International Conference on Liability and Compensation for Damage in Connexion with the Carriage of Certain Substances by Sea, convening in London on April 30, 1984, for a period of four weeks ("the Conference"). Much of the Committee's work on these items has been conducted through its two Sub-committees.

The International Sub-committee, chaired by Mary Louise Montgomery of New York, studied issues to be considered by the Conference. The Sub-committee focused specifically on questions raised by proposed revisions to two treaties: The International Convention on Civil Liability for Oil Pollution Damage, 1969 ("CLC"), and the International Convention on the Establishment of an International Fund for Compensation of Oil Pollution Damage, 1971 ("FC"). Members of the Sub-committee participated in meetings of the National Committee for the Prevention of Marine Pollution and Working Groups formed by the National Committee. These meetings, held under auspices of the Coast Guard and the Department of State, were for the purpose of facilitating public participation in the formulation of positions to be taken by the U.S. Delegation at the Conference. The

Sub-committee provided its views on a number of key issues to the Chairman and Vice Chairman of the Committee on Marine Ecology, both of whom were to attend the conference.

The Domestic Sub-committee, chaired by William R. Dorsey III of Baltimore, reviewed HR 3278, which languages in the U.S. House of Representatives HR 3278 is the most recent in the procession of bills over the years that would establish a comprehensive oil spill liability and compensation system. In addition, HR 3278 would serve as implementing legislation for CLC and FC, upon their ratification by the U.S. The Bill was reported by the Committee on Merchant Marine and Fisheries in August 1983 and is now before the Committee on Public Works and Transportation. The Sub-committee found unrealized the expectations that the Public Works Committee would act on the Bill early in 1984 and concluded that submission of MLA comments should be delayed until renewed Congressional interest was evidenced by scheduling of hearings or other indications of political will to move the bill. Subsequently, and very recently, the Administration announced its support for a revised CLC and FC regime and, with a number of conditions, for comprehensive liability and compensation legislation.

On May 3, 1984, the Committee on Marine Ecology met with Vice Chairman Lawrence G. Cohen in the chair. After reports from the Sub-committees, the Committee considered the timing of submission of MLA comments on HR 3278. The members present concluded that, in view of recent developments, comments should be submitted at an early date without waiting for the Public Works Committee to act. Accordingly, draft comments, prepared by the Domestic Sub-committee, will be reviewed by the full Committee and, if approved, will be forwarded to the President for Executive Committee consideration.

In February 1984, the head of the U.S. Delegation to the International Conference, Rear Admiral B. F. Hollingsworth USCG, asked our President to select one representative from the Maritime Law Association to serve on the U.S. Delegation. President Paulsen designated the Chairman of the Marine Ecology Committee to serve on the delegation and to represent the MLA in the work preparatory to the Conference. The preparatory work involved a long series of meetings in Washington, some public, some interagency, with drafting, document review, coordination, *et al.*, superimposed. The cul-

mination of these activities was attendance as a U.S. delegate at the Conference, which began April 30. Also accredited to the Conference were President Paulsen as a representative of Comité Maritime International and Vice Chairman Cohen as a representative of the Oil Companies International Marine Forum. The results of the Conference will be reported to MLA members in coming months.

The future work program of the Committee includes tracking developments on HR 3278, reviewing the results of the International Conference as to CLC and FC revisions, and consideration of a seminar for general practitioners with the goal of providing an overview of marine pollution laws of the United States.

The Committee expresses great appreciation to its Executive Committee member, Robert M. Hughes, III of Norfolk, whose term of office comes to an end with the Spring meeting. Bob's practical wisdom, sense of humor, and knowledge of how the system works has helped us solve some problems and avoid others. We welcome new ExCom member Morton H. Clark of Norfolk to the fold. And we offer humble thanks for the continued presence on the Committee of James J. Higgins of New York, our venerable Immediate Past Chairman, who provides the Marine Ecology Committee with both an appreciation of the past and a sense of what is possible in the future.

SIDNEY A. WALLACE
Chairman

President Paulsen: Mr. Howarth regarding hazardous substances.

REPORT OF THE TRANSPORTATION OF HAZARDOUS SUBSTANCES COMMITTEE

Mr. Howarth: Mr. President, fellow members, this Committee has had as its main business for the past few years the consideration of the draft Convention on Liability and Compensation in Connection with the Carriage of Noxious and Hazardous Substances by Sea, known in short as the HNS Convention.

The principal drafter of the convention has been the Legal Committee of IMO, which has had several meetings and many off-the-record meetings. The CMI has contributed its comments to the

Legal Committee and the Legal Committee finally introduced a draft with many, many square brackets for presentation to the diplomatic conference of the IMO.

Most of the major issues involved were not resolved at the Legal Committee level. The question of whether or not shippers' liability should be included is up in the air. The issue of different limitations of liability available is very much up in the air. The geographical scope of the convention is up in the air.

In addition to that, there are about at least a dozen other issues as to which there are square brackets and differing propositions.

This Committee has been very fortunate in keeping in close touch with the U.S. delegation to the Diplomatic Conference through Admiral Sid Wallace and through members of the Committee in Washington, and we have participated in the formation of the position to be taken by the U.S. delegation at the conference.

Yesterday our Committee had a very useful meeting. We got Admiral Wallace on the telephone and he gave us the latest red hot report on what was happening in London.

The diplomatic conference will take up most of the month of May and it's been decided that the HNS is to be considered this week, the CLC next week and then after the CLC in the third week the HNS will be taken up again with the last week being devoted to the plenary sessions at which the final decisions will be made.

The head of the Legal Committee, our member, Dr. Frank Wiswall, has been elected Chairman of the Committee of the whole to consider the HNS and has been chairing the meetings this week.

Up until yesterday there had been a lot of discussion of the various issues, but no decisions. Today there are what are called indicative votes being taken on the major issues and by next week we will have a better idea of where this is heading.

Admiral Wallace reported on most of the issues there seemed to be about a fifty/fifty split which does not bode well for the eventual promulgation of a convention because that requires a two-thirds vote of all of the participating governments.

However, the IMO has a record of always producing a convention, so don't be surprised if one is produced, albeit in very rough form.

We have not made any recommendation to the Association as a whole since there has been really nothing to put your teeth into to recommend.

However, if and when a convention is brought forth we shall present a detailed report and our recommendations.

Thank you very much.

President Paulsen: Thank you, Mr. Howarth.

Continuing in the same vein as the talk that we had from Mr. Burnley, our Committee on Economic Regulation of Ocean Common Carriers, Mr. Turk.

REPORT OF THE ECONOMIC REGULATION OF OCEAN COMMON CARRIERS COMMITTEE

Mr. Turk: Mr. President, Officers and fellow members, a good deal of what I was going to say about the enactment of the 1984 Act has been said by the gentleman from the Department of Transportation. I would just mention to you that in Dave Owen's latest report to the MLA there is a summary of that Bill.

A lot, as was indicated, is going to depend on what the FMC does in its rule making to implement this Bill.

I was glad to hear that the Department of Transportation will be watching that because we have heard some, a little scary, reports about what the FMC intends, some of which could undo a lot of the good that we hoped was going to come of the bill.

At least there is no more tunnel. We see the light and that subject is completed.

On the matter of the UNCTAD Code, we intended to make a study of conflicts between U.S. domestic regulatory law and the Code, assuming (1) that the U.S. ratifies and (2) that it does not. Also involved is what our trading partners do by way of ratifying the Code with or without reservations. That has to be brought back somewhat to the starting point since we have a new regulatory program and we intend to make that study in relation to the new Shipping Act, and if any recommendations seem worth making, we will propose them to the Association.

One of our Committee members had suggested that we embark on a program of making a very detailed analysis of the legislative history of this new Act, somewhat similar to the one that was done by Don Webster in 1961 for the 1961 amendments to the Shipping Act. It's a rather immense task. I am afraid it would be a costly one and there hasn't been too much enthusiasm. But I was authorized

to contact the House Merchant Marine staff to find out at least whether the staff has already intended to embark on that and save us the trouble.

Thank you for your attention.

President Paulsen: Thank you, Mr. Turk.

The International Law of the Sea, Mr. Allbritton.

REPORT OF THE INTERNATIONAL LAW OF THE SEA COMMITTEE

Mr. Allbritton: Mr. President, ladies and gentlemen, Jack Allbritton from Houston.

The Committee of International Law of the Sea met Wednesday with fifteen people present. Last Fall our Committee was assigned the task of examining the Law of the Sea Convention in much more detail than this Association had done in the past. And, as you know, the United States has refused to sign it and adopt it.

A Sub-committee chaired by Dick Brown of New York was appointed to identify the issues with which it would seem appropriate for our Committee and for this Association to deal.

The Sub-committee has been examining the historical background for the convention, the reasons why the United States has not adopted it or signed it, the ramifications of nonparticipation by the United States in the convention, and into domestic legislation that is being proposed as a result of the United States' nonparticipation.

They have been working very diligently, Mr. President. They met several times this year; they are still working. We expect to have a report from that Sub-committee soon, at which point the full Committee will consider their recommendations and then make recommendations to the Association insofar as what our activities should be with regard to that convention.

In the meantime, our Committee is also continuing to monitor developments of a legal nature in the offshore oil and gas industry. And we will report those of significant interest in our newsletter which we inaugurated last Fall, and which we will be putting out on an annual basis.

Thank you.

President Paulsen: Thank you, Mr. Allbritton.

It sounds like you are making the same kind of progress that the Conference of the Law of the Sea did.

Was that fifteen years?

Mr. Allbritton: Maybe a little more.

President Paulsen: Thank you, Mr. Allbritton.

Let's hear from the Merchant Marine Committee, Mr. Kharasch.

REPORT OF THE MERCHANT MARINE PROGRAMS COMMITTEE

Mr. Kharasch: Your Committee is pleased that its batting average for legislative predictions has been 1000, or at least .999. In our last report, we predicted that the Congress would pass the sweeping regulatory reform legislation then called the Shipping Act of 1983, and now indeed passed as the Shipping Act of 1984. Also, we predicted that the new administration maritime promotional program would neither be devised nor would legislation pass, and this negative prediction was also correct.

1. The Shipping Act of 1984 changes much of the maritime regulatory structure in effect since the Shipping Act, 1916. The sensuous substance of the new law is the subject of a detailed report by your Committee on Economic Regulation of Ocean Common Carriers.

2. On the promotional side, there are four programs of note. First, the operating differential subsidy (ODS) program: This program continues to be funded, and the figures are interesting. Between 1969 and 1985, according to recent Sea-Land testimony:

   a) The number of subsidized lines dropped from 14 to 7; and

   b) The number of ODS liner vessels dropped from 293 to 124; *but*

   c) The ODS accrual rose from $230 million to $347 million or from $788,000 a vessel to $2,800,000 a vessel.

   Second, the Title XI financing guarantee program is experiencing some heavy calls on reserves as a result of defaults.

Third, the construction differential subsidy (CDS) program has firmly reached what we should now learn to call "zero budgeting".

That is, zero CDS money is being appropriated for subsidized construction in U.S. yards.

This zero budget for CDS has aroused much concern, and several proposals are now before the Congress to provide funds, with several new programs for block building or vessel trade-ins proposed. The administration, however, is flatly opposed. According to Mr. Russel Stryker, Assistant Maritime Administrator, no more CDS is proposed because "such programs have failed to achieve their stated objectives over the past 30 years"—a novel reason in Washington for shutting down a government program. Mr. Stryker testified, however, that there is "ongoing" review of U.S. commercial shipbuilding, and a new program is definitely coming: "we are working vigorously at it." No doubt to this end, the life of the public Maritime Advisory Committee to MARAD—formed in 1982—has been extended for another year.

Viewing these non-developments, your Committee risks another courageous prediction: That U.S. shipbuilding will continue to be the subject of Advisory Committee consideration.

Fourth, proposals to extend the cargo preference program have not advanced. Sharp skirmishes continue over attempts to circumvent the program by "blended" credits and the like. These days, with rates under pressure, cargo is vital. Again, though, there is no overall policy being applied.

Your Committee is deeply concerned with the decline of the U.S. merchant marine, and believes all MLA members should be concerned at the lack of any cogent, realistic national policy. We hope the MLA will express its concern, urge a broad effort to reach a policy, and offer to cooperate in developing one. Surely the time for patience has run out.

3. Our last item to report is that your Committee has been asked by the Department of Commerce Office of Export Trading Company Affairs to assist in an examination of the relationship of the terms of the Export Trading Company Act of 1982 to the provisions of the the Shipping Act of 1984. Our first meeting with Commerce will be May 7 in Washington. MLA members interested in the

subject are urged to let us have as soon as possible any comments or additions to our list of potential conflicts in the provisions of the two new laws.

President Paulsen: I thank you.

I suggest you get together with Mr. Garrett Brown, there is an empty seat back there, and buttonhole him.

Okay, let's hear from the Marine Insurance, Mr. Winston.

REPORT OF THE MARINE INSURANCE, GENERAL AVERAGE AND SALVAGE COMMITTEE

Mr. Winston: Mr. President and fellow members. At the meeting of the Committee held yesterday with thirty-four persons in attendance, reports were heard from the Chairmen of the five Sub-committees.

I am pleased to report all are making substantial progress toward achievement of their objectives.

Ed Brennan, Chairman of the Sub-Committee on Cargo Insurance, is completing preparation of a bibliography of reference material on the London statute cargo clauses, which will ultimately be made available to the membership.

Charles Achuff, Chairman of the Subcommittee on General Average, which met in Philadelphia this last Monday, is carrying forward several projects which include (1) a report on the Winson case, (2) a study of general average with reference to tugs and barges, an initial report with respect to which was given by Alex Parks at the Committee meeting, (3) the difference in aproach as to what constitutes a General Average Act, as reflected by the *Eagle Leasing* case in the Second Circuit, and the *Orient Mid-East Lines* case in the Fifth Circuit, and (4) continuing cooperation with the Association of Average Adjusters, a member of the Executive Committee of which was in attendance at the meeting of the Sub-committee of Philadelphia.

Sheldon Vogel, chairman of the Sub-committee on Hull Insurance, is making substantial progress on the projects: (1) a comparison of the London Institute Hull Clauses and the current American form, and (2) an analysis of the London War Clauses. That Sub-committee expects to be in a position to make reports on

both matters to the full Committee prior to the Fall 1984 meeting of the Committee.

George Waddell, Chairman of the P&I Sub-committee, which met in New York last Wednesday morning, is nearing completion of a substantial project: Updating and expanding the annotations to the P&I policy. That Sub-committee is also ready to prepare a report on the potential effects on P&I insurance of the draft bill of the staff of the Merchant Marine & Fisheries on which you have just taken action if such a report is requested by those Committees of the Association directly concerned with this proposed legislation.

Lastly, K. H. Mao, Chairman of the Sub-committee on Salvage, which met this week in New York, is moving forward with a recommended solution to the problem posed by salvage of public vessels and public cargoes and has a first draft of a report which will be considered by the Sub-committee. Secondly, this Sub-committee will carry forward plans to participate with the Association of Average Adjusters in a seminar in 1985 dealing with practical as well as legal aspects of a marine casualty involving salvage.

President Paulsen: Thank you very much, Mr. Winston.

Several other educational oportunities as well, one is a session on next Thursday at the Hyatt Regency, New Orleans, run by the Federal Bar Association and Dewey Villareal will be speaking there concerning the revision of the Carriage of Goods by Sea Act, liability system, a subject which has involved us a great deal. And I should also mention the Tulane seminar at Copenhagen in June. Sovereign Immunity, Mr. Dorsey.

REPORT OF THE REVISION OF FOREIGN SOVEREIGN IMMUNITIES ACT COMMITTEE

Mr. Dorsey: My name is William Dorsey, I am from Baltimore. This is going to be a short status report on the proposed amendments to the Foreign Sovereign Immunities Act.

The American Bar Association Committee has put forth various proposals for amendments to the Foreign Sovereign Immunities Act and those proposals have been approved by the ABA section on International Law and Justice.

The substance of the report of the ABA Committee has also been approved in substance by various other sections of the ABA, i.e., the

Torts and Insurance Practice section, and the Section on Litigation and the Section on Banking and Commerce.

I expect that the proposed amendments will be brought before the House of Delegates of the ABA this Summer and I am optimistic that they will be approved.

Just a brief reminder that the proposals, for amendment of the FSIA that were put forth on behalf of the MLA by your MLA Committee have survived intact and are included in the pacakage of Amendments to the FSIA.

A brief review of those very quickly, there were three.

One was to change the effect of wrongful arrest from loss of claim to liability to damages for detention.

The second was an amendment to Section 1605B to make it absolutely clear that that section is a substitute in rem action, having in mind particularly the right to interlocutory appeals.

The third amendment that we put forward was an amendment to provide that foreclosures of preferred ship mortgages could be accomplished under the Ship Mortgage Act of 1910.

As I say, I expect that the ABA will approve these amendments, I hope this Summer, and the real work of getting Congress to adopt the amendments will follow.

That is all I have, Mr. President.

President Paulsen: Thank you very much, Mr. Dorsey.

Marine Financing, Mr. Harper.

REPORT OF THE MARINE FINANCING COMMITTEE

Mr. Harper: Thank you, Mr. President.

I would like to report to you today on the status of the work of the CMI Subcommittee on Maritime Liens and Mortgages. Our MLA Committee has responded to two lengthy CMI questionnaires concerning U. S. laws on the subject and I have attended two CMI Sub-committees meetings as a representative of our Association. There will be a final CMI Sub-committee meeting in London in September, following which a report and recommendations will be proposed. Maritime liens and mortgages will be on the agenda of the next CMI conference to be held in Lisbon in May 1985.

For the balance of this report I am substantially indebted to the

summary of the Sub-committee's work recently received from Francesco Berlingieri, who is its Chairman.

It should be mentioned by way of general background that following the decision of IMO and UNCTAD to place on their work program the revision of the 1926 and of the 1967 Brussels Conventions on Maritime Liens and Mortgages, and of the 1952 Brussels Convention on Arrest of Ships, the CMI decided to offer its cooperation to both such Intergovernmental Organizations. Two International Sub-committees were appointed by the CMI Assembly under the chairmanship, respectively, of the President of the CMI and of Prof. Allan Philip.

The study of the revision of the two Conventions on Maritime Liens and Mortgages started with an investigation of the reasons why the 1926 Convention had not been ratified by common law countries, and the 1967 Convention had not even come into force. It appears that the 1926 Convention was considered unsatisfactory by the National Associations of the countries which had not ratified it, and obsolete by many Associations of the countries which had ratified it. It also appeared that the 1967 Convention was considered satisfactory, save minor changes, by a great majority of the National Associations.

It was therefore decided by the CMI Subcommittee to take the 1967 Convention as a basis for the further work and to thoroughly investigate which changes were desirable. In view of the strict links existing between the matters dealt with in the Convention on Maritime Liens and Mortgages and in that on Arrest of Ships, it was also felt desirable to investigate whether it would have been preferable to merge the two Conventions and, if so, to provide for the possible ratification or acceptance of one or more distinct sections of the global new Convention, such as the section on mortgages, that on maritime liens or that on arrest of ships.

In order to seek the opinion of the National Associations on these problems a Second Questionnaire was issued. Replies were received from 20 National Associations.

Following the second meeting of the Subcommittee held in Brussels on the 4th and 5th of April, 1984, a joint meeting with the Sub-committee on Arrest of Ships was held, when matters of common interest were discussed—these matters being whether there should be one or two conventions and, in the negative, whether a better coordination should be insured between them. In the joint meeting

it was almost unanimously decided that it was preferable to keep the two conventions separate, but that they should be better coordinated.

The Subcommittee on Maritime Liens and Mortgages discussed the nature and extent of a revision of the 1967 Convention. From the debates it emerged that, save for the creation of a system of registration of maritime liens suggested by France and supported by Greece and India but opposed by all other Associations, the possible changes were of a relatively minor importance, and not such as to alter the physiognomy of the 1967 Convention.

We will be requesting time at the MLA meeting in Puerto Rico in the Fall to review the terms of the 1967 Convention, the work of the Sub-committee and changes recommended by it and, lastly, comparisons with current law in the United States.

Finally, I would like to bring to your attention the Fourth Annual Symposium on Maritime Finance to be held in these quarters on Thursday, May 31, 1984. The program, for which there is a relatively nominal charge, will focus on current problems in vessel financing. The program has the impeccable sponsorship of the Admiralty Committee of the Assocaition of the Bar of the City of New York, the Maritime Finance Sub-committee of the American Bar Association and the MLA Committee on Marine Financing. I hope to see you there.

Thank you.

President Paulsen: Thank you, Mr. Harper. Maritime Arbitration, Mr. Poles.

REPORT OF THE MARITIME ARBITRATION COMMITTEE

Mr. Poles: Our committee is rather large, it consists of thirty-three members; seventeen being from New York, sixteen being from outside New York.

We have concluded that since our clients are the primary consumers of the product of arbitration, we, as lawyers, and the Arbitration Committee should take a more activist role in promoting the quality of arbitration. We looked at arbitration in five luncheon meetings that we had in the last twelve months. We concluded that we must focus on quality, predictability, speed and cost.

We found that we have problems in each one of these areas. We proposed to start working on a solution of these problems through,

number one, the Liaison Sub-committee, which was organized several years ago.

Bond Smith is the Chairman of that Sub-committee and he has had several meetings with the Society of Maritime Arbitrators and he has reported that his meetings are going well.

We also have a Sub-committee on the proposal of the change of the phrase "commercial men" appearing in the arbitration clause of charter parties.

We have a Sub-committee on the ninety-day rule, a Sub-committee on discovery, a Sub-committee on arbitrators' fees, which is a very, very sensitive committee. We have also decided in our last meeting, which was last Tuesday, to invite at each of our meetings a member of the Society of Maritime Arbitrators to observe and contribute to our meetings. In order for arbitration to be a real forum, a continuing forum and developing forum, we have a long-term job of substantive work and, unfortunately, a lot of diplomatic work to do.

When we receive our written Sub-committee reports we will compile those reports and make appropriate recommendations to the MLA.

Thank you.

President Paulsen: Thank you very much, Mr. Poles.

Continuing Legal Education, Mr. McCreary.

While he is coming up, you heard earlier that we have a group of 156 new associate members. It was predicted when we put in the proctoring program that there would be a decrease in the number of people applying for the MLA. Instead, there is an increase.

Mr. McCreary.

REPORT OF THE CONTINUING LEGAL EDUCATION COMMITTEE

Mr. McCreary: Mr. President, ladies and gentlemen, I am Robert McCreary, Jr. from Cleveland, Ohio.

Our Committee met on Wednesday. I will try to be brief. Within the next six months or one year there will be sixty or even approaching one-hundred associates who are going to declare their rights to become proctors of this organization. They will be armed, we hope, with their certificates showing attendance at seminars.

Let me remind those that are here they should also have evidence

of their admission to the Federal District Court. It might also be well to look at the bylaws before you send in your submission so as to be sure you have covered all requirements.

Between now and the end of October when the Maritime Law Association-sponsored seminars commence in San Juan, there are nine or ten other seminars which have been approved by our Committee for awarding points toward proctorship. At least there are nine in the western hemisphere.

Let me say, we owe a debt of gratitude to Dick Binzley of Cleveland who has attended to the certification of various seminar programs to be sure they are up to snuff and certainly all of them are and some far surpass that word.

Finally, we discussed speakers and topics for the November San Juan seminars. We welcome suggestions, either directly to me or to your committee chairman.

Thank you, Mr. President.

President Paulsen: Thank you, Mr. McCreary.

ABA Relations, Mr. Lord.

While he is coming up, I will give the report for the dinner. There will be over 1,500 people at the dinner tonight and it should be a very, very fine affair.

Mr. Lord.

REPORT OF AMERICAN BAR ASSOCIATION RELATIONS COMMITTEE

Mr. Lord: Mr. President, fellow members, at our Committee meeting yesterday it was suggested that our membership be reminded that the ABA is a resource through its resolution procedures in the House of Delegates to support any action that this Association wishes to take.

Also, our Committee wishes to call to the attention of our membership that it is quite conceivable to obtain an ABA brief *amicus* in the event we should desire support of the MLA position before the courts. The only reservation is that in all likelihood the ABA will not file a brief *amicus* in the Supreme Court except where a petition for a writ of certiorari has been granted.

At a well attended meeting the Committee approved the report

of the Association's delegate to the House of Delegates of the American Bar Association.

As a standard item on its agenda, the Committee addressed the question whether there are positions of our Association which might be aided by the support of a resolution adopted by the House of Delegates, such as our position in regard to the Visby Amendments to the Hague Rules.

The Committee wishes to call to the attention of our members that the possibility of obtaining briefs *amicus* from the ABA on subjects of concern to our Association should not be discounted, — with the caveat that the ABA probably will not file a brief amicus in the Supreme Court until after certiorari has been granted.

It is my great pleasure once again to report to you as the Association's delegate to the ABA House of Delegates at its Mid-Winter Meeting and on this occasion also on a meeting of the National Conference of Bar Presidents, both at Las Vegas.

There has for some time been a question whether the President of our Association, which like the ABA itself is national in character, is entitled to membership in the National Conference of Bar Presidents. The members of that Conference for the most part consists of presidents and past presidents of state and local bar associations.

Our President Mr. Paulsen and I met some months ago with a staff representative of the ABA. In order to gain increased recognition of our Association as an affiliate of ABA, we were encouraged to inquire whether our President is qualified for membership in the Conference, which resulted in the advice that he could qualify. Accordingly, Mr. Paulsen applied to the Conference for membership and received a letter admitting me and not him to membership. This malaprop was straightened out so that Mr. Paulsen is currently in good standing as a member of the National Conference of Bar Presidents, which at the same time automatically admits into membership all past and future presidents of our Association, subject only to identification and payment of dues.

In order to initiate an MLA presence within the Conference, at the request of Mr. Paulsen, I attended a luncheon meeting of the Conference at Las Vegas on Saturday, February 11th, and also made brief appearances at seminars, called "break-out meetings," on subjects of no particular interest to maritime lawyers. The luncheon was addressed by Secretary of Labor Donovan who, among other things, described Washington as an area of seventeen square miles sur-

rounded by reality, that they are about to construct a wall around it, and build a moat on the inside.

At the meeting of the House there was extensive debate on a number of issues of such remote interest, to maritime lawyers, as the extent of use of hearsay testimony before grand juries and authorization of payment by law firms to law students under what is termed "externship" programs.

A subject which I thought occupied a disproportionate amount of the time of the House was a debate on the question whether the House should adopt a resolution sponsored by the Section on Individual Rights and Responsibilities favoring repeal of any statutes preventing use of marijuana as a prescription drug for treatment of such problems as the after effects of chemotherapy, all under supervision of an M.D. A large number of states have approved such use. The President-Elect of the Association, our fellow member John Sheppard of St. Louis, voted to defer action on the resolution pending an early anticipated report of the American Medical Association as to whether such use of marijuana should be sanctioned for medical purposes. Being uninstructed, I voted in favor of the motion to defer on the ground that such an issue could better be handled by the AMA. The resolution was passed by a comfortable margin.

A Special ABA Commission on Association Governance has been reviewing various aspects of the constituency of the House of Delegates. It made its report last Fall to the Board of Governors, which resulted in a late filed report of the House of Delegates Membership Committee. The Membership Committee report, among other things, recommended that consideration be given to the status in the House of Assembly delegates and also delegates of affiliated organizations. Although late filed, the report was sufficiently timely for me to receive instructions from our President to oppose on the floor of the House any action that would again bring into question our status as an affiliated organization entitled to grandfather rights and full voting representation in the House of Delegates. Before the Membership Committee reported to the House I had occasion to speak to its Chairman, Judge Norman Ramsey, who assured me that the Committee had no intention of affecting adversely the delegate status of our Association and that his former partner, David Owen, had so thoroughly indoctrinated him as to the wisdom and necessity of ABA's affiliation with MLA that we need not feel that our affiliated status is in any jeopardy. Following Judge Ramsey's report, I ad-

dressed the House briefly to confirm on the record that the Membership Committee had promised both substantial advance notice and full opportunity for hearing on any subject before the Committee which might affect our delegate status. At the moment we would appear not to have any cause for immediate concern on the issue of voting representation in the House of Delegates. However, the Membership Committee is considering recommending to the House that the qualifying 50% ABA membership be increased to 75%. While we would hope to avoid scrutiny of the extent of our ABA membership on the basis of grandfather status, all are urged to join ABA who have not done so.

The Treasurer of the ABA in his report to the House apologized for its length and stated that he was conscious that many things might have been left unsaid, as in the case of the man who asked an acquaintance whether he had ever told him about his grandchildren. The reply was, "No you haven't and I want you to know how much I appreciate it."

(Laughter).

So with apologies for the length of this report, I wish again to express my deep appreciation for the honor once again of representing this Association as its delegate to the House of Delegates.

President Paulsen: Thank you, Mr. Lord.

1984 meeting, Mr. Nixon.

REPORT OF PLANNING & ARRANGEMENTS COMMITTEE FOR THE 1984 FALL MEETING

Mr. Nixon: Thank you, Mr. President.

Perhaps at too many meetings you have had me up here extolling the beauties of the beaches of Puerto Rico and the delights of Dorado Beach as a convention site. Today we get down to the nitty-gritty.

The nitty-gritty is contained in this little folder which was mailed out to you all about two weeks ago. Unfortunately, the spirit of thrift that pervades the administration of our Association means that it is coming fourth class mail. It is like an admiralty lawyer putting his card in a bottle of water and throwing it over the seawall in the hope that it will eventually touch land.

Extra copies are out there in the hall.

In words of one syllable, the registration fee is $125. However, that is per head. You and your accompanying guest are each $125; a couple is $250. That $250 should be sent with a blue registration form to Don Kennedy in New York.

The hotel wants a $150 deposit per room. They don't care how many people you squeeze into the room. This $150 goes into the white envelope and should be sent directly to the hotel.

The one little cloud in Puerto Rico set-up is that it is twenty-five miles from the San Juan International Airport to Dorado Beach where the hotel is. We want to know when you are arriving so that we can make sure transportation will be available.

The transportation cost by the hotel "limousine," (which is really kind of a bus) is included in the package price if you arrive at normal hours, which I think in Puerto Rico is something like 8:00 in the morning to 6:00 at night. If you are going to arrive outside of tha period, you will have to make other arrangements.

I did a test run. I called up the Delta number given on the back of the brochure. It took me fifteen minutes to find out that I didn't want to go via Delta at thirty percent off instead of a nonstop flight via American Airlines at roughly the same fare. I suggest that, in order to avoid problems, you get your travel agent or secretary to find out what is the best and cheapest way to fly to Puerto Rico and then have her call Delta and let them make the arrangements. However, you will have to pick up tickets from the chosen airline and pay it directly.

I am sorry to say there are a couple of typos in the brochure. The package plan rates are for five nights and six days, not vice versa. There are also mistakes in the pricing; the 5 night package rate for a double room is $183.28 per night, not $177.88 as shown in the brochure.

Apart from that, I don't think there is anything very much more to say. If you should want to come down the weekend before the meeting begins officially on Monday, October 29th, please book early because spaces are filling up.

Finally, if you have received requests from nonmembers to attend this meeting, please remember that these are handled by the invitation of the President, whoever he may be. Just write him a note and give the full particulars.

We hope and expect this is going to be one of the best attended

and most useful of all our conventions and, with your help, we can make it so.

If you have questions, any member of the Committee listed in the front of the brochure will be glad to help.

Now with the permission of the President, I will change hats.

As editor of the AMC, I want to point out the fact that we are now about to distribute to the subscribers the four-volume, 1983 bound edition. This is something of a record since we usually don't get the annual volume out until about eight or nine months after the calendar year has passed.

When you get your copy, look in Volume 1. You will find a very handsome portrait of a gentleman who has been associate editor of the American Maritime Cases for thirty years. Moreover, he has been president of this organization, a member of it for forty-six years, and probably one of the leading contributors to maritime law in this country.

I am going to ask Professor Nick Healy to come up and receive the first volume with his picture.

(Applause.)

Mr. Healy: Thank you very much, indeed. This was a very unexpected surprise, but it is a very nice one and I certainly have enjoyed my thirty years with AMC.

I must confess, I haven't been a very diligent worker.

President Paulsen: That, Mr. Healy, is one of the few statements you have made that I don't believe. You are a very diligent worker.

I failed earlier to notice the presence of David Robles of Panama before. Welcome, Dave.

Are there any other foreign guests that I did not mention?

The Nominating Committee, Mr. Sims.

REPORT OF NOMINATING COMMITTEE

Mr. Sims: Members and guests, it is my privilege to give the report of the Nominating Committee. The President, in his wisdom, appointed a group of extremely active, experienced members of the Association and they met at some length yesterday.

They arrived at what I think you will agree is a fine slate of candidates for election.

However, the Secretary advises me that he does not intend to insert any of these candidates' names in the minutes as having been elected if today they are not wearing an MLA tie or before leaving the room deposit sufficient funds with him to cover the cost.

I think I see one or two that may have to come up with ten bucks.

(Laughter.)

Fortunately, our recommendations were unanimous and I should like to name as the Committee's nominations for officers and members of the Executive Committee the following:

For President, Graydon S. Staring of San Francisco. For First Vice President, Francis J. O'Brien of New York.

For Second Vice President, Richard W. Palmer of Philadelphia.

As Treasurer, Marshal P. Keating of New York.

As Secretary, Kenneth H. Volk of New York.

As Membership Secretary, Richard E. Repetto of New York.

There are four members of the Executive Committee who were to be nominated. And the gentlemen whose names are nominated are:

Morton H. Clark of Norfolk, Virginia; Michael Marks Cohen of New York; George W. Healy III of New Orleans; Mark O. Kasanin of San Francisco.

Mr. President, the Nominating Committee submits these to the membership.

A Voice: I move that the nominations be closed.

President Paulsen: Is there a second to that motion?

A Voice: Seconded.

President Paulsen: Is there any discussion?

(No response.)

President Paulsen: All those in favor say aye.

(A chorus of ayes.)

President Paulsen: I was going to move the adoption of the Nominating Committee's Report.

I guess that's a second.

A Voice: I second.

President Paulsen: Any discussion?

(No response.)

President Paulsen: All those in favor say aye.

(A chorus of ayes.)

Mr. Paulsen: Two motions to accomplish one thing, that makes it twice as good.

Thank you very much, Mr. Sims and all the members of the Nominating Committee.

I planned the usual long valedictorian address that Mr. Sims has been so adroit at and all my predecessors. I am going to ask if the Secretary will copy the final words that I had in my last newsletter. I think that will take care of the situation.

A FINAL WORD

This being the last newsletter that I will issue as your President, I wish to thank the entire MLA membership for its support and helpfulness. It has not only been an honor and privilege, but also a joy to serve in this capacity for the last two years. I must say, however, that I'm looking forward to what John Sims describes as the most desirable position in the Association – Immediate Past President.

In "signing off", I do want to express special thanks to a number of people for unusual help:

The President's Advisory Committee, consisting of past presidents – for wise advice, carefully thought out and cheerfully given (but, I'm afraid, not always fully heeded);

To committee chairmen and members – for important work on substantive questions of maritime law;

To the Chairmen of the Dinner Committee (Jim Ruddy and Tim Ford) and the members thereof – for their patience, understanding and tact as well as very hard work;

To the Chairman of the Fall 1982 Planning and Arrangements Committee (Gerry Gelpi) and members – for excellent work, despite a total lack of control over weather conditions;

To Elliott Nixon – for his work in setting up the Foley Square maritime exhibit;

To all Officers and members of the Executive Committee – for support, help and guidance!

To my partners who understand the importance of the substantive work of the Association in the development of maritime law, not only nationally, but internationally through the CMI;

To my excellent secretary, Linda Arango – without whose help nothing much would have been accomplished;

Finally, to my wife, Janet – for patience, understanding, support and love. And in saying that, I want also to express my appreciation and that of the Association to all ladies, whether members or members' loved ones, who through the years have done so much to help. God bless you all!

We are marching ahead under a new leadership. I turn the gavel over to President Staring.

(Applause.)

President Staring: Thank you, Gordon.

Ladies and gentlemen, I am deeply honored to be elected to this position. It is with a great deal of hope and pleasure that I look forward to serving you in the coming year. It is with more than hope, the highest confidence and pleasure that I look forward to working with all of the fine people who comprise the Executive Committee and the other offices of this Association.

I have, I think, only two brief functions at this meeting.

The first one is a very pleasant one, indeed.

I have to present to Mr. Paulsen the certificate of official recognition of our appreciation as an Association for his distinguished service to us. I am not going to read the certificate because I have something more specific to say instead.

Mr. Paulsen: I will sit down.

President Staring: Gordon has led us in this organization with an extraordinary combination of tact and wisdom during the last two years.

I can't help remarking that the past presidents of this organization in a long line have set an unbroken precedent of hard work and great dedication to the Association and its aims. But, Gordon, no president of the Association in my time has dedicated more of his time, his efforts and his spirit to the Association and to its general aims.

Arthur Boal's testimonial a little earlier said it very well, of course. There isn't anyone that I know of who has better qualifications than Arthur to have said what he said and, indeed, what I now echo about you.

It has not been in vain, Gordon. You have earned an extraor-

dinary amount of respect and affection and good will of every sort, both at home and abroad for this Association, for the Admiralty Bar in general, for yourself and I think for all the people who are fortunate enough to be associated with you professionally.

You have done yourself very proud and you have done us very proud. We thank you.

But we are not going to let you retire. We are going to keep on looking to you for advice and counsel whenever we can get it, which I intend will be very often.

Thank you, Gordon.

(Applause.)

Mr. Paulsen: Thank you very much. I really can't say anything: For once I'm at a loss for words. Thank you from the bottom of my heart.

President Staring: I have one other function to perform.

I call upon Mr. John C. McHose of Los Angeles to see if he has a pertinent motion.

Mr. McHose: I do take this opportunity to say with great regret but with tremendous respect and appreciation for what this administration has done that we adjourn.

A Voice: Seconded.

President Staring: So adjourned.

(Applause.)

(Whereupon, at 12:40 o'clock p.m., the proceedings were adjourned.)

* * *

FORMAL REPORT OF THE FISHERIES COMMITTEE

A meeting of the Fisheries Committee was held at the offices of Messrs. Haight, Gardner, Poor & Havens in New York City on May 4, 1984.

Mr. Bruno Augenti of The Marine Index Bureau reported statistics concerning the size of the U. S. fishing fleet, personal injuries which occur on fishing vessels and the status of the fishing fleet's insurance.

The Committee discussed plans for the 1984 Fall Meeting. The Commitee plans to consider international joint fishing ventures and, possibly, legislation which is needed in the fishing industry.

Respectfully submitted,

CHESTER D. HOOPER, Member
for Martin R. Johnson, *Chairman*

FORMAL REPORT OF INTERGOVERNMENTAL ORGANIZATIONS COMMITTEE

INTERNATIONAL MARITIME ORGANIZATION (IMO)

The long-awaited International Conference on matters arising from the carriage of certain substances by sea is currently under way at IMO Headquarters in London. The Conference began on Monday 30 April and will conclude on Friday 25 May. In addition to the draft texts of the HNS Convention, the 1969 CLC Protocol and the 1971 Fund Protocol, over 50 working documents and proposals were submitted to delegations at the outset of the Conference.

A full report on the conclusions of the Conference and also on the 52nd Session of the IMO Legal Committee (to be held in London from 10-14 September 1984) will be submitted at the fall meeting.

UNITED NATIONS CONFERENCE ON TRADE AND DEVELOPMENT (UNCTAD)

The Conference on Conditions for Registration of Ships will be convened at United Nations Headquarters in Geneva from 16 July through 3 August 1984. As anticipated, the outcome of the International Preparatory Committee Meetings late last year was inconclusive, and the draft text of the Convention on Registration is littered with square-bracketed language.

The United States will attend the Geneva Conference and will insist that decisions be taken by consensus, which is understood to be the current position of the other Group B States as well as Liberia, Panama and the Bahamas. A full report on the outcome of this Conference will be submitted at the Fall Meeting.

There is no official word at this time as to what progress, if any, has been made in resolving the jurisdictional dispute between IMO

and UNCTAD concerning pending work on maritime liens and mortgages and the arrest of ships.

UNCTAD convened a Conference on Maritime Fraud in Geneva from 6-17 February 1984. The result was a recommendation for further study of several problems, chiefly those of fraud involving the use of bills of lading.

EUROPEAN COMMUNITY (EC)

With the entry into force of the IMO Convention on Standards of Training, Certification and Watchkeeping (STCW) on 28 April 1984, the Paris Memorandum States are gearing up for enforcement of the stringent requirements of that Convention. Interestingly, the U.S. Department of Transportation has recently announced that the United States is interested in becoming a signatory to the Paris Memorandum. This would considerably enhance the authority of the U. S. Coast Guard, as it would enable the conduct of control inspections of foreign vessels with regard to requirements of conventions which the United States has not yet ratified, including ILO Convention No. 147 on Minimum Standards in Merchant Ships, which is the basis for much of the port state control authority embodied in the Paris Memorandum.

Respectfully submitted,

Frank L. Wiswall, Jr., *Chairman*
J. Edwin Carey, *Vice Chairman*
Richard E. Repetto, *Excom Member*

FORMAL REPORT OF COMMITTEE ON STEVEDORING AND TERMINAL OPERATIONS

Mr. President and Fellow Members:

The Committee met on May 3, 1984 at the offices of Healy & Baillie in New York, New York thanks to the hospitality of Nick Healy. There were thirteen members of the Committee present.

The Committee discussed the status of the proposed amendments to the Longshoremen's and Harbor Workers' Compensation Act. It was pointed out that on April 10, 1984 the House had passed its version of the amendments to the LHWCA and that the Senate had

already passed its version of the amendments. It was also reported that the joint committee to consider the Bill was appointed on May 3, 1984, and it appeared the amendments would be enacted either in late 1984 or early 1985. It was the consensus of the Committee that these amendments, pointing out the new changes, would make a good topic for discussion at the fall meeting in Puerto Rico.

The Committee then discussed the Second Circuit decision of *Colgate Palmolive Company vs. Global Terminal & Container Services, Inc.,* (2 Cir., 1983) and it was learned that the United States Supreme Court had denied certiorari in the case on April 30, 1984. The Committee had previously been polled on the question of whether or not the MLA should consider filing an *amicus* brief in the case. The results of that poll, with eleven responses having been received, was that all of the responding members felt the *Colgate Palmolive* decision to be in error and recommended the Association give consideration to participating in a petition for certiorari. Of course with the denial of certiorari on April 30, 1984, this question became moot within our Committee.

The Committee next considered a report from non-member Terry J. Coniglio of Los Angeles, California relative to the FMC inquiry on terminal operators being conducted on the west coast. It was reported that the FMC recently held hearings on a regional basis, and the purpose of the hearings was to gather information on terminal operations to assist the FMC in its formulation of regulations pursuant to the Shipping Act of 1984. Representatives of various segments of the Maritime Transportation Industry testified at these hearings. A copy of Mr. Coniglio's telex report to the Committee is appended hereto.

The Committee then discussed its project of the international survey of remedies of stevedores and terminal operators against vessels. Several of the members had completed their assignments and submitted reports on their respective countries; however, several of the members had not yet submitted their reports and I will contact those Committee members individually and request the reports be submitted promptly in order that we may present a report at the fall meeting in Puerto Rico.

The draft convention on The Liability of International Terminal Operators was also discussed. As Chairman, I have been corresponding with other members of a CMI committee established to review and comment on the draft convention, and I will appoint a sub-

committee to review the draft and submit a report to the Executiv Committee of the Association.

David Karcher of Miami, Chairman of the Sub-committee appointed to maintain a surveillance on the Maritime Services Financial Responsibility Act of 1983 (H.R. 1307) gave an up to date report on that Act. It was reported that the proposed legislation remains dormant and the possibilities of the same passing are nill.

It was then reported that the report from the Sub-committee on the Himalaya Clause had been reported in The MLA Report of the Association, Document No. 652, April 2, 1984.

The Committee then discussed a recent Bill which had been introduced in Congress relative to maritime personal injuries actions and inasmuch as it appears that Act will possibly affect maritime workers, other than seamen, I will obtain a copy of that Bill, review the same, and appoint a subcommittee to study the same and submit a report from the viewpoint of the Stevedoring and Terminal Operations Committee.

There being no further business to come before the Committee, the meeting was adjourned until the fall meeting to be held in Puerto Rico.

Respectfully, submitted,
W. Boyd Reeves, *Chairman*

May 1, 1984
To: W. Boyd Reeves
Fr: Deborah Reid Kelley
Law Offices of Terry J. Coniglio

Report to the Committee on Stevedoring and Terminal Operations MLA on FMC hearings.

I am sorry that I was unable to attend the meeting. However, please present this short report.

The FMC recently held hearings on a regional basis. The purpose of the hearings was to gather information to assist in its formulation of regulations pursuant to the Shipping Act of 1984. Representatives of various segments of the Maritime Transportation Industry testified.

The major areas of inquiry were as follows:

1. Terminal Tariff Filing
2. Terminal Agreement—Filing and Approval
3. Antitrust Immunity

4. Revenue Raising for Public Ports
5. National Security
6. Foreign Cargo Diversion

Terminal Tariff Filing

The consensus was that tariffs should continue to be filed with the FMC.

The testimony developed that the private sector relied more on tariff information available of their competitors in setting rates than the public ports.

A trend may be developing on the West Coast to charge a nominal fee for access to the tariffs to shippers. The ports of the Gulf Coast felt the tariffs should be made available without charge.

Terminal Agreement – Filing and Approval

While the general consensus that FMC processing time had greatly improved during the tenure of Chairman Green, most felt that the time provisions would be beneficial to all. A great deal of confusion was expressed as to which agreements will require FMC approval and which will not. A bent toward erring on the side of conversation was expressed.

Antitrust Immunity

Much uncertainty was expressed in this area.

Concern was expressed that the lack of immunity will impede agreements pertaining to the development of general facilities. It was generally felt that these types of agreements should be exempt.

Despite the Federal Trade Commission's statement that antitrust immunity is not necessary to make these types of agreements, most felt uncomfortable with the lack of immunity in this area.

Most disagreed with the Federal Trade Commission's suggestion that without antitrust immunity rates were likely to come down. However, some public ports did not.

Arguments were advanced by both the public and private sectors as to why they should continue to enjoy antitrust immunity.

The argument was advanced that public ports should be exempt because their purpose is not to earn money but rather to generate a

favorable economic climate in their particular regions and therefore should be given the encouragement of antitrust immunity.

Revenue Raising for Public Ports

The Commission was also interested in the methods utilized by public ports to finance development including the interest rates and their rates of return.

General Obligation Bonds are on the wane. The trend is toward Revenue Bonds.

Foreign Cargo Diversion

The ports of the Pacific Northwest indicated that a problem with Canadian Cargo Diversion may be developing. This was attributed in part to the Canadian Government subsidizing rail movement.

At the present time, Mexican Cargo Conversion does not pose a problem.

National Security Considerations

The issue of national security was raised in connection with foreign owned carrier affiliated terminals.

In response it was noted that their facilities are generally leased.

Regards,

Terry J. Coniglio
4720397 Coniglio

APPENDIX A
ASSOCIATE MEMBERS ADMITTED MAY, 1984

K. Catherine Albano, New York, NY
David J. Ansel, Boston, MA
Leon A. Aucoin, Metairie, LA
Robert William Ayling, San Diego, CA
Reginald T. Badeaux, Jr., New Orleans, LA
Claudia D. Baker, New York, NY
R. John Barrett, Norfolk, VA
Laurence E. Best, New Orleans, LA
I. Scott Bieler, New York, NY
Cory Alexander Birnberg, Redondo Beach, CA
Anthony F. Bisignano, New York, NY
William Lawrence Black, III, Seattle, WA
James G. Blain, Houston, TX
David Sinnott Bland, New Orleans, LA
Henry H. Bolz, III, Miami, FL
G. Ray Bratton, Memphis, TN
Alan K. Breaud, Lafayette, LA
J. Devon Brown, San Francisco, CA
Robert J. Brown, New York, NY
Rodney L. Brown, Jr., Seattle, WA
Hana S. Callaghan, Seattle, WA
Christopher E. Carey, New Orleans, LA
Anita R. Casey, Charleston, WV
L. Stanley Chauvin, Jr., Louisville, KY
Alan C. Christian, Mobile, AL
Rex M. Clack, San Francisco, CA
Robert A. Cole, Jacksonville, FL
Peter M. Commette, Miami, FL
Janet Wilson Cordova, New York, NY
Terence Sheehan Cox, San Francisco, CA
Donald M. Currie, Seattle, WA
Daniel L. Daboval, New Orleans, LA
Barrett Bond Daly, New Orleans, LA
Thomas Robert Daniels, New York, NY
Charles Gullette De Leo, Miami, FL
Lawrence Curt Delay, Anchorage, AK
Joseph F. De May, Jr., New York, NY
Robert S. Dietz, New Orleans, LA
John W. Dohan, Detroit, MI
John J. Driscoll, Jr., Houston, TX
Robert Terrance Duddy, Portland, ME
John M. Elsley, Houston, TX
Robert H. Etnyre, Jr., Houston, TX
Christopher L. Evans, Houston, TX

Hugh B. Exnicios, Metairie, LA
Kevin Patrick Farmer, New York, NY
Kevin B. Finkel, Houston, TX
Robert V. Fitsimmons, Miami, FL
Thomas D. Forbes, New Orleans, LA
Derek J. Fromm, New York, NY
Hugh Nevin Fryer, Washington, DC
G. Michael German, San Francisco, CA
Michael L. Goldblatt, Nashville, TN
J. Mark Gruber, Buffalo, NY
Paul Richard Hales, St. Louis, MO
Stephen K. Hamilton, Houston, TX
James F. Hammill, Cherry Hill, NJ
Karen I. Hansen, Houston, TX
Thomas P. Hartnett, New York, NY
Marilyn Tanner Hebinck, Houston, TX
Richard L. Hecht, New York, NY
Kenneth M. Henke, Lafayette, LA
William Bradford Hill, Jr., Houston, TX
Seth S. Holbrook, Boston, MA
Mary Campbell Hubbard, New Orleans, LA
William John Hudak, Jr., New York, NY
James F. Hyland, Red Bank, NJ
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Marguerite K. Kingsmill, New Orleans, LA
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James T. Murphy, Providence, RI
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Charles Arne Nunmaker, New Orleans, LA
Michael J. O'Kane, Miami, FL
Peter Edward O'Rourke, Detroit, MI
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M. Greg Rains, Paducah, KY
Ricardo A. Ratti, Washington, DC
James Bernard Re, Boston, MA
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Ray Morgan Thompson, Mobile, AL
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Thomas L. Tisdale, New York, NY
William R. Towns, Houston, TX
John F. Unker, Houston, TX
Stephen C. Veltman, Chicago, IL
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Constance M. Walker, Houston, TX
David R. Walker, Houston, TX
James Madison Walker, New Orleans, LA
James P. Walsh, Washington, DC
David E. Warden, Houston, TX
Thomas J. West, Tacoma, WA
Boyd H. Wolf, Tampa, FL
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