

THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

FALL MEETING — OCTOBER 20, 1995

PRESENT:

CHESTER D. HOOPER
JAMES F. MOSELEY
HOWARD M. MCCORMACK
WILLIAM R. DORSEY, III
MARSHALL P. KEATING
LIZABETH L. BURRELL
GEORGE W. HEALY, III

and the following 140 members:

Charles B. Anderson	Francisco G. Bruno
Roman Badiak	Frederick F. Burgess, Jr.
Almer W. Beale, III	Paul E. Calvesbert
Michael K. Bell	William D. Carle, III
George D. Benjamin	James K. Carroll
Helen M. Benzie	George F. Chandler, III
Philip A. Berns	Michael Marks Cohen
Richard C. Binzley	David W. Condeff
Geoffrey F. Birkhead	William R. Connor, III
George W. Birkhead	John M. Cowden
Denise S. Blocker	Paul N. Daigle
Patrick J. Bonner	David G. Davies
Allan G. Bowdery	Melissa A. Davis
Lawrence J. Bowles	Andrew S. De Klerk
John E. Bradley	Vincent M. DeOrchis
Lawrence D. Bradley, Jr.	Charles S. Donovan
James K. Brengle	J. Kelly Duncan
Lawrence B. Brennan	John A. Edginton
Hon. Charles L. Brient, Jr.	John F. Fay, Jr.
Richard H. Brown, Jr.	R. Tucker Fitz-Hugh

Prof. Robert Force	Marion E. McDaniel, Jr.
Mark A. Freeman	Peter A. McLauchlan
George G. Gabel, Jr.	John K. Meyer
Robert C. Garvie	Dennis Minichello
G. Beauregard Gelpi	Walter R. Muff
Gerard T. Gelpi	Douglas M. Muller
Gene B. George	Thomas J. Muzyka
William B. Gibbens, III	Carl R. Nelson
Harvey G. Gleason	Lloyd C. Nelson
Robert S. Glenn, Jr.	Frank X. Neuner
Andrew J. Goldstein	David A. Nourse
Donald C. Greenman	George W. Nowell
Rupert P. Hansen, Jr.	Dennis M. O'Bryan
Raymond P. Hayden	Michael A. Orlando
Nicholas J. Healy	Richard W. Palmer
Neal D. Hobson	Patricia L. Parker
Anne D. Hopkins	Gordon W. Paulsen
Kim Jefferies	John R. Peters, Jr.
Mark Edwin Johnson	Paul M. Poliak
Louis G. Juliano	David W. Proudfoot
Mark O. Kasanin	Donald C. Radcliff
James B. Kemp, Jr.	Robert S. Reich
John D. Kimball	Sandra L. Rhodes
George J. Koelzer	Winston E. Rice
Victor I. Kooch	J. Ramon Rivera-Morales
Nenad Krek	C. Kent Roberts
Cliffe F. Laborde	James H. Roussel
John R. Lacy	Thomas C. Rue
Blake W. Larkin	Thomas A. Russell
J. Dwight Le Blanc, Jr.	Robert J. Ryniker
Edward F. LeBreton	Robert I. Sanders
Patrick F. Lennon	John P. Schaffer
Raymond T. Letulle	Sidney H. Schell
John T. Lillis	Louis P. Sheinbaum
Henry C. Lucas, III	James T. Shirley, Jr.
Marilyn Lytle	G. Byron Sims
David T. Maloof	Stephen C. Smith
Mark G. Manning	Brian D. Starer
Patrick V. Martin	Graydon S. Staring
Warren J. Marwedel	Norman C. Sullivan, Jr.
Raymond L. Massey	Joseph P. Tabrisky
Faust Mattioni	James J. Tamulski

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James W. Tarlton, III
Lee A. Thorson
Thomas L. Tisdale
Robert K. Tisdall
Alan Van Praag
Leo J. Vander Lans
John P. Vayda
Patrick J. Veters

George L. Waddell
Guilford D. Ware
M. Hamilton Whitman, Jr.
David McI. Williams
Michael H. Williamson
Frank L. Wiswall, Jr.
Robert J. Zapf
JoAnne Zawitoski

and the following 8 guests:

Sara Bradley
Hon. Justice Richard E. Cooper
Emily DéRogée
Peter Ehlermann

Johanne Gauthier
Dr. Bram W. Mulder
David W. Taylor
Tim Taylor

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PROCEEDINGS

MR. HOOOPER: The meeting is called to order. We'll begin with the Secretary's Report.

MR. DORSEY: Good morning, ladies and gentlemen. The usual administrative details.

Sign-up cards are in the back of the room to my left. Even though your name may appear in the program that you get when you register, you will not be listed as being present in the proceedings of this meeting unless the sign-up card is in the basket. I put that basket out at 8:00 this morning, and I noticed at least three people had signed up by 8:15. I wonder if they waited until now to be present at the meeting.

The Proceedings of the Association meeting which took place on May 5th in New York, document number 716, has been mailed to all the members. And if there are no modifications or objections, Mr. President, I would move that they be adopted and approved.

(Seconded)

MR. HOOOPER: All in favor? (Ayes) Opposed? Thank you. The Motion is carried.

MR. DORSEY: A report now on the Board of Directors meeting that took place on Monday, October 16th here in the Hyatt Regency.

Your Secretary reported that the minutes of the meeting of the Board that took place in Baltimore on August 12th, had been distributed. Upon motion duly made and seconded, those minutes were accepted and approved.

Treasurer Marshall P. Keating of New York and Membership Secretary Lizabeth Burrell distributed their respective reports, which were accepted and approved, and they will be giving those reports this morning.

Of particular significance, Treasurer Keating recommended that membership dues be raised. Upon motion duly made and seconded, and after thorough discussion, the Board unanimously approved raising the annual dues by the amount of ten dollars per annum for those members in practice less than five years and by fifteen dollars per annum for all other dues paying members.

Warren J. Marwedel of Chicago reported on the status of the arrangements of this meeting, and Thomas S. Rue of Mobile reported on the arrangements for the fall 1997 meeting which will take place at the Marriott Desert Springs Hotel in Desert Springs, California. They'll be reporting this morning.

Second Vice President Howard McCormack of New York reported on the meeting of committee chairs held on Monday, October 16th at the reasonable

hour of 7:15 a.m. At the meeting, the committee chairs reported on the plans and projects of their respective committees.

First Vice President James F. Moseley of Jacksonville then recommended the establishment of a long-range planning committee to focus and report to the Board on concerns and issues facing the Association as directed by the President. With the unanimous concurrence of the Board, President Hooper indicated that he intended to form such a committee.

Joseph P. Tabrisky of Jacksonville reported for the Recreational Boating Committee. He indicated a poll of this committee was currently being conducted on a resolution to be presented to the Association recommending proposed model legislation for licensing of recreational craft in light of increasingly inconsistent legislation being adopted by various states. There was a further report from this committee at our meeting this morning, and I'll get to that somewhat later.

Board member George F. Chandler of Houston reported that the meetings to explain the Ad Hoc Study Group's proposed amendments to COGSA were taking place and going well. He anticipated that the proposed amendments would be brought before the Association for a vote at the May 1996 meeting.

He also reported that the CMI and UNCITRAL will be undertaking formation of a joint working group to study the possibility of drafting model laws on electronic bills of lading.

Finally, he reported on the formation of a new Association committee on electronic communications of which he is the chair, and he's going to be reporting on that this morning.

John P. Schaffer of Stamford, Vice Chairman of the Committees on Maritime Legislation and Maritime Personnel, reported that in light of various recent decisions on punitive damages, there was an open question whether there was any purpose in further attempting legislative action on that subject. That committee will continue to monitor developments and report to the Association as necessary.

And in this connection, President Hooper indicated that the Board had declined an invitation to file an amicus brief in connection with the Petition for Certiorari in the case of *Guevara v. Maritime Overseas Corporation*, in which the Fifth Circuit held that punitive damages were not available in a maintenance and cure case.

Board member Patrick Bonner of New York, Chairman of the Committee on Navigation and Coast Guard matters, reported that his and President Hooper's efforts to enlist the support of the Coast Guard to obtain amendments to the Coast Guard authorization bill with respect to the admissibility of the

Coast Guard reports had proved fruitful, and that the Coast Guard would be seeking amendments along the lines as suggested by the Association.

You may remember that the gist of the amendments that we were seeking would be to make the reports inadmissible in private civil litigation, and that Coast Guard witnesses would be available to be called on by private parties in civil litigation only if they were the sole source of factual evidence.

David McI. Williams of Baltimore, Chairman of the Committee on Marine Finance, reported on problems created by the amendment to 46 U.S.C., Section 12102(a) that would render a vessel titled in a state ineligible for documentation by the Coast Guard.

He also indicated that there was an effort underway internationally to harmonize the rules concerning cross border insolvency proceedings as they apply to vessels and corporations. The Office of the Legal Advisor of the Secretary of State is organizing a study group to formulate input for an UNCITRAL meeting on this subject in October of next year. Mr. Williams has asked his joint subcommittee on vessel foreclosures and insolvency to monitor this situation. You'll be hearing from Mr. Williams later this morning with a resolution that he has that has been unanimously approved by his committee.

Robert J. Zapf of New York, Chairman of the Committee on Practice and Procedure, reported on the activities of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects, and he is going to talk on that this morning as well.

Former president Graydon S. Staring of San Francisco reported on arrangements for a meeting of the board of directors to take place in San Francisco on March 23rd, 1996.

President Hooper then gave his report. He indicated that he has asked the Chairman of the Committee on Alternate Dispute Resolution to work in conjunction with the SMA in developing proposed rules for mediation and conciliation.

He also indicated that he had good meetings with the staff of the Immigration and Naturalization Service and Congressional staffers concerning the proposed amendments to HR 2202 relating to stowaways.

The President then requested that the Board authorize him to write to the Senate to ask the Senate to give its advice and consent to the President to accede to the Law of the Sea Convention. Upon motion duly made and seconded, that authorization was unanimously granted.

President Hooper then expressed his thanks and appreciation to Edward LeBreton of New Orleans for speaking at the Houston marine seminar, to Robert

Zapf of New York for attending the JIGE meeting in London, substantially at his own expense, and to First Vice President James F. Moseley, to Second Vice President Howard M. McCormack, Warren M. Faris of New Orleans, and Alfred Kuffler of Philadelphia for attending the London Commercial Court Centenary at their own expense.

The Board also met early this morning, about an hour before this meeting. Membership Secretary Lizabeth Burrell gave a further report on membership matters, and she'll be going over that with you shortly.

Your Secretary indicated that he had been advised by David Williams, Chairman of the Committee on Marine Finance, that that Committee had unanimously approved and would be proposing this morning a Resolution urging several legislative changes relating to marine finance.

Your Secretary also advised the Board that he had been advised by Robert Zapf of New York, the Chairman of the Committee on Practice and Procedure, that his Committee has approved and would be presenting a resolution that would authorize him to put forward such nonsubstantive technical changes to Rules B, C, and E as necessary to ensure conformity among the Admiralty Rules and the Federal Rules of Civil Procedure consistent with changes previously authorized by the Association.

Thomas A. Russell of Long Beach, who is a member of the Committee on Recreational Boating, appeared this morning and indicated that his Committee had unanimously approved a Resolution that will be presented this morning. It is a resolution that urges various states to take a uniform approach to any mandatory educational or certification requirements for recreational boating. He asked for the Board's approval of this Resolution, which was unanimously approved.

John T. Lillis of New York, Chairman of the Committee on Transportation of Hazardous Substances, reported that the IMO legal committee has cleared a draft convention on hazardous substances. There was considerable discussion at the Board meeting about the procedure to be followed by his committee and the Association in general on getting comments on that convention and eventually expressing a position on that convention. He will be reporting on that this morning as well.

And, Mr. President, at long last that concludes my report, and I ask that it be approved.

PRESIDENT HOOPER: Is there a second? (Seconded) Any discussion? All in favor? (Ayes) Opposed? The report is approved. Now for the Treasurer's report.

MR. KEATING: Thank you, Mr. President.

Good morning, members of the Association and guests. We're halfway through our fiscal year, and as of this time, we have on hand some \$313,000 in cash and equivalents as against the same time last year, when we had close to \$380,000. That's down some \$67,000 from year to year.

That has been the history of the last four years. We've been running at some \$60,000 a year in deficit between expenses and dues. We have some other miscellaneous sources of income that have helped but have not been sufficient to completely fill that gap.

As a matter of prudence, it was decided after lengthy consideration at the Board Meeting that a small dues increase was indicated at this time, and the proposal is that we raise the regular dues by \$15, from \$80 a year to \$95 a year, and we raise the dues for those admitted to the bar for less than five years from the current \$50 to \$60 a year. Those increases will produce about \$55,000 a year additional revenue, and that should cover the immediate problem and hopefully provide for some time in the future.

This is the first dues increase we've had since November of 1985. So we've been at this dues level for ten years, which I think is rather remarkable in terms of the escalating cost for running this type of association.

We sent out the annual directory by bulk mail about three weeks ago. If anybody doesn't have one, let me know, and we'll see that you receive it promptly.

We also now have subscriptions available for the CMI publications. Anybody who wants to subscribe to the CMI publications can do so at this time through Chet Hooper.

As liaison with the Centennial Committee, I can report that we've had several meetings, and we've had a number of ideas as to how to structure the centennial event, which will be in May 1999 in New York. We should have a report from Ted Cunningham, who's the chairman of that committee, at the May meeting.

Mr. President, that concludes the Treasurer's report, and I respectfully move its adoption.

PRESIDENT HOOPER: Second? (Seconded) Any discussion? All in favor? (Ayes) Opposed? The report is approved. Thank you, Marshall. And Lizabeth, the Membership Secretary.

LIZABETH BURRELL: Good morning. The total membership of the Association now stands at 3,682, composed of members in the following categories: 3 honorary members, 3 ex-officio members, 178 judicial members, 1,837

proctor lawyer members, 1,316 associate lawyer members, 57 academic members, and 288 nonlawyer members.

At the board meeting on Monday, October 16th, the Board approved the nomination of the Honorable Jacques L. Weiner, United States Circuit Judge for the Fifth Circuit, as a new judicial member. Professor Henry J. Bourignon of the University of Toledo College of Law was approved as a new academic member.

Twenty-six new associate lawyer members were admitted at the Monday meeting. That number is a little low for a fall meeting, but we had had an extraordinary influx of new associate lawyer members at our August Board meeting. Overall, our membership is up quite substantially.

At the Board meeting that took place this morning, the Board approved the recommendations of the Proctor Admissions Committee for the advancement to proctor status of the following sixteen lawyers: They are Gerald M. Baca, Wilton E. Bland, III, Phillip A. Buhler, William Hewig, III, John E. Holloway, Blake W. Larkin, Charles K. McCotter, Jr., Douglas M. Muller, Michael D. Murphy, Robert J. Murphy, J. Ramón Rivera Morales, Jack S. Rockafellow, Michael F. Sturley, A. Andrew Tsukamoto, Frank H. Williamson, and John T. Wooldridge.

The Board also approved for membership the following six people in the non-lawyer member category: They are Mary Ann Bayard, Peter W. Birch, Michael Grant, Thomas F. Kula, Jeanette G. Smith, and David G. Thompson.

That concludes my report, and I would respectfully move its acceptance.

PRESIDENT HOOPER: Any discussion? All in favor? (Ayes) All opposed? Thank you.

Now, before we go to the committee reports, I would like to recognize the presence, and ask Johanne Gauthier, the President of Canada's Maritime Law Association, to say a few words to us. Johanne?

JOHANNE GAUTHIER: Now, those of you who were present at the New York meeting last May will recall that I then disclosed one of our Association's most guarded secrets. That was the existence of a spy among your ranks.

Now, since then, I realized that this was a big boo-boo on my part, big mistake, because immediately after the meeting your counterintelligence committee started working, and since then I've not received a tiny bit of inside information from your Association.

So I see by the look of some of your faces that you're not all aware of the existence of that subcommittee. Well, I can tell you, it's not because they're not listed in your records and won't report today that they don't exist. I have proof

here. If you look in your blue book under the letter G, you will see that my name is not there. Well, that was the last retribution of the committee for my action in May.

Naturally, as is the case with all presidents, President Hooper denies any knowledge of these pernicious activities. But let's not worry, because although it would have been nice to have our own "Watergate", given that the name would have been most appropriate in the circumstances, we've decided in the best interests of Canadian-American tradition to settle our differences amicably over a couple of mai-tais. So the case is closed now.

Because of the number of inquiries that I received about the absence of my name in the blue book, I thought that I had to give you an official explanation. And after hearing Mr. Hillsman's story about his fainting in court, that this explanation would be about as plausible.

Now, the real reason for me wanting to bring you greetings from Canada this morning is to also thank you on behalf of the sixteen Canadians that are here with you this week. We thank your Board and your President for inviting our CMLA members to these activities. It's always a big treat for us to be with you.

I've had the privilege of attending many of your out of town meetings, and I must say that — without flattery, that's not my style — I must congratulate the Arrangements Committee, because this is about the best resort I've been to. I don't know about you, but I find it just fabulous. And as mentioned by Chet earlier this week, they even succeeded in booking a fabulous week of sunshine, which is not, as you know, a small achievement considering the past meetings we've had of this Association.

Now, I would like also to congratulate those of you who organized the seminars and to tell them that the guests don't just come for the fun. We do attend those seminars, and we enjoy them tremendously, and the two held this week were excellent. They did give us a glimpse, I think I speak for all the guests, because I heard it from others from Europe who attended the seminars, of what you have to face in your daily practice. Horror stories about punitive damages and the likes.

And if you would like to have a glimpse of the Canadian practice, I wanted to tell you that you're all invited to attend our own Association meetings. They are not held in as exotic places, but, you know, Vancouver, Halifax, Toronto, and Montreal are not so bad.

As a matter of fact, we have a joint CMLA-Federal Court of Canada seminar coming up in Ottawa on December 1st. If you want to have any more information on this, I'll circulate it or I'll give the information to Chet.

So thank you again to you all, and it's been great to be with you this year.

[10804]

PRESIDENT HOOPER: Thank you very much, Johanne. I should mention that Johanne's been kind enough to invite me to the Halifax meeting this past June, and not only to the meeting, but to her executive committee meeting. Maybe that was a mistake, but it was a lot of fun. Thank you.

We can start our committee reports now. The first one is Warren Marwedel for ABA Relations and for this meeting. Warren?

I should mention, while he's approaching the podium, the next speaker I'll call on is Jack Lillis. So if he can move up here near the front, we can move a little faster.

WARREN MARWEDEL: Thank you, Mr. President.

Good morning. I want to thank all of you for coming. I think it's been a very good week.

We've had near perfect weather, if you just excuse the little sprinkle last night.

Just a comment on the committee work, the people that work on this Arrangements Committee and the next committee that we'll have at our next meeting in two years. They do an awful lot of work behind the scenes. And while you're all off enjoying the business meeting and the seminars and the committee meetings, they're behind the scenes working with the banquet people and recreation people. And they actually give up the week of entertainment that is available here.

And I would like to especially thank my committee and David Proudfoot, who's sitting in the back. David invited us to his home, he's a resident here, and did an awful lot of background work for us, because he was here and we're several thousand miles away. David, I'd like you to stand up.

As you know, we have the reception tonight from 7:00 to 8:00 and the dinner dance. I want to remind you again, if you have any change in your plans, to let Jim Carroll know.

We have posted in various places outside here and over at our registration the seating changes that have been made, so you should check it. If there's anything wrong with that, let them know as early as possible so we can make sure you have a place to sit.

For the ABA meeting, I just wanted to point out that the midyear meeting of the ABA will be in Baltimore in February, and the annual meeting will be in Orlando next August.

There's been a significant change, I think, in the topics that the ABA deals with at these meetings. They're getting away from some of the hot political issues that I'm not sure they should have been involved in in the first place.

But they are focusing now on specialization, lawyer's advertising that they specialize in a particular area of law, and exactly what that specialization means to the lawyer, and to the liability that may result from advertising that you are a specialist.

They're also taking a hard look at how the ABA has accredited law schools. I think some of you are aware of the antitrust suit against the ABA. And they've entered into a consent decree that essentially, I'm sorry for the academics here, reduces the number of law school deans that sit on the committee that accredits the different law schools.

There was a feeling that the law school deans were having too great an influence on how various law schools were accredited.

The ABA is also focusing on what the law schools teach, so that the student comes out better prepared in the future to practice law and not be any kind of drain to the law firms that hire them right away.

So I think it's a good focus, and many of the things that they are looking at, we are looking at as well, especially in the area of specialization. Thank you.

PRESIDENT HOOPER: Thank you. I'd like to express the Association's thanks to Warren and his committee for the hard work and excellent work they've done in arranging this meeting. It's a great facility, and we're really appreciative of their efforts.

As I mentioned at the Board of Directors meeting this morning, a few years ago we changed the schedule of out of town meetings so they fell in the second year of the President's term, so that the President could prepare for these meetings and get used to this big meeting, or the job before this big meeting.

To tell the truth, the President really doesn't have to prepare at all for this meeting if the President has arranged the committees such as he arranged the committee here this week, which we generally do. I appreciate that very much, Warren.

Next is Jack Lillis, who is going out of order because he has a plane to catch, for the Committee on Transportation of Hazardous Substances.

JOHN LILLIS: Thank you, President Hooper.

Just very briefly, there was a draft that was published by IMO, the International Maritime Organization, on July 21st, 1995. That draft is a draft Interna-

tional Convention on Liability and Compensation for Damage in Connection with the Carriage of Hazardous and Noxious Substances at Sea.

The draft was considered a week ago in London by the legal committee of IMO. And the legal committee passed the draft and has referred it to the diplomatic conference, which is now scheduled for the middle of April of 1996.

For those of you who have been following this process over the last ten years plus, you know that this is a very dramatic development with this draft clearing the legal committee.

Our committee reported that this morning to the officers and the Board of this Association. We will be in the process this fall of communicating with the membership as well as interested committees and committee chairs and the board in order to get maximum input from anyone interested from this Association in perhaps formulating a position and input and recommendations to the United States delegation as they prepare for the diplomatic conference next April.

Our target right now is to have input and a position from the Association by the end of January 1996. We will be writing to the membership. We will also be liaising with various interested committees.

As I said in May in New York, and I say again, and every person who I've spoken with here this week, we want input. I requested input in May on the floor of the Association meeting in New York. We continue to request input.

Our committee is very much inviting input. Anything that anyone has, either from this Association or clients and constituents of members of this Association, please get it to me as soon as possible. We will also be doing a process that will hopefully encourage that further and facilitate that.

Thank you very much, Mr. President.

PRESIDENT HOOPER: Thank you very much, Jack.

Next will be the Carriage of Goods Committee, Vince DeOrchis, and Vince will be followed by CMI, Charlie Anderson.

VINCENT DeORCHIS: Good morning.

Mr. President, I'm pleased to report that the Committee on Carriage of Goods by Sea, informally known as COCOG, met on Monday, and was very well attended in spite of the remarkable charms of this island of Kauai and the beautiful weather which the Board of Directors and Warren are undoubtedly responsible for.

As you are well aware, COCOG has been extremely busy since last May's general meeting in an effort to provide regional forums to review, analyze, and

debate the new carriage of goods by sea proposal. To date, there have been five special meetings, three of which have been held in New York, one in Houston, and one in Chicago. With the assistance of the original ad hoc committee members who were responsible for drafting the proposal, the members of my committee have begun an in-depth detailed analysis.

Based on my personal observations and comments from others, it appears that the process has proved to be very valuable. As an understanding of the proposal increases, the fears and concerns expressed earlier in May by many have given way.

Most importantly, Mr. President, the members of COCOG have shown an admirable ability to recognize that compromise is at the heart of this new proposal.

And so I'm hopeful that after the remaining discussions and special meetings now scheduled to take place in Seattle on October 27th, New York on November 13th, Los Angeles on December the 4th, and in New Orleans on January 23rd, that the COCOG committee will be able to vote on the new proposal at its final special meeting, which is now scheduled to take place in New York on January 29th, 1996.

I would like to add, Mr. President, that we were very fortunate to hear from Professor Francesco Berlingieri at our meeting Monday afternoon concerning the results of the CMI survey of its members regarding the perceived need for changes to the Hague Visby rules.

While the national interests of each country seem to weigh heavily on the responses to the CMI survey, there is certainly some evidence that other countries are thinking of making changes to their Carriage of Goods by Sea Act, which are very similar to the ones contained already in our proposal.

We were also privileged to hear from Mr. Stewart Hetherington, the immediate past president of the Maritime Law Association of Australia, concerning recent recommendations by a special committee in that country to review their Hague Visby legislation, which was only passed in 1991. The Australian report contains many of the same features already reflected in our COGSA proposal.

There is certainly much more territory to be covered by our committee over the coming months, and there will be some fine tuning and tightening up of the language in our proposal.

However, I'm hopeful that by early 1996 the COCOG committee will be able to present the Association with a new COGSA proposal which reflects the needs of the maritime community as we head off into the twenty-first century, and which is a fair compromise of most all of the interests who will be affected by this much needed statutory reform.

Lastly, Mr. President, on behalf of the COCOG committee, I would like to thank yourself, former committee chairman George Chandler, Mike Ryan, Professor Mike Sturley, and the other members of the ad hoc committee who provided very valuable assistance at each of these special meetings. They certainly made the job much easier for myself. Mahalo.

PRESIDENT HOOPER: Thank you very much.

Next, Charles Anderson for the CMI, and Charles will be followed by George Chandler.

CHARLES ANDERSON: Thank you very much, Mr. President.

Our Committee has been very active over the past few months. The Assembly and the Executive Council of the Comité met in May. Frank Wiswall, of course, attended that meeting as a member of both the Assembly and the Executive Council, and provided us with a very detailed overview of the work in progress.

We were also very fortunate at our meeting to have present a number of members of working groups as well as a few chairs of the working groups, who also gave reports on their work in progress, which I will very briefly summarize.

On the matter of Hague Visby and Hamburg, we were honored to have Professor Berlingieri at our meeting. He reported on his analysis of the replies to the questionnaires which were circulated to the national associations, suggesting various changes to both Hague Visby and Hamburg.

The Assembly has approved the appointment of an International Subcommittee on the subject under Professor Berlingieri's chairmanship. The first meeting of that Subcommittee will take place in London in November. I understand you, Mr. President, as well as George Chandler and Professor Michael Sturley will be attending that meeting on behalf of our Association.

Frank also reported on his working group's progress with classification societies with a view towards the development of uniform guidelines for responsibilities of the class societies. That work is hopefully going to be completed early in 1996. I believe the next meeting is scheduled for January.

With regard to offshore operations, some of you may recall that at the conclusion of the CMI Conference in Sydney the amended text of the Rio Draft Convention, known as the Sydney Draft, was approved by the plenary session. This draft has been submitted to the IMO Legal Committee and is presently under consideration.

However, a number of national associations, prominently Canada and the United States, have suggested that that Convention should be more comprehensive and include not only mobile units, but also fixed structures.

The Executive Council has set up a working group under the chairmanship of Richard Shaw of the UK to consider the feasibility of this more comprehensive convention, while at the same time giving support to the IMO Legal Committee in its consideration of the Sydney Draft.

With respect to limitation of liability, we were very pleased to have Patrick Griggs, the chairman of the CMI working group, present at our meeting. The primary task of that working group is to study the effect of the draft HNS Convention on the 1976 Limitation Convention, and to consider the necessary linkage between those two conventions.

As to the Arrest Convention, there was a meeting recently in London — last week, I believe — of the Joint International Group of Experts under the auspices of IMO and UNCTAD, which Bob Zapf attended. He reported to us at the meeting that the new convention will probably be prepared on the basis of the Lisbon draft.

We have a number of other ongoing working groups and projects relating to subjects such as wreck removal, electronic data interchange, and maritime agents, as to which perhaps more can be said at the Spring meeting.

Frank Wiswall also reported on the CMI's representation at various meetings of governmental organizations such as IMO and UNCTAD.

Many of you may recall last May that Frank had reported on our invitation to the Comité to host a colloquium on an appropriate subject at the Association's centenary in June of 1999. I'm pleased to report that the Executive Council has accepted that invitation with proposals for topics to be submitted at a later date.

And finally, Mr. President, we had some discussion concerning the involvement of some of our younger members in the Comité's work. I've met with the Young Lawyers Committee, and will be assigning specific projects for some of these younger lawyers to work on so that they can become more involved in the working groups for these projects.

At this point it would be appropriate for me to yield the floor to Nick Healy for a report on the CMI America Foundation.

PRESIDENT HOOPER: Thank you.

NICHOLAS HEALY: Mr. President, honored guests, ladies and gentlemen, I shall be brief.

The board met the other day and made several decisions. One was to extend the deadline for submission of essays in the Elliot Nixon competition to June 30th, 1996. So those of you who have family members or young lawyers in your firms or who are students at law schools, please try to encourage the submission of essays on matters fostering the uniformity of the maritime law. The prize is

\$1,000, as you know. It's not a fortune, but it may help with some tuition or whatever.

Secondly, in a modest response to the plea of Bill Birch Reynardson the other day for contributions to the International Maritime Law Institute at Malta, the board voted to make a donation of \$1,000 to the Institute.

The treasury is in the same state it was in last May, I'm sorry to say. That is, we have about \$4,500, of which we have now committed \$2,000. So please try to send in your checks. If you should want to label them as gifts to the Maritime Law Institute, that would be perfectly all right. We'll see that the Institute receives the money.

Thank you very much, Mr. President.

PRESIDENT HOOPER: Thank you, Nick.

Next we have George Chandler for the new Electronic Communications and Commerce Committee, and George will be followed by Don Greenman.

GEORGE CHANDLER: Thank you, Mr. Chairman.

You heard Jack Lillis a moment ago requesting input for his committee. I've suggested to Jack that I've discovered a way to get input. All we need to do is add the words "final report" to any title you might be putting out to the committee, and you'll get lots of input. That was at least my experience.

As a self-confessed dweeb, I couldn't pass up this committee chair, because it involves all the aspects of computers that I'm very much involved with, and it provides a unique opportunity for the Association as well.

We intend to cover all possible aspects of computer usage, E mail, on-line services, electronic filings, electronic registrations, EDI, etc. If it concerns computers, we were concerned with it. One of the big jobs we will have is to coordinate and assist other committees as they're coming into the world of computer usage.

We already have six liaisons appointed: Practice and Procedure, Young Lawyers, Marine Financing, Stevedoring, Maritime Fraud, and Carriage of Goods; areas that all are in the cutting edge at the moment, or at least the beginning of the cutting edge of computer usage, either through EDI or communications or what have you.

I think we all recognize the fact that E-mail is one of the big items of discussion, as is the Internet and so forth. There's a number of things in this area that I think are a little frivolous, but one of the things that we can do and we intend to do is to communicate within this Committee with the use of E-mail, and have some sort of place we can go to for discussions and virtual meetings.

One of the great problems of this Association and its committees has been being able to meet in one location. Necessarily, you leave out a lot of people once you meet in one location. E-mail and on-line services bridge that gap entirely. It makes no difference where you are. You can carry on discussions, fruitful discussions through chat groups, and many other ways.

So we intend to explore that as a committee. And in fact, I have the permission of the President to impose a condition for membership in this committee, even though we've never had any conditions in other committees, and that is you must have an E-mail address so that we can carry out our communications in that manner.

We hope, if we are successful in this, to set a pattern that can be utilized by other committees for their methods of communication. We'll certainly share our experiences with the membership and the committees in that respect.

Now, the membership is still wide open. So far we have eighteen appointed members, and six more have approached me so far here in Hawaii. If there's anyone else who wants to join, please don't hesitate to give me your card, and if possible, your E mail address. If you don't have an E-mail address, we can help you get one.

I recognize not everybody is a computer dweeb or necessarily wants to be one, but you might want to be able to communicate with the use of computers, and we have experienced people who can help you.

By the same token, none of us in this group is that experienced that we can't learn something in this area. So as we go through and we explore these areas and how to do it, we'll all learn together.

So I would encourage you, if you have an interest, if your firm is just getting on that horizon and wants to see how they can start to make effective use of E-mail, then please see me.

One of the other aspects will be our electronic communication in commerce. That will involve the use of EDI, the ongoing work of electronic bills of lading and so forth. In that respect, UNCITRAL, the legal division of the UN, has approached CMI and asked for the appointment of a group of experts as they look into the laws for electronic bills of lading.

The people who have been appointed by CMI for that group are Patrick Griggs, will be the Chairman of the group, Jan Ramberg of Sweden, Gertjan van der Ziel of Holland, and myself. The date and agenda are yet to be announced.

This is a very exciting piece of work, in that it provides a first opportunity for CMI and UNCITRAL to actually work together. We're looking forward to that with great expectations.

There's many other areas for this Committee, such as with the Practice and Procedure Committee. There's a Committee called JEDI, Judicial EDI, which is looking into electronic filing of pleadings using E-mail and uses EDI so that you can automate forms, particularly the maritime forms. We'll need to be keeping a close look at that.

As many of you have seen in your district courts, the electronic filing is just coming on stream.

So I think there will probably be other uses of computers that need our attention as they come up, and we will need to work with other committees. But what we will try to have is a solid core of people who have experimented with the various uses of electronic communication and commerce, and thus be available to the committees as a resource.

I'm very much looking forward to it. And if you'll please keep in mind that if you have an interest in this area, just give me your card, and we'll try and get you on the committee. Thank you very much.

PRESIDENT HOOPER: Thank you, George.

We have Don Greenman from Limitation.

DONALD GREENMAN: Thank you, Mr. President.

Our committee met Tuesday jointly with the Transportation of Hazardous Substance Committee and the Joint Subcommittee on State Statutes Concerning HNS and Oil Pollution.

We were fortunate to have the Coast Guard representative in the form of LCDR Steven Poulin by telephone from his home in Washington, for which I think he deserves some credit. We also were happy to have Patrick Griggs, who had just attended last week's meeting of the IMO Legal Committee with respect to the Limitation of Liability Convention.

As Jack Lillis mentioned earlier, there is a diplomatic conference scheduled for next April, which will, in fact, be carrying through to conflict with our MLA meeting in the spring. It will consider the HNS Convention, but it is also going to consider amendments to the 1976 Limitation of Liability Convention or possibly, they say, even a new 1996 convention on limitation of liability.

This is all part of an effort that began some years ago when the IMO began thinking about the HNS Convention. They decided that they would, in parallel, update the Limitation Convention of 1976 to allow for inflation. As matters have gone on, they have made a few additional changes.

The inflation factor, we understand from Patrick Griggs, would require the limits of the existing convention to be raised threefold. However, talking to the

Coast Guard and also to Patrick Griggs, I believe that the United States delegation is going to press for real increases in the limits, and not just those that would account for inflation. If that occurs, then maybe the convention will meet with some favor in the U.S., as the last one did not, because we were concerned with the low limits in it.

As you may or may not know, the Limitation Convention has two funds for personal injury and death claimants and another fund for all other property damage claimants. There is a special fund for passengers.

One of the tinkering things that they plan to do with the Limitation Convention is to increase the limits for passengers from 46,666 special drawing rights to 175,000 special drawing rights per passenger authorized to be carried. That's not per passenger on board, it's per passenger that the vessel is authorized to be carrying.

They also are planning to do away with the 25,000,000 special drawing rights overall cap on passenger claims. And there is a possibility of an amendment that would permit countries, when they adopt the convention, to opt out of any limit at all for passenger claims, which I understand is something that Japan is pressing for.

They also plan to incorporate a streamlined procedure for further amendments to the convention so that, as inflation goes on, the limits can be easily changed.

With respect to the HNS Convention, there are open issues with respect to two problems. One is the linkage problem and the second is the gap problem.

Linkage comes about because the HNS Convention itself has a procedure for limiting liability for the shipowner under it, under which the shipowner would have to establish a fund. The problem, if it is a problem, which this creates is that the shipowner may be required to constitute both an HNS limitation fund and a general limitation fund. There is some thought that perhaps it should all be handled under the Limitation Convention; in other words, linkage between the two regimes.

The other problem is gap, and that come from the fact that there are still three limitation conventions in the works which are in force. It is possible that a particular country might be bound by a convention to enforce a limitation for a shipowner that is substantially less than the amount that the HNS Convention would require be paid.

This means that the "cargo" or HNS interests, would not have their fund come into existence before, or at the same time the shipowner's contribution was limited by general limitations, so that the gap between the shipowner's con-

tribution and the level at which cargo starts to contribute would have to be solved in some way.

At the legal committee last week, there was a paper which presented five possible solutions to the linkage and gap problems, none of which were adopted. So it's going to be a free-for-all when it gets to the diplomatic conference next spring. And that concludes my report, Mr. President.

PRESIDENT HOOPER: Thank you, Don.

Next, Marine Ecology, John Vayda.

JOHN VAYDA: Thank you.

At the May meeting I reported to you that the opportunity existed for Congress to pass the first amendments to OPA. The good news is that the committee remains quite optimistic that limited surgical amendments to OPA will be passed some time soon. The bad news is that nothing has yet happened because, as you all know, Congress has just been overwhelmed with many other issues.

The first OPA amendment was contained in the Coast Guard reauthorization bill, which was passed by the House early in the spring of this year, and since then it's been waiting in the Senate for approval. It hasn't even yet made it to the full floor of the Senate.

The Amendment of OPA within that bill is really rather small. It merely removes marinas and other inshore facilities from the definition of OPA.

However, there are many larger Amendments that are happening. Just yesterday the second, and probably very important amendment to OPA, was introduced in both the Senate and the House. Since it was done just yesterday, I don't have a bill number to provide to you. However, we do have a copy of the bill if any of you are interested. [November 20, 1995 Note: Bill is H.R. 2500]

The bill deals with several issues, particularly focused on natural resource damage assessment, which is called NRDA.

The first area which it addresses is shaping the assessment process itself. The bill requires, quote, application of the most cost effective, cost reasonable, and timely plan for restoration, end quote. That's a very major change, if it's passed.

The second change would require all trustees, that would be federal, state, local, and tribal trustees, to consider that natural recovery shall be a means of natural resource restoration. Prior to this amendment, natural restoration was excluded.

It also proposes major changes to the damages area. It would require that the damages be limited to restoration to the measurable and ecologically signifi-

cant functions that the natural resources would have performed absent discharge. And it would only compensate the public for uses that would have actually occurred absent the discharge.

It makes a big change also to the present timetable for implementation of NRDA. It legislatively overturns the consent order which was signed by NOAA and the Natural Resource Defense Fund, and is now in place, which would require implementation of OPA by the end of this year, and it would instead substitute a new date of August 18th, 1998 for final implementation of NRDA.

The bad news is, that these proposals and this draft legislation, is attached to the CERCLA reauthorization bill. And as you all know, CERCLA is an item which is subject to major debate in Congress. Nobody has any idea which way it will go. So therefore the future of this piece of legislation is very much an open question.

As I also reported in May, our committee has created three separate study groups in order to focus on potential areas of amendment to OPA.

The first area is concursus. We believe, after speaking extensively and frequently with many of the different committee members in Washington and their staffs, that concursus is an area in which there does not presently seem to be very much political opposition. And since there are many favorable points to it, it may well be politically palatable.

Our committee has been working together with the ad hoc joint committee, which was originally created by the Marine Finance Committee, but now is composed of our Committee, and the Practice and Procedure Committee, to come up with some specific language. We hope to be able to give the Association as a whole in May, these draft changes to OPA, probably together with a new Rule G to implement a concursus for oil pollution events.

The second area we're working very much on is NRDA. Our study group made advances in coming up with some specific proposals during the course of this last spring and summer.

However, all of that was blown away when the in-place regs, which had been issued in '94, were superseded by what are now called repropoed NRDA regs, issued on August 3rd, 1995. The comment period for these repropoed regs only closed on October 2nd. We haven't been able to see what most of those comments say, so it's an open door on that issue.

I think it's overly optimistic for us to think we'll have anything for you in May on NRDA, but we're going to give it a good shot.

The third area that we're working on is federal exclusivity. As you all know, that's been a very big issue for decades in the oil pollution field. That

issue was lost when OPA was passed in August of '90. Nevertheless, the ghost has not been given up, and many think that there is now some faint possibility of rearguing the issue.

It is going to come up again in the HNS Convention, which Jack Lillis has reported to you, and we'll be working closely with his hazardous transportation committee in order to try to figure out how or if the exclusivity issue will overflow from the OPA field into the HNS field. It may well have a very large overflow.

We anticipate we'll have a very busy six months which follow with much hard work. Mahalo.

PRESIDENT HOOPER: Thank you. Next we hear from Marine Financing, Dave Williams. Dave will be followed by Edward LeBreton from Marine Insurance.

DAVID WILLIAMS: Thank you, Mr. President, ladies and gentlemen. The Committee on Marine Financing continues to be active. We are greatly encouraged by the possibility of provisions for concursus in OPA '90. We are also watching the Coast Guard authorization bill, which includes a number of the legislative initiatives that we've previously proposed and which the Association has approved. Also, we are still waiting for the decision from the Eleventh Circuit in the case, *Dietrich v. Key Bank*, in which members of our Committee filed an *amicus* brief on behalf of the Association on the issues presented by the *Fogle* case.

This morning my task is to ask the Association's approval for a further legislative initiative, a copy of which is in the back of the room. This is designed to address a problem that crept into the documentation statutes in 1988 and 1989 with the Vessel Identification System which was enacted together with the recodification of the Ship Mortgage Act. Our Committee worked very hard on the provisions of the Ship Mortgage Act at the time, but we did not examine the Vessel Identification System provisions, as they originated with the staff of the House Committee on Merchant Marine & Fisheries and were added very late in the process.

The current issues arise from the redundancy, of which most of you are aware, between our federal and state systems of vessel registration. Federal law provides for vessel documentation, endorsement of documented vessels for commercial trades or recreational use, and the filing and recording of preferred mortgages and claims of lien. Vessel documentation is administered by the Coast guard.

Federal law also provides for numbering undocumented vessels in the state of their "principal use" and for states to enact boat numbering laws pursuant to

federal guidelines. All fifty states have enacted laws for this purpose except Alaska. In thirty-two of those states, there are also provisions for state titling of boats. These two systems, federal documentation and state numbering and titling, have coexisted in an uneasy peace for many years.

Problems arose because new recreational vessels typically have been processed under not just one, but both of these systems. While the federal documentation process was pending new boat owners registered under state law in order to be able to use their new boats. Lenders insisted on perfecting under state law, where the boat is numbered or titled. Although the state registration is intended to lapse upon the completion of the documentation process, there are literally tens of thousand of boats that are both documented and also state titled.

This redundancy, and the confusion and fraud it engendered, was part of the genesis of the Vessel Identification System legislation, which in 1988 and 1989 made a boat which is titled in a state ineligible for vessel documentation. The obvious purpose of the law was to eliminate the redundancy between the systems. A less obvious purpose may be to essentially foreclose the documentation of the recreational vessels as we know it.

This aspect of the statute was something of a sleeper. The West Publishing Company didn't even pick up this amendment to the statute in their pamphlet for several years. The amendment does not take effect until one year after the Coast Guard prescribes guidelines for state boat titling. The Coast Guard has now promulgated regulations for the VIS and state boat titling and this statute, which makes any state titled boat ineligible for federal documentation, is due to take effect on April 25, 1997. The amendment is found at 46 U.S.C. § 12102(a).

What this means is that for a yacht which is now documented and which is covered by a preferred mortgage, if that vessel also has a state title outstanding at the effective date of the statute in 1997, the vessel's documentation will become automatically invalid under the statute. This is true regardless of whether the state issuing the title for that boat participates in the VIS.

The mortgage, fortunately, should be preserved in that case because there is a savings statute (46 U.S.C. § 12111(c)) that will apply. But that savings statute will not apply to vessels which are documented after April 25th, 1997, for which there is a state title outstanding.

In that case, where a state title is outstanding at the time a vessel's application for documentation is submitted, after the amendment becomes effective, the documentation will never have been valid. The mortgage will never have been properly filed and recorded and, therefore, will not be preserved by the statute. Thus the documentation will be invalid, and the mortgage unperfected, even though all the papers appear to have been properly handled. The new law will

apply even though the parties to the documentation process may be totally unaware of the existence of the outstanding state boat title.

In response to our Committee's prior comment letter, the Coast Guard has promulgated a regulation to provide for the surrender of state boat titles, but with tens of thousands of titles outstanding, and no imminent prospect of uniformity among state titling laws, the likelihood of surrender of all those titles is small. The situation presents a serious problem for the boating industry.

In response, the Committee on Marine Financing recommends that certain legislative amendments be presented to Congress on behalf of the Association. These have been widely discussed and unanimously approved by the Committee on Marine Financing.

The first is to ask for repeal of the seven words which create the problem in the documentation statute. That is to say, proposal number one is: Amendment of Section 12102(a) of Title 46 to delete the words "or is not titled in a state." This would eliminate the exclusivity provision.

The second proposal is to provide an alternative means to avoid the redundancy, as Congress intended. Proposal number two is: Legislation as necessary to effect the combination of the manufacturer's certificate of origin provided to recreational vessels and the builder's certification required for federal vessel documentation into a single document of vessel origin.

This proposal should provide for only a single document of vessel origin so that a boat owner and a lender have to choose one system or the other and pursue that. Although it would be possible to move from one system to the other, there shouldn't be the redundancy that now exists.

Third is our proposal to require that the Vessel Identification System use the Hull Identification Number as a means of vessel identification for documented vessels. Number three is: Legislation as necessary to authorize the Coast Guard to require submission of the Hull Identification Number to the Coast Guard for documentation of recreational vessels and to make information as to the HIN available through the Vessel Identification System.

Under the System as it is now proposed, it may not be possible to go into the System and see by searching a single number whether a particular boat registered in a state has also previously been documented. The use of the HIN for this purpose seems to those of us who have examined the VIS to be an important prerequisite for a successful, useful system.

Our fourth proposal is: Legislation as necessary to require the Coast Guard to issue a temporary certificate of documentation for a vessel for which only a recreational endorsement is sought.

One of the practical problems that drove the industry into the present, redundant system was the fact that the Coast Guard's documentation process took some time before the vessel was documented. During that interval pending documentation, a boat owner had no authority to use a new boat without numbering the boat under the state system. Owners, therefore, registered under the state systems on an interim basis while the Coast Guard processed the application for documentation. There are innumerable cases of fraud as well as mistakes and simple confusion that have resulted from that redundancy. The temporary certification of documentation is designed to make the interim state registration unnecessary.

So, Mr. President, that is our request for these four legislative initiatives. We request permission to present these to the staff of the House and the Senate to ask for legislation to this effect.

PRESIDENT HOOPER: Is there a second to that motion? (Seconded) Any discussion? All in favor? (Ayes) Opposed? The Motion is carried. Thank you, Dave.

DAVE WILLIAMS: One other comment. The Office of the Legal Advisor of the Secretary of State has initiated a number of study groups, some of which have been mentioned here this morning. One of the ones possibly of broad interest to members of the Association will be the study group on Uniform Rules Concerning Cross-Border Insolvency. Anyone who has dealt with a shipping line going bankrupt will appreciate the myriad difficult problems of jurisdiction and recognition of foreign bankruptcy proceedings that may result in this area.

Bruce King, of the Joint Subcommittee on Foreclosures and Insolvency, will be monitoring this work and we solicit the comments of our members to Bruce or myself. If you are interested in participating in this worthy effort, please let us know.

Thank you.

PRESIDENT HOOPER: Thank you. Marine Insurance and General Average, Edward LeBreton.

EDWARD LeBRETON: Good morning. I wanted to speak for a minute about the Ad Hoc Committee on the British Marine Insurance Act of 1906. This actually is a separate committee under the chairmanship of Ed Cattell. However, he wasn't able to be present here this week. So we spoke about it at the meeting of the Committee on Marine Insurance and General Average, and I want to speak about it briefly.

You should have received at registration a copy of the most recent MLA Report, which contains an extensive study this committee made comparing the

present prevailing law in the United States on the subject of marine insurance with the terms of the 1906 Act.

It was a study done under Ed's chairmanship, and work was done by volunteers from the Young Lawyers Committee. I think it's quite a significant piece of work regardless of whatever else happens to this project, so I commend it to you.

Also in the MLA Report is an article by Mack Miller from New Orleans, which discusses the present situation with choice of law in marine insurance, and why many of us think that the continuing problems resulting from the *Wilburn Boat* decision in 1955 have gotten worse and worse, and now realized the ultimate fears some expressed then. This is why there is interest in an initiative to bring uniformity to the area of marine insurance in the United States.

The Ad Hoc Committee is making a further study of state regulation in coastal states which affects marine insurance. That is expected to be completed shortly.

Then I understand it is the intention of the Ad Hoc Committee to put together a working draft of a U.S. Marine Insurance Act based on this study, and following generally the guidelines of the 1906 act.

When that is done, it is the intention of the Ad Hoc Committee to solicit comment as much as possible.

So I am up here asking for comment from the members on the study published in the MLA Report. I know that from the combined experience and wisdom of this group, there are comments or additions which can be made.

And anyone who has such a comment, please pass it on to Ed Cattell. I'm sure it will strengthen the work product, which ultimately may be used to support a proposal by this committee. Also, of course, when the project does reach the stage of the draft act, it will be circulated and comment will be sought then.

Comment also is being sought from outside the Association, because this has a business effect on underwriters, and risk managers, and marine operators.

I hope that you will hear more from Ed at the spring meeting on this subject, because I think it will be very interesting. Thank you.

PRESIDENT HOOPER: Thank you. Please pass on to the authors of that very thorough report our appreciation for it.

Next is Maritime Arbitration, Pat Martin, to be followed by John Schaffer for Maritime Personnel.

PATRICK MARTIN: Thank you, Mr. President, and good morning.

The primary goal of the committee is to promote maritime arbitration in the United States. We are an active committee. We meet probably five, six times a year. It's an ongoing task to make maritime arbitrations as well as other arbitrations cost-effective and efficient.

We, in conjunction with the Society of Maritime Arbitrators, run education seminars for arbitrators and attorneys. We, this year, had a draft approved for security for arbitrators' fees, which, of course, is always of great concern to the arbitrators.

I would just like to bring you abreast of perhaps two recent developments. First, the Society of Maritime Arbitrators, last year, brought out a new set of Rules. And as many of you know, the Rules are sometimes incorporated by reference into maritime contracts and charter parties, and the commercial people who do that have no idea what the Rules are.

The new Rules change things significantly in three areas.

First, the arbitration clause is now self-enforcing. In other words, if the party against whom arbitration is demanded refuses to respond, the demanding party can then appoint an arbitrator on its behalf, which to some extent changes the practice in the past.

As a result of a lot of input from commercial interests, attorneys' fees will now be awarded to the prevailing party as a matter of course, and the arbitrators in recent awards have certainly enforced that.

And also where there is a series of contracts, each incorporating the SMA Rules, there's a provision in the Rules that the disputes can be consolidated. This goes a long way to, by contract, overturning the *Boeing* decision, which held that you could not consolidate arbitrations involving common issues of fact in law unless the parties had agreed.

The British are now circulating a draft of the proposed new English Arbitration Act. Michael Marks Cohen and others have looked at it. It contains significant changes both in the details and generally. And we will probably have a more thorough report on that in due course.

Traditionally, the Maritime Arbitration Committee has dealt primarily with arbitrations and charter parties in New York. But I can see now that this is going to change.

I call your attention briefly to the *Sky Reefer* decision, where the Supreme Court now permits arbitration clause in bills of lading governed by COGSA. There have been in recent times salvage awards in New York.

There is some consideration to having, what Pat Bonner brought up with us yesterday at our meeting, that perhaps we should have some type of arbitration rules for collision cases, which I think raises very interesting questions.

And secondly, arbitration is expanding outside of New York. Carl Neil and Graydon Staring brought to the attention of the committee yesterday that the West Coast is trying to promote active maritime arbitration, and has established a panel of seasoned lawyers to do that. I think it behooves us all to encourage all types of maritime arbitration in the United States.

We should, I would ask that each of you, as we have done with our clients, encourage them to put arbitration clauses in their contracts. Arbitration clauses take very many different guises, and unless the clients thoroughly understand what they're getting into, they're often shocked by the result.

Lastly, to fill the gap between this meeting and the next meeting in, I believe it's Palm Springs in 1997, the International Congress of Maritime Arbitrators has scheduled a meeting for Paris, June 24-28, 1996. For anybody interested in that, please contact myself or the Society of Maritime Arbitrators in New York.

Bond Smith, a former chair of the committee who died this summer, and a great friend and mentor of many of us, will certainly be there in spirit. Thank you.

PRESIDENT HOOPER: Thank you. Is John Schaffer here, or anyone for Maritime Personnel?

Next we have Bob Zapf for Practice and Procedure.

ROBERT ZAPF: Good morning. The Practice and Procedure Committee met on Tuesday this past week with twenty-one members and guests in attendance. We focused in our discussions on a number of issues, and I'll only refer to several of them which I think require some action here.

The Federal Rules Advisory Committee is meeting in November, and then they will meet again before our next meeting in May.

Tentatively on the agenda for the November meeting is a proposed amendment to Rule B to conform the provisions concerning service of process of maritime attachment and garnishment on vessels and tangible property aboard vessels with the similar provision in Rule C this Association had previously promoted to require that such service in the situation where a warrant of arrest under Rule C is being served, that that service would be performed by the U.S. Marshal.

When that change was put into effect in Rule C, there was no analogous provision put into effect for process of maritime attachment and garnishment under Rule B.

Therefore the Advisory Committee proposes to make a similar conforming amendment in Rule B, which the Practice and Procedure Committee has reviewed and is fully in agreement with, and therefore supports that amendment.

In addition, there are certain technical amendments required to the notice provisions in Rule B(2) concerning the taking of default judgments that have to be made to conform Rule B(2) with the new Rule 4 that went into effect in the 1993 amendments to the Federal Rules of Civil Procedure.

In addition, this Association had also previously approved a change in Rule C and E to attempt to eliminate the confusion that arises out of the use of the words claim and claimant.

In Rule C and E there is inconsistency in the use of the word "claim" in the phrase, "claim of owner," dealing with the person, the claimant who asserts the claim of owner, who has the right and ability to come in and defend *in rem* proceedings, with the use of the word "claim" in other portions of the federal rules and admiralty rules, meaning somebody who asserts a claim against the property.

The Rule C and E amendments are still not on the agenda for the Advisory Committee, primarily because of some delay in getting a reaction from the Department of Justice. As you know, Rule C and E govern civil forfeiture proceedings as well as the maritime arrest proceedings.

The Department of Justice has proposed a separate subsection dealing with civil forfeitures under Rule C. That language is being discussed, and hopefully will not hold up our effort to change the maritime provisions concerning claim and claimant.

Therefore, there are certain technical, nonsubstantive changes to these rules that will have to be made, hopefully between now and the next meeting. And accordingly, we have a Resolution that we would ask the Association to adopt, which was discussed and approved in the Practice and Procedure Committee on Tuesday.

The Resolution is that the Association hereby authorizes the Chair of the Practice and Procedure Committee, in consultation with and on the advice of members of that Committee, to confer with representatives of the Department of Justice and the Advisory Committee to the Judicial Conference, and to adopt as a recommendation of the Maritime Law Association of the United States such nonsubstantive, technical amendments to the wording of Rules B, C, and E as necessary to ensure conformity among the admiralty rules and the Federal Rules

of Civil Procedure consistent with changes previously authorized by the Association.

This basically deals with the issue of, again, trying to avoid the confusion of the use of words claim and claimant with specific language which has already been authorized by the Association and has been put to the Advisory Committee.

This resolution is sought in order to give us the flexibility to deal with any changes that might be required as a result of the Department of Justice's position and the Advisory Committee's views itself, to attempt to move this process forward, and have those changes get on the agenda and hopefully be adopted, which may very well take place between now and the next meeting in May.

Accordingly, I ask that this Resolution be approved by the Association.

PRESIDENT HOOPER: Was that a unanimous vote of your committee meeting?

ROBERT ZAPF: Yes, it was.

PRESIDENT HOOPER: Is there a second? (Seconded) Is there any discussion? All in favor? (Ayes) Opposed? Motion carries. Thank you.

ROBERT ZAPF: Thank you. In addition to the work on the rules amendments, the committee also received a report concerning the compromise legislation on the admissibility of Coast Guard marine investigation reports and the availability of Coast Guard personnel as witnesses in civil litigation.

As you recall in the May meeting, the House bill on the Coast Guard Authorization Act of 1996 included a provision that would have permitted as a matter of legislation the admissibility of the findings of facts of Coast Guard marine casualty investigation reports, but not the opinions. The House bill would also ban the availability of Coast Guard personnel as witnesses to explain their findings of fact.

Because of the timing that was involved, the Board of Directors in May authorized us to approach Congress and ask that this really be held in abeyance pending further discussions and negotiations.

The Senate version of the Coast Guard Authorization Act of 1996, which is still pending as was mentioned earlier, does not have any similar provision in it, so that there seemed to be an opportunity to try and rework that legislation.

There were meetings with the Coast Guard attended by President Hooper, Pat Bonner as the chair of the Navigation and Coast Guard Matters Committee, and myself, as a result of which we, in cooperation with the Coast Guard, came up with compromise legislation which the Coast Guard will now support. The

compromise in essence bans the admissibility of the entire report, findings and facts, conclusions, recommendations, et cetera, from admissibility in civil proceedings, and also makes available Coast Guard personnel as fact witnesses when the information or facts cannot be obtained in any other manner.

This, we felt, was a compromise legislation. It was submitted to all the members of the Practice and Procedure Committee and the Navigation and Coast Guard Matters Committee. Comments were received.

As a result of those comments and the approvals of both of those committees by vast majorities, the board was asked to approve the text of the compromise legislation, and that has been done. President Hooper has written to the Senate asking that this compromise legislation be adopted in substitution for the language contained in the House bill. And again, this is awaiting further Congressional action.

The forfeiture subcommittee has, as you know, over the past few years been working on a model forfeiture act. That act has been circulated among all the committees here, and the MLA has received some comments and changes as a result of it. And now it has been circulated to various federal agencies, and is awaiting further comment from them, including the Department of Justice, the Drug Enforcement Administration, the Coast Guard, and the Office of the U.S. Marshal.

There is a proposed legislation on a forfeiture act that has been put forward by the Department of Justice. We are going to liaise with them to ensure that our version and their version can be made as consistent as possible, and hopefully we can all support one version to be submitted to Congress.

On new business, we have established a formal liaison with the new Committee on Electronic Communications and Commerce.

We have established a new subcommittee on circuit court unpublished opinions, to review these decisions and to determine whether there may be rulings on admiralty law issues which perhaps ought to be made available in published form. And that new subcommittee will start working on that after this meeting, and I will ask President Hooper to appoint a new chair for that subcommittee.

We've also established a new subcommittee to monitor the Office of the legal Advisor to the Department of State concerning a proposed new international convention on the recognition and enforcement of foreign judgments. This was a new development, which we think is a matter of great concern to all of us in the litigation sphere in terms of obtaining a judgment and being able to enforce it abroad.

So we've created a new subcommittee to study those issues and to monitor their development. And I will be asking President Hooper to appoint a new chair to that subcommittee.

That concludes the report on the Practice and Procedure Committee meeting held this week.

I also wanted to report briefly on the status of the IMO and the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects.

As I reported in the May meeting, the seventh session of the JIGE was held in Geneva in December of 1994. At that session, after much debate, it was decided that there would indeed be a new Arrest Convention to update the 1952 Arrest Convention, and conform developments since 1952 with the now pending and circulated for ratification 1993 Maritime Liens and Mortgages Convention.

The new draft convention was prepared based upon discussions in Geneva and based primarily on the 1985 CMI draft Arrest Convention, which was created in Lisbon.

There were three outstanding issues of some significance which were anticipated to be the subject of discussion and debate at the eighth session of the JIGE held in London last week.

However, on the first day of the proceedings of the eighth session, a small group of delegations from several countries went back and revisited the issue of whether there should even be a new Arrest Convention, given the wide acceptance of the 1952 convention.

A whole day of debate was lost on revisiting the issue, which had been decided in Geneva in December of 1994, after which it was again, by a vast majority of the delegations there present and voting, decided there would be a new draft convention and it would be based upon the 1985 CMI draft.

The draft that had been prepared by the Secretariat would therefore constitute the basis for further discussions at the ninth session of the JIGE now scheduled for Geneva, December 2nd through 6th of 1996.

There was no substantive discussion on the three major areas of debate which dealt with (i) the enforceability of national maritime liens created under the Article 6 of 1993 Maritime Liens and Mortgages Convention; (ii) the right of rearrest in the situation of a vessel that had been arrested, but released on the posting of security, and, for example, it was determined that the amount of the security was insufficient for all the claims or the claim that was the basis for the arrest; and, finally, (iii) whether an arresting court could condition the order of arrest on the posting of security for a wrongful arrest claim.

Those three substantive issues, which generated a significant amount of debate in Geneva, were never reached in London. Hopefully they'll be reached in Geneva in another year. But as a result of these developments, you can see that if a new Arrest Convention is ever promulgated, it will not be in this decade.

That's the report on the status of JIGE and Practice and Procedure. Thank you very much.

PRESIDENT HOOPER: Thank you. Now we have Recreational Boating, Tom Russell.

THOMAS RUSSELL: Thank you, Mr. President.

Members and distinguished guests, Michael McCauley asked me to help him out today, and I am glad to be able to do that.

The Recreational Boating Committee met yesterday afternoon. The main area of discussion was the pressing need for uniformity among state laws requiring certification of recreational boaters. We prepared a proposed Resolution for the Association, which I will discuss shortly.

We also presented the latest issue of *Boating Briefs*, our Committee's Newsletter. Copies are in back of the room. And I'd like to thank my partners at Williams, Woolley for continuing to sponsor this.

Kent Roberts gave us his biannual survey on personal watercraft laws. The survey discusses trends in personal watercraft, or jet skis. Copies of this are also in the back of the room.

Kimberly Kearney told us about an update on Miles versus Apex that she's working on with the Uniformity Committee.

Jim Shirley gave us an update on a new U.S. open form salvage agreement from the Society of Maritime Arbitrators.

But the main topic to be discussed was the certification of recreational boaters. This has become a very hot issue recently, perhaps because of the number of jet skis that are being sold these days — about eighty thousand per year.

Alabama and Connecticut recently required mandatory certification. We understand that Arkansas, Georgia, Indiana, and Nebraska are now developing licensing requirements. Twenty states have asked Alabama for a copy of its law. So it shouldn't be surprising that even some manufacturers are recognizing that they will have to live with some form of recreational boating certification.

The Recreational Boating Committee is working to get ahead of the trend, and we think that the MLA itself should work to guide the states toward uni-

formity and reasonableness. We already have two different states with different certification laws, and I don't think we need more.

The Committee has prepared a draft model bill on recreational boating certification. We're still fine tuning it, so we don't have it to present to you today, but we'll have it in May.

In the meantime, what we've done is to prepare a proposed Resolution, and I'd like to read that to you. It's called the Resolution for Uniformity in Certification of Recreational Boaters:

“WHEREAS, The Maritime Law Association of the United States is concerned with encouraging uniformity among various states which may pass recreational boating measures having the potential for conflict with licensing and regulatory matters presently in place under the laws of the United States; and

WHEREAS, at least two states have recently enacted legislation requiring boater safety certification for recreational boaters; and

WHEREAS, various other states are considering certification measures for recreational boating; and

WHEREAS, the increased attention by state legislatures in regulation of recreational boating has created the risk of inconsistent laws and regulations in various states; and

WHEREAS, one of the stated objectives of this Association is to promote uniformity in the enactment and interpretation of those laws affecting maritime commerce, and the Recreational Boating Committee is in the process of preparing a model bill for the Association to be recommended to the states.

NOW, THEREFORE, BE IT RESOLVED, that The Maritime Law Association of the United States supports uniformity in legislation considered by the various states requiring certification of recreational boaters.

BE IT FURTHER RESOLVED, that representatives of this Association be authorized to inform the various state legislatures of this Association's strong desire that any mandatory educational or certification requirement be uniform amongst the states to the fullest extent possible.”

Yesterday the Recreational Boating Committee unanimously voted to adopt this resolution. This morning the Board of Directors unanimously voted to adopt it. And I would ask the membership also to adopt it.

So, Mr. President, I move that this Resolution be adopted by the MLA.

(Seconded)

PRESIDENT HOOPER: Is there any discussion of this Resolution? All in favor? (Ayes) Opposed? The Motion carries. Thank you, Tom.

THOMAS RUSSELL: Thank you. That concludes my report.

PRESIDENT HOOPER: Do we have a report from Uniformity of Maritime Law?

And next we'll have young lawyers, Joe Tabrisky, after Peter McLauchlan's report.

PETER McLAUHLAN: Thank you, Mr. President. I'm filling in for chairman Norman Cowie, who could not be here.

The Uniformity Committee met yesterday and discussed the ongoing projects. As you know, the Uniformity Committee has predominantly worked with the other committees of the Association, and has assisted the Association in the past with filing amicus briefs with the Supreme Court. We got a volunteer, someone got volunteered, I should say in their absence, to monitor the certiorari docket of the Supreme Court.

And we also obtained an update on the Miles versus Apex project which is being conducted in conjunction with the Recreational Boating Committee. Kim Carney from Chicago is heading up that project, and she has about ten to fifteen volunteers. They are progressing, albeit slowly, and anticipate having a book for everybody on the Miles case for the spring meeting of 1996.

The Uniformity Committee is also updating its 1992 report on conflicts in the circuits. There are about six subjects we still need volunteers to assist with. The volunteer would take a particular subject and give a report of up to about ten pages of cases in the various circuits that are somehow in conflict.

The six subjects that we need volunteers on are equity jurisdiction, comparative and superseding fault, limitation of liability (all vessels), prejudgment interest in P and I cases, general average (including imminent peril cases), and lastly, safe harbor.

So if any of you present or folks back in your offices are interested in assisting with those subjects, please let Norman Cowie or me know. We hope to have a report prepared for the spring meeting also which can be included in the MLA Report.

Last, we discussed briefly the United Nations Convention on the Law of the Sea. It was the consensus of the Uniformity Committee that we assist the Law of the Sea Committee in getting that Convention ratified.

That concludes the report. Thank you.

PRESIDENT HOOPER: Thank you. Next, Young Lawyers, Joe Tabrisky.

JOSEPH TABRISKY: Good morning, Mr. President, members and our guests. I'm here today on behalf of Andy Tsukamoto, who could not be here to report. He is in New York.

As many of you know, the goal of the Young Lawyers is to assist new members who happen to be young lawyers, either in age or at heart, in becoming actively involved with the Maritime Law Association in the activities of the various committees.

Additionally, over the years we have also become sort of a safety net for providing assistance to the various committees through labor and research and writing on various projects which they from time to time come up with and need assistance on.

I'm pleased to report, once again, the young lawyers have achieved their goals in both regards.

Firstly, as many of you know who were here yesterday morning, a number of young lawyers presented and wrote papers that were excellent and provided an excellent panel discussion concerning recent developments in maritime law.

And I would commend the work of Kathy Stein of Long Beach, Douglas M. Muller of Charleston, South Carolina, James F. Moseley, Junior of Jacksonville, Peter McLauchlan of Houston, Jason Gaarder of New York, Jackie McGowan of New York, Denise Blocker, San Francisco, and Andy Tsukamoto of New York.

If you did not have an opportunity to hear them speak yesterday, I recommend their papers which are contained in the CLE materials to you. Additionally, once again, those papers will be published in an upcoming issue of the Tulane Maritime Law Journal.

The second goal of the Young Lawyers Committee, of course, is to assist other committees in their work. At times the committees have difficulty getting certain work done, and we have always been there to provide that needed work.

You heard earlier this morning from the Marine Insurance Committee of the work that was done between Ed Cattell on the Ad Hoc Committee of the British Marine Insurance Act and the Young Lawyers reporting on the British Marine Insurance Act, and various approaches by the various district courts and circuits in our country on marine insurance.

I would again recommend that report to you. A vast majority of it was done by members of the Young Lawyers Committee.

At our meeting yesterday morning we were pleased to have with us Charlie Anderson, the chairman of the CMI committee, who expressed a great interest in having young lawyers assist the various projects with his committee.

We were also pleased to have James F. Moseley, Senior, first vice president, come to us and advise us of the long-range planning committee work that is going to be under way, and again, presenting to us a desire for young lawyers' involvement with that committee.

Finally, as you heard here today, there are other committees that need assistance, and we are going to be coordinating with them in the coming months to provide that needed assistance.

Despite the fact that Denise Blocker, who was the immediate past chairman of this Committee, had spoken quite a few times about coming to the Young Lawyers for assistance, there are still people who are unaware that we are here to help. And I want to again state that, as contained in the minutes here today, please approach Andy or any member of the Young Lawyers Committee and advise them if you need any assistance.

Finally, on behalf of the Young Lawyers Committee and Andy, I want to thank Denise Blocker, our past chairman, for all the work she has done, laying the ground work for this committee, and the success that it's now achieved and the work it's done.

As well, I'd like to thank our Board liaison, John Edginton, for the assistance and the advice he's provided to the committee. Thank you.

PRESIDENT HOOPER: Thank you.

Now we have, I think, Planning and Arrangements for 1997. Is Tom Rue here?

THOMAS RUE: Mr. President, members and honored guests. The 1997 meeting of the Association in the fall will be at Marriott's Desert Springs Resort and Spa. This is in the Palm Springs area, which as you know, holds many of the country's finest golf courses. For those of you like I who do not golf, let me assure you there are plenty of other exciting activities waiting for your exploration.

Mark your calendars now. October the 27th, 1997 will be the week during which this meeting will be held.

In the meantime, your committee will be working hard to ensure that, like this meeting, it will also be memorable. Thank you, Mr. President.

PRESIDENT HOOPER: Thank you, Tom.

Is there any old business?

For new business, I want to start off with a few things, and I think we have some other reports under new business.

I received a short fax from Dave Owen which I'd like to read to you. I think he wanted me to.

It says: "Dear Chet, I'm distressed to report that I've had to cancel long-held plans to attend the Kauai meeting because of personal illness and the hospitalization of Eleanor's brother. We have attended these meetings together since the first in Bermuda 1972. To make this worse, Hawaii is my original home. I was born and raised here.

I wish you a congenial and productive meeting like all the rest for which the MLA is famous. David."

I think you're going to hear later about David's book.

We've also gotten flyers of various meetings.

The China Maritime Law Association is having a conference in Delhi on the 27th to 30th of August, 1996.

Australia and New Zealand are having a meeting from the 5th to the 8th of November. Pretty short order; that's this year.

The Tulane Maritime Law Center wanted me to announce a conference in London on May 7th and 8th, 1996.

We have one from Panama, which is on the 7th and 9th of February, 1996.

Chile, the 8th, 9th, and 10th of November, 1996, I believe. Or is it this year? That's this year.

Now, I have those flyers if anyone wants to look at any of them.

I'd also like to thank Justice Cooper and Judge Brieant for coming and speaking to us and being with us this week. I particularly want to thank Judge Brieant for coming this morning and putting up with our presence during our business meeting. We're very pleased and honored to have you with us, Judge Brieant.

We would also like to thank Judge Brieant for alerting us to problems raised in the long-range plans of the Judicial Conference. I'll be assigning a study of that plan to appropriate committees of our Association.

Is there any other new?

Oh, and Justice Cooper, I'm told, is here, too. Thank you, Justice Cooper, thank you very much for putting up with us this morning as well.

Bob? This is Professor Force.

ROBERT FORCE: Good morning, President Hooper, honored guests and ladies and gentlemen. I'm privileged to offer the following Resolution.

The Maritime Law Association of the United States extends its congratulations and best wishes to John W. Sims upon his retirement as an adjunct professor of law at Tulane University Law School in New Orleans.

A past president of the Maritime Law Association of the United States, a member of the Comité Maritime International, past chairman of the Tulane Admiralty Law Institute, a professor of Tulane Law School for over twenty years, a long-time Associate Editor of American Maritime Cases, and a senior partner in Phelps Dunbar, John Sims has spent a lifetime in the development of admiralty and maritime law and the growth and improvement of the legal profession.

The Maritime Law Association of the United States notes with appreciation and gratitude his many accomplishments, and wishes him a long and happy retirement.

PRESIDENT HOOPER: Is there a second? (Seconded) Any discussion? All in favor? (Ayes) Opposed? The Resolution is carried. Is there any other new business? Frank Wiswall has some.

FRANK WISWALL: Almost literally once in a lifetime a book comes along which sheds real light on our profession, its origins in this country, and how our present law has developed.

For the past ten years David Owen has been battling against lengthening shadows to complete the work on this book. Many of you may not know that he has an irreversible degenerative vision problem.

Together with Michael Tolley, a political scientist at Northeastern University who has done a lot of the work with original records, they have produced a remarkable volume. Unique in my experience of writing in this field, it's a narrative style that is entertaining reading as well as being informative.

It's also the particular merit of this book that it contains documents from Maryland which were previously thought not to exist. The exposition of the development of the procedural and substantive law illustrates some of these documents from the colonial Maryland record.

I think any of you who are interested in how we came to where we are today will want to read Courts of Admiralty in Colonial America.

I've brought ten copies of this book, which are for sale primarily to those foreign visitors who would not want to be encumbered with a lot of heavy U.S. currency on their way home. If any of you from abroad are interested in taking home a copy of this book, please see me after the meeting.

For any other members of the Association and others who are guests who wish a copy of the book, would you kindly fill out one of the order forms in the

back and put your room number on it here in the hotel or other address here. If we don't sell out to the foreign visitors, I'll be happy to make a copy available to you.

I think you'll find it a most, most rewarding and interesting book. The last such effort that I know of was made by our great member, Judge Charles M. Hough, in the early part of this century. I doubt that any book like this is going to come along again in the rest of our lifetimes.

Thank you very much, Mr. President.

PRESIDENT HOOPER: Thank you very much.

Is there any other new business?

Nick Healy, you have something for us?

NICHOLAS HEALY: O na alii nui, o na wahine, o na kane, a hui a pau.

In case there are a few members or guests present who are not completely familiar with the Hawaiian language, I'll translate it for you:

Mr. President, ladies and gentlemen, I move we adjourn.

PRESIDENT HOOPER: Thank you. All in favor? (Ayes)

(Meeting concluded at 11:30 a.m.)

FORMAL REPORT OF THE COMMITTEE ON ALTERNATIVE DISPUTE RESOLUTION

The Alternative Dispute Resolution Committee held their fall meeting in Kauai on October 17, 1995. The Chairman commenced the meeting by reporting to participants the status of several current projects.

1. Amended Rule of Conciliation. These rules have been completed.
2. Mediation Register — Questionnaire has been completed.
3. Mediator Training Sources. The ADR Committee has completed a list of 28 training sources for mediation.

Caspar Ewig was appointed ADR Committee liaison with the Arbitration Committee & Society of Maritime Arbitrators with respect to the aforementioned projects.

During our meeting, those present voiced opinion that the MLA had a responsibility to insure "standards" for MLA mediators to be listed in the MLA Mediation Register. To this end, Frank L. Wiswall, Jr. (Committee Member) was requested by the Chairman to prepare and coordinate with ADR liaison officer

(Caspar Ewig) a draft of appropriate standards. Additionally, the participants recommended that those mediators listed in the MLA register be required to report mediation results at the conclusion of any mediation in which they are involved as mediators. It was proposed that said information be limited to statistical data so as not to violate any confidentiality of the parties involved.

Lastly, several new members were elected to this Committee.

1. Frank L. Wiswall, Jr.
2. Carl R. Neil
3. Walter Muff

The aforementioned summarizes this Committee's activities to date.

Respectfully submitted,
Robert G. Phillips,
Chairman

FORMAL REPORT OF THE COMMITTEE ON CLASSIFICATION SOCIETIES

The Committee On Classification Societies met on October 19, 1995 in Kauai. Four Committee members and five guests attended. A brief review of the Committee's charge and its earlier meetings since formation in February 1995 was followed by a report from Dr. Frank Wiswall. Dr. Wiswall is Chairman of the CMI's Joint Working Group On Classification Societies. This Group has, since 1992, held 11 meetings with the purpose of drafting language for international agreements governing contract clauses and a code of conduct for all Classification Societies. The Group intends to propose: model clauses for agreements between Classification Societies and governments; model clauses for agreements as to Classification Societies' liabilities to shipowners and third parties; and a written Standard of Conduct to be applicable to all Classification Societies.

Dr. Wiswall reported that the latest draft revisions in all three areas occurred in October 1995. Much progress has been made though much more needs to be done to obtain consensus from all members of the JWGCS.

He is hopeful that consensus might be obtained at the Group's January 1996 meeting. If so, their recommendations would be sent to all national maritime law associations in February 1996 for review and comment. Our Committee would be asked to study, discuss and analyze the proposed wordings with the purpose of reporting to the Executive Committee of the MLA whether in our

opinion the drafts proposed should have the support of the MLA's endorsement. Some preliminary review of the drafts have already been done. The Committee will meet for further review after the final drafts are submitted to the MLA, expected during February 1996.

Respectfully submitted,
George D. Benjamin,
Chairman

**FORMAL REPORT OF THE
COMMITTEE ON ELECTRONIC COMMUNICATION AND
COMMERCE**

The Committee on Electronic Communication and Commerce is newly established and is in the process of being formed. The mission of the Committee is as follows: To encourage the development of electronic communication between MLA members. To monitor development and problems in the maritime usage of online computer services, electronic filing, electronic registration, computer based legal research, security issues, computer programs and systems. To consider domestic and international law relating to the use of computers in maritime commerce and communications, including Electronic Data Interchange (EDI) for commercial and shipping documents, court forms, etc. Committee members need an e-mail address in order to participate.

Respectfully submitted,
George F. Chandler,
Chairman

**FORMAL REPORT OF THE
COMMITTEE ON MARINE FINANCING**

The meeting of the MLA Committee on Marine Financing, including the Joint Subcommittee on Vessel Foreclosure and Insolvency, was held in Garden Island Room 4 of the Hyatt Regency Hotel, Kauai, Hawaii, on October 17, 1995, and was called to order at 7:30 a.m. by David McI. Williams, Chair. Those in attendance were as follows:

<u>Name</u>	<u>City</u>
Michael K. Bell	Houston
G.W. "Bill" Birkhead	Norfolk
Walter E. Blessey, Jr.	New Orleans

<u>Name</u>	<u>City</u>
John E. Bradley	New York
Lizabeth L. Burrell	New York
William D. Carle, III	Cleveland
David G. Davies	Cleveland
Charles S. Donovan	San Francisco
J. Kelly Duncan	New Orleans
John Edginton	San Francisco
Peter Ehlermann	Hamburg
James B. Kemp, Jr.	New Orleans
Bruce A. King	Seattle
Leroy Kramer, III	Racine
Francis X. Nolan, III	New York
Michael A. Orlando	Houston
James H. Roussel	New Orleans
Thomas A. Russell	Long Beach
Kathy Stein	Long Beach
David McL. Williams	Baltimore
Robert J. Zapf	New York

I. Chair Reports

Consolidation of Offices of Vessel Documentation:

The Chair reported on some of the start-up problems encountered by those using the facilities of the National Vessel Documentation Center in Falling Waters, West Virginia, and in particular the telephone problems. Other committee members reported on their experiences with the Center.

Coast Guard Authorization Bill — H.R. 1361 and S.1004:

The Chair discussed these bills. Senate Bill 1004 is a bill to authorize appropriations for the United States Coast Guard.

II. Discussion Topics

A. Vessel Identification System:

The Chair remarked that this system was developed basically for drug enforcement purposes, but in doing so has opened the door for fraud in connection with titling a vessel under both federal and state systems. This matter was addressed fully in the Chair's report to the general membership at the meeting on October 20, 1995.

Several members had comments about the system, and the Chair handed out copies of comment letters submitted by members of the Committee, including two from Robert S. Fisher of Tenafly, New Jersey, one from the Chair to the

United States Coast Guard Headquarters, and one from Kevin Smith of Clark Ladner, Cherry Hill, New Jersey.

B. Office of the Legal Adviser, Secretary of State:

Charles Donovan of San Francisco discussed matters involving UNIDROIT and then Bruce King discussed UNCITRAL as a part of the report from the Vessel Foreclosure and Insolvency Subcommittee. Jan Arnson of Haight Gardner will work with John Edginton of San Francisco, California, to consider matters for the next UNCITRAL meeting.

Bruce King also discussed additional matters pertaining to OPA '90. The *In Rem* Foreclosure Forms Project is under way, with some input received from other members, and the Chair called upon others to make other comments if necessary, with the hope that a report can be issued in about four months.

Bob Zapf of New York City discussed the JIGE Draft Articles, which will be next considered at a JIGE meeting in December of 1996. Mike Bell of Houston discussed issues involving the Electronic Committee, and John Edginton discussed, among other things, Section 1110 of the Bankruptcy Code. On other matters, Charles Donovan discussed the *Triton* case before Judge Sear in New Orleans and Bruce King discussed a fisheries matter from the Pacific Northwest.

The Chair handed copies of letters and reports, all pertaining to the matters listed on the Agenda, and if members of the Committee desire copies, they should contact the Chair or the Vice Chair.

Those in attendance participated very actively in the meeting, which was adjourned by the Chair at approximately 9:10 a.m.

Respectfully submitted,
James B. Kemp, Jr.
Vice Chair

**FORMAL REPORT OF THE
COMMITTEE ON MARITIME LEGISLATION**

The Maritime Legislation Committee met on Thursday, October 19, 1995, at the Fall Meeting of the Maritime Law Association in Kauai. In attendance were fourteen members and guests. Because of scheduling problems and the Legislation Committee's long-standing interest in the issue of punitive damages, the meeting was combined with the Ad Hoc Committee on Punitive Damages.

PUNITIVE DAMAGES

The Ad Hoc Committee on Punitive Damages is composed of several members from the Legislation Committee — Bruce R. Hoefler, Jr., (Chairman), John P. Schaffer, Francis X. Byrn and Paul S. Edelman — as well as George J. Cappiello and Gerald E. Meunier from the Maritime Personnel Committee. John Schaffer, who is also the Vice-Chairman of the Legislation Committee, gave the report of the Ad Hoc Committee on Punitive Damages. There was a brief discussion of judicial developments since *Miles v. Apex*, 498 U.S. 19, 112 L.Ed. 2d 275 (1990), including the most recent decisions of *Guevara v. Maritime Overseas Corp.*, 59 F.3d 1496 (5th Cir., *en banc*, July 26, 1995) and *Glynn v. Roy Al Boat Management Corporation*, 57 F.3d 1495 (9th Cir., June 21, 1995), which held that punitive damages are not available in maintenance and cure actions. Consequently, the Ad Hoc Committee has decided that continued pursuit of remedial legislation is not appropriate at this time, but that the Committee should remain intact and continue to monitor jurisprudence and congressional developments on the subject of punitive damages. In essence, the Ad Hoc Committee will serve as a watch dog to make certain that judicial and legislative events don't necessitate a renewed remedial response.

As a final note on punitive damages, it was observed that *BMW of North America Inc. v. Gore*, Ala. S.Ct. (646 So.2d 619), another case from the State of Alabama which has reached the Supreme Court on the issue of the constitutionality of a punitive damages award, was argued before the United States Supreme Court on writs on October 11, 1995. The outcome of this case is particularly awaited.

PRODUCTS LIABILITY STUDY GROUP

As a result of the meeting in New York in May, 1995, a group was formed to evaluate the ongoing efforts in Congress at legislative reform of products liability, including punitive damages. The House of Representatives passed HR 956 on March 10, 1995 and the Senate passed S. 565 on May 10, 1995. Approaching the date of the Fall Meeting, neither the Senate Commerce, Science & Transportation Committee nor the House Judiciary Committee, both with jurisdiction over the legislation, had requested a conference on the bills.

Members of the group from the Maritime Legislation Committee include R. Christian Johnsen, John P. Schaffer and Paul S. Edelman. Mr. Schaffer reported that the group was to have a meeting following the Legislation Committee meeting and that, otherwise, there were no other developments on this topic.

UNIFORM STATUTE OF LIMITATIONS

Almer W. Beale, II, has been heading up an effort to study the feasibility of a uniform statute of limitations, which would cover all causes now governed by the doctrine of laches. The key purpose is uniformity of maritime law. Progress has been slow, but Mr. Beale, assisted by David F. Sipple, expects to have a more substantive report at the May 1996 Meeting.

AD HOC COMMITTEE ON 1906 MARINE INSURANCE ACT

Edward V. Cattell, Jr., has been chairing this Committee and coordinating with the various, interested committees in the MLA. Due to scheduling problems encountered by Mr. Cattell, the meeting of this Ad Hoc Committee in Hawaii was cancelled. After the May 1995 Meeting, Francis V. Liantonio, Jr., of the Legislation Committee was appointed to serve as liaison to this group.

Following the Spring 1995 Meeting, Mr. Cattell circulated a written analysis of the British Marine Insurance Act in comparison with U.S. jurisprudence on the subject. At the time of the Fall Meeting, Mr. Cattell's working group was finalizing an evaluation of current state regulation of Marine Insurance and the actual preliminary draft for an American Marine Insurance Act, based upon sections of the British Act. The Ad Hoc Committee intends to schedule regional meeting with insurance providers and consumers to solicit input and support for the project.

Concerns have been expressed about this endeavor, including those of a Legislation Committee member, Marilyn L. Lytle, who is counsel to the American Institute of marine Underwriters. One of the main concerns of the domestic marine insurance market appears to be maintaining freedom from regulation in order to compete with foreign insurance markets on an equal footing, while at the same time having uniform treatment of marine insurance in the United States.

SEAMAN STATUS

It was noted that, once again, the U.S. Supreme Court has addressed and attempted to clarify the issue of Jones Act status. In *Chandris v. Latsis*, 115 S.Ct. 2172 (U.S. June 14, 1995), the lower court had held that a worker could qualify as a Jones Act seaman if he was "*either permanently assigned to a vessel or performed a substantial part of his work on a vessel*". The Supreme Court reversed, holding that a seaman must have a connection to a vessel in navigation in terms of *both its duration and its nature*.

JOINT AND SEVERAL LIABILITY

The discussion included *Coats v. Penrod Drilling Corporation*, 61 F.3d 1113 (5th Cir., August 8, 1995), wherein the U.S. Fifth Circuit decided that joint and several liability remains the rule in maritime personal injury cases, refusing to adopt a modified joint liability rule.

SUITS IN ADMIRALTY AND PUBLIC VESSELS ACTS

At the Spring Meeting in New York, Professor David Sharpe and George Washington University law student, Peter Nosek, made a presentation on the excellent research project to fold the Suits in Admiralty and Public Vessels Acts into the Federal Tort Claims Acts. Recognizing fragmented maritime claims, overlap and uncertainty in a hodge-podge of statutes enabling maritime tort claims to be filed against the United States, Professor Sharpe's reform effort is mainly to simplify the law, not to change substantive rights provided by the affected statutes. At that time, the project was well received by the Committee, although there were some discussions that maritime lawyers do not have a problem with the present procedural scheme and therefore there was not a real need to "fix something that is not broken."

Professor Sharpe and Mr. Nosek, who is now seeking to establish a practice in Anchorage, Alaska, were both unable to attend the Fall Meeting. However, Professor Sharpe has indicated that they are tightening the focus of the project and hope to make another presentation at the May 1996 meeting in New York.

Respectfully submitted,
Mark J. Spansel,
Chairman

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

The Committee held a joint meeting with the River and Ocean Towing Committee in Kauai on October 17, 1995.

Chairman Patrick Bonner reported on the background and the status of the MLA's efforts on the legislation amending the law on the admissibility of Coast Guard reports. In the Spring of 1995, as part of the Coast Guard Authorization Act for 1996, the House of Representatives passed a Bill which would make Coast Guard investigative reports admissible at the discretion of the Coast Guard and investigating personnel would be available for deposition or testimony only with the consent of the Coast Guard. Following the passage of the Bill, the Chairman of the MLA Practice and Procedure Committee wrote a num-

ber of letters to Senate Staffers and others opposing the enactment of the House Bill.

Rather than engaging in a lobbying effort in the Senate to try to defeat the Bill, members of the Committee recommended that we meet with the Coast Guard to see if there was common ground and whether the needs of the Coast Guard and the concerns of the MLA could be satisfied. The Coast Guard agreed to meet with representatives of the MLA in August. Chairman Bonner polled the membership of the Committee to obtain their sentiments regarding the admissibility of the Coast Guard reports.

President Chester Hoper, Chairman Robert Zapf of the Practice and Procedure Committee and Chairman Bonner met with Rear Admiral Shkor and other high ranking Coast Guard officers on August 10, 1995 in Washington to discuss amending the Section in the House Bill regarding admissibility of Coast Guard reports. The Coast Guard representatives appreciated the concerns of the MLA and also explained the Coast Guard's operational and financial problems in supplying witnesses in civil litigation. It was agreed that Messrs. Zapf, Bonner and Lt. Commander Poulin would try to redraft the Section to see if they could come up with common language acceptable to all.

Over the next few weeks, Messrs. Bonner and Zapf and Lt. Commander Poulin exchanged drafts and eventually reached an agreement on common language. The compromise language was sent to the Committee members who approved the amended version of the Act. The amended language was also placed before the Board of Directors of the Maritime Law Association who also endorsed the amended language.

President Hooper has sent the amended language to the Senate Committee dealing with the Coast Guard Authorization Act and the matter remains in the Senate Committee.

At the meeting, Chairman Bonner also distributed a new organization table for the Coast Guard office of Marine Safety, Security and Environmental Protection which included names and designations for the new offices.

A flyer providing information on Coast Guard on-line services for vessel records and violations history was also distributed at the Committee meeting and copies were made available at the general meeting of the Association. This flyer included telephone numbers and the computer specifications to make this information available via modem.

The Committee agreed to undertake a project to try to draft arbitration rules for collision cases. A number of Committee members appreciated the need for standard, approved rules of procedure for collision arbitrations after the Tampa Bay three ship collision. It was agreed that the Committee will work closely

with the Maritime Arbitration Committee and the Alternate Dispute Resolution Committee. Chairman Bonner also agreed to attend the Maritime Arbitration Committee meeting at the invitation of Chairman Patrick Martin to discuss this project.

Member Ken Roberts of Portland, Oregon reported on efforts to amend the Jones Act. He also distributed a letter from Representative Jones of North Carolina proposing such an amendment. A general discussion of these efforts followed.

There was also a discussion about the site of the Spring Committee meeting. For the last few years, the Committee has been meeting in Washington during MLA week and the Coast Guard has been presenting a full day program in which high ranking Coast Guard officers provide the present status of regulations, statutes and other Coast Guard projects. Chairman Bonner expressed the concern that attendance might not warrant such a full scale presentation and perhaps the Committee should consider meeting in Washington every other year or intermittently. There was wide-spread support for a meeting in Washington each year and a number of members expressed how valuable this program was. There was strong sentiment for continuing to meet in Washington each year. It was agreed that the Committee would try to publicize this very valuable seminar as other MLA members might be interested in attending. It was suggested that a flyer be placed in the general mailing for the Spring meeting publicizing the Coast Guard Program.

Respectfully submitted,
Patrick J. Bonner,
Chairman

FORMAL REPORT OF THE COMMITTEE ON SALVAGE

The Salvage Committee meeting was held at Kauai on the morning of October 16, 1995, with 12 members present.

Mr. Jim Shirley of New York City, as chairman of the subcommittee discussed the status of developing a United States Open Forum Salvage Contract that would be readily acceptable by United States interests. This project was commenced as a result of requests by a number of interests suggesting a document calling for arbitration of certain salvage claims to be held in the United States. The work on this project is being done in cooperation with and under the auspices of the Society of Maritime Arbitrators. A draft of such salvage agreement has been prepared and reviewed by the Society of Maritime Arbitrators

Board of Directors who have tentatively approved the form, subject to further comments and suggestion by the industry representatives. A copy of this form may be obtained by contacting Mr. Shirley at his New York City office. Further action and discussion will be held on this subject at our Spring meeting in 1996.

The next item discussed was the updating of the Blackwell criteria for salvage awards. A 1993 National Research Counsel study of the United States salvage industry recommended that the Maritime Law Association of the United States be asked to take action to update the criteria for determining salvage awards. Gordon Paulsen, of New York City, has chaired this Washington, D.C. study and has also taken the lead in assisting our committee in taking on this task. Although Article 13 of the 1989 Convention which will come into effect in July 1996 (one year after the 15th ratification of the Convention) does cover the subject, it is nevertheless felt that some aspects of U.S. law are not explicitly taken into account by the Convention. Mr. Paulsen advised that Professor Joe Sweeney of Fordham Law School has agreed to provide student research and assistance on this project. Further reporting will be given at our Spring meeting.

Discussions were then held with respect to reviewing cases in which awards have been made, and the manner in which the 1989 Convention criteria was invoked.

Respectfully submitted,
Paul M. Poliak,
Chairman

FORMAL REPORT OF THE COMMITTEE ON STEVEDORING AND TERMINAL OPERATIONS

The Committee met at 8:00 a.m. on October 17, 1995, with six members and two guests in attendance.

The Committee reviewed the present status of the proposed amendments to COGSA and discussed their relevance to stevedoring and terminal operations. The Committee also noted the extension of the effective date of regulations issued by the Federal Highway Administration governing overweight (greater than 10,000 lbs.) containers to September 1, 1996.

The Committee then heard and discussed a report by Michael Van Leeuwen of Rotterdam concerning the legal dilemmas that have arisen under The Netherlands statutes concerning maritime arrests that had been hoped to resolve conflicts among conflicting bodies of law by reconciling the laws of the place of contracting with those of the flag state. General discussion followed concerning problems relating to fleets of the former U.S.S.R. and Croatia.

The Committee heard case reports on the invalidation of the Himalaya Clause in the 1990 edition of the ACL bill of lading caused by inadvertent omission of a comma, which a federal judge has held created a grammatical ambiguity. There also were reports on possible contract of RICO coverage of racketeering activities in Honolulu and of the legality of a terminal's contracted-for preferences in positioning vessels contrary to a custom of the port that vessels would be positioned on a first-come, first-serve basis.

The meeting concluded with three citations to reported cases affecting stevedore and terminal operations.

Respectfully submitted,
David G. Davies,
Chairman

**MINUTES OF THE BOARD OF DIRECTORS MEETING
OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES
Held At The
Hyatt Regency Hotel, Kauai, Hawaii
on
Monday, October 16, 1995**

The Meeting was called to order by President, Chester D. Hooper at 9:37 a.m. In addition to President Hooper, the following officers were present:

James F. Moseley, First Vice-President
Howard M. McCormack, Second Vice-President
William R. Dorsey, III, Secretary
Marshall P. Keating, Treasurer
Lizabeth L. Burrell, Membership Secretary
George W. Healy, III, Immediate Past President

The following Board Members were present:

George F. Chandler, III
John A. Edginton
Thomas S. Rue
George William Birkhead
George D. Gabel, Jr.
Neal D. Hobson
James B. Kemp, Jr.

Patrick J. Bonner
Brendan P. O'Sullivan
Donald C. Greenman
Raymond L. Massey

Also present or joining the meeting in progress by invitation were:

Joseph P. Tabrisky of Jacksonville
Robert J. Zapf of New York
Warren J. Marwedel of Chicago
Ex-President Graydon S. Staring of San Francisco
David McI. Williams of Baltimore
John P. Schaffer of Stamford

SECRETARY'S REPORT

Secretary William R. Dorsey, III of Baltimore reported that the Minutes of the Board of Directors Meeting held in Baltimore on August 12, 1995, had been circulated to all of the members of the Board and had been mailed to the membership. Upon motion duly made and seconded, the Minutes of the Board of Directors Meeting of August 12, 1995, were approved and accepted.

Upon motion duly made and seconded, the Secretary's Report was approved and accepted.

TREASURER'S REPORT

Treasurer Marshall P. Keating of New York reported on the cash on hand and investments as of September 30, 1995, which reflected the Association's sound financial position. Treasurer Keating then recommended that membership dues be raised. He pointed out that there had been no raise in membership dues for ten (10) years and that the excess of expenses over dues was about \$60,000 per year. After considerable discussion, and upon motion duly made and seconded, the Board unanimously approved raising the annual dues by the amount of Ten Dollars (\$10.00) for those members in practice for less than five (5) years, and by Fifteen Dollars (\$15.00) for all other dues paying members, effective for the fiscal year commencing May 1, 1996.

Treasurer Keating also reported that the new Directory had been mailed to the membership. He also indicated that we now have subscriptions to CMI publications.

Upon motion duly made and seconded, the Treasurer's Report was approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Lizabeth L. Burrell of New York reported that the total number of members of the Association is 3,677. She presented the names of twenty-six (26) applicants for Associate membership, one (1) applicant for Judicial membership, the Honorable Jacques L. Weiner, Jr., United States Circuit Court Judge for the United States Court of Appeals for the Fifth Circuit, and one (1) candidate for Academic membership, Professor Henry J. Bourguignon of the University of Toledo School of Law. The twenty-six (26) Associate applicants, one (1) Judicial applicant, and one (1) Academic applicant were unanimously elected and approved.

Membership Secretary Burrell announced that one of our non-lawyer members, Charles S. Cumming of New York, had been admitted to the bar and had become an Associate member.

Upon motion duly made and seconded, the Membership Secretary's Report was approved and accepted and is appended to the original of these Minutes along with the list of names of the successful candidates for membership.

ARRANGEMENT COMMITTEES

Warren A. Marwedel of Chicago reported on the status of the arrangements for the meeting in Kauai. President Hooper extended his compliments and thanks to Mr. Marwedel and the other members of his Committee for a job well done. Board Member Thomas S. Rue of Mobile reported on arrangements for the Fall 1997 Meeting, which will take place at the Marriott Desert Springs Hotel in Desert Springs, California.

MEETING OF COMMITTEE CHAIRS

Second Vice-President Howard McCormack of New York reported on the meeting of Committee Chairs held on Monday, October 16 at 7:15 a.m. At this meeting the Committee Chairs, or their designees, outlined the plans and projects of their respective Committees. Mr. McCormack also presented to the Board a bound copy of the reports that he had received from the Committee Chairs.

LONG RANGE PLANNING COMMITTEE

First Vice-President James F. Moseley of Jacksonville recommended the establishment of a Long Range Planning Committee to focus and report to the

Board of Directors on concerns and issues facing the Association as directed by the President. Attached to these Minutes is a copy of a letter from Mr. Moseley to the members of the Board outlining particular issues that could be addressed by such a Long Range Planning Committee. With the unanimous concurrence of the Board of Directors, President Hooper indicated that he intended to form such a Committee.

COMMITTEE ON RECREATIONAL BOATING

Joseph P. Tabrisky of Jacksonville reported for the Recreational Boating Committee. He indicated that a poll by this Committee was currently being conducted on a resolution to be presented to the Association recommending proposed model legislation for licensing of recreational craft, in light of increasingly inconsistent legislation being adopted by various states.

COMMITTEE ON CARRIAGE OF GOODS

Board member George F. Chandler, III of Houston reported that the meetings to explain the Ad Hoc Study Group's proposed amendments to COGSA were taking place and going well. He anticipated that the proposed amendments would be brought before the Association for a vote at the May 1996 Meeting.

ELECTRONIC BILLS OF LADING

Board member Chandler also reported that the CMI and UNCITRAL would be undertaking formation of a joint working group to study the possibility of drafting model laws on electronic bills of lading.

COMMITTEE ON ELECTRONIC COMMUNICATION AND COMMERCE

Board member Chandler further reported that the formation of the Committee on Electronic Communication and Commerce, of which he is the Chair, was under way. He indicated that one of the requirements for membership on this Committee was the maintenance of an e-mail address.

AD HOC SUBCOMMITTEE ON PUNITIVE DAMAGES

John P. Schaffer of Stamford, Vice Chair of the Committees on Maritime Legislation and Maritime Personnel, reported that in view of recent decisions on punitive damages there was an open question as to whether there was any pur-

pose in further attempting legislative action on that subject. The Ad Hoc Subcommittee on Punitive Damages will continue to monitor developments and report to the Association as necessary.

In this connection, President Hooper indicated that the Board had declined an invitation to file an *amicus* brief in connection with a Petition for Certiorari in the case of *Guevera v. Maritime Overseas Corp.*, a case in which the Fifth Circuit held that punitive damages were not available in connection with a maintenance and cure claim.

COMMITTEE ON NAVIGATION AND COAST GUARD MATTERS

Board member Patrick J. Bonner of New York, Chair of the Committee on Navigation and Coast Guard Matters, reported that his and President Hooper's efforts to enlist the support of the Coast Guard to obtain amendments to the Coast Guard Authorization Bill with respect to the admissibility of Coast Guard reports had proved fruitful, and that the Coast Guard would be seeking amendments along the lines suggested by the Association.

COMMITTEE ON MARINE FINANCE

David McI. Williams of Baltimore, Chair of the Committee on Marine Finance, reported on the problems created by an amendment to 46 U.S.C. Section 12102(a) that would render a vessel titled in a state ineligible for documentation by the Coast Guard. He also indicated that there was an effort underway internationally to harmonize the rules concerning cross-border and insolvency proceedings as they apply to vessels and corporations. The Office of the Legal Advisor and the Secretary of State is organizing a study group to formulate input for an UNCITRAL meeting on this subject in October of next year. He has asked the Joint Subcommittee on Vessel Foreclosures and Insolvency to monitor this situation.

COMMITTEE ON PRACTICE AND PROCEDURE

Robert J. Zapf of New York, Chair of the Committee on Practice and Procedure, reported on the activities of the Joint Intergovernmental Group of Experts on Maritime Liens and Mortgages and Related Subjects. He indicated that at the most recent meeting of JIGE the question of whether or not there should be a new arrest convention was put forward. Accordingly, there had been no real progress made in coming up with the terms of a proposed new convention. He indicated that it was not likely that there would be any new arrest convention in the near future.

**BOARD OF DIRECTORS MEETING, SAN FRANCISCO,
MARCH 1996**

Former President Graydon S. Staring of San Francisco reported on arrangements for a meeting of the Board of Directors to take place in San Francisco on Saturday, March 23, 1996. The Pan Pacific Hotel was selected as the hotel for the Board. The Board Meeting will probably take place at the World Trade Club.

PRESIDENT'S REPORT

President Hooper then gave his report. He indicated that he has asked the Chairman of the Committee on Alternative Dispute Resolution to work in conjunction with the SMA in developing proposed rules for mediation and conciliation. He also indicated that he had good meetings with the staff of INS and Congressional Staffers concerning a proposed amendment to H.R. 2202 relating to stowaways.

The President then requested that the Board authorize him to write to the Senate to ask the Senate to give its advice and consent to the President to accede to the Law of the Sea Convention. Upon motion duly made and seconded, that authorization was unanimously granted.

President Hooper then expressed his thanks to Edward LeBreton of New Orleans for speaking at the Houston Marine Seminar. He also expressed appreciation on behalf of the Association to Robert J. Zapf of New York for attending the JIGE meeting in London, substantially on his own funds, and to First Vice-President James F. Moseley, Second Vice-President Howard M. McCormack, Warren M. Faris of New Orleans, and Alfred J. Kuffler of Philadelphia for attending the London Commercial Courts Centenary at their own expense.

There being no further business to come before the Board, the meeting adjourned at approximately 11:44 a.m.

Respectfully Submitted,
William R. Dorsey, III, Secretary

**MINUTES OF THE BOARD OF DIRECTORS MEETING OF
THE MARITIME LAW ASSOCIATION OF THE UNITED STATES**

**Held at the
Hyatt Regency Hotel, Kauai, Hawaii**

**on
Friday, October 20, 1995**

The Meeting was called to order by President Chester D. Hooper at 8:30 a.m. In addition to President Hooper, the following officers were present:

James F. Moseley, First Vice-President
Howard M. McCormack, Second Vice-President
William R. Dorsey, III, Secretary
Marshall P. Keating, Treasurer
Lizabeth L. Burrell, Membership Secretary
George W. Healy, III, Immediate Past President

The following Board members were present:

George F. Chandler, III
John A. Edginton
Thomas S. Rue
George William Birkhead
George D. Gabel, Jr.
Neal D. Hobson
James B. Kemp, Jr.
Patrick J. Bonner
Brendan P. O'Sullivan
Donald C. Greenman
Raymond L. Massey

Also present or joining the meeting in progress by invitation were:

Warren J. Marwedel of Chicago
Cliffe F. LaBorde of New Orleans
Thomas A. Russell of Long Beach
John T. Lillis, jr. of New York
Neal D. Hobson of New Orleans

SECRETARY'S REPORT

Secretary William R. Dorsey, III of Baltimore, advised that David McL. Williams of Baltimore, Chairman of the Committee on Marine Finance, had

reported to him that his Committee had unanimously approved a proposed resolution that he would put forth to the members at this morning's meeting. The proposed Resolution urges several legislative changes relating to marine finance. A copy of the proposed Resolution is attached to the copy of these Minutes.

Secretary Dorsey also indicated that he had been advised by Robert J. Zapf of New York, Chairman of the Committee on Practice and Procedure, that his Committee had unanimously approved a proposed Resolution that would authorize him to put forward such non-substantive technical changes to Rules B, C and E as necessary to ensure conformity among the Admiralty Rules and Federal Rules of Civil Procedure consistent with changes previously authorized by the Association. He also intended to present this Resolution to the Association at this morning's meeting. A copy of this proposed Resolution is attached to these Minutes.

Upon motion duly made and seconded, the Secretary's Report was approved and accepted.

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Burrell reported that six (6) non-lawyers had been recommended for non-lawyer memberships and that sixteen (16) applicants had been recommended for advancement to Proctor status. Upon motion duly made and seconded, all six (6) of those candidates for non-lawyer membership were elected and the advancement of the sixteen (16) applicants to Proctor status was approved. The names of these successful applicants is appended to the original of these Minutes. It was subsequently noted that Raul Betancourt, Jr. of Philadelphia, had died since the Board met in May of 1995.

COMMITTEE ON RECREATIONAL BOATING

Thomas A. Russell of Long Beach appeared on behalf of the Committee on Recreational Boating. He presented to the Board a Resolution unanimously approved by that Committee urging the states to take a uniform approach to any mandatory educational or certification requirements for recreational boating. After a few technical amendments to the Resolution, on motion duly made and seconded, the Board unanimously approved same and recommended that it be presented to the membership. A copy of the Resolution is attached to these Minutes.

COMMITTEE ON TRANSPORTATION OF HAZARDOUS SUBSTANCES

John T. Lillis, Jr. of New York, Chair of the Committee on Transportation of Hazardous Substances, reported that the IMO Legal Committee has cleared a draft convention on hazardous substances. A discussion was then held on what action the Committee should take and the timing of its submission to the Board leading to an Association position on the proposed Convention. Mr. Lillis indicated that he was presently intending to take a poll of the membership for its input on this proposed Convention, have the HNS Committee meet in early January to fully review the poll and other Committee's comments, and come up with a recommendation for the Board and eventually the Association for action in connection with this Convention.

SITE SELECTION

Warren J. Marwedel of Chicago, Chair of the Site Selection Committee and Cliffe F. LaBorde of New Orleans, Chair of the 1999 Arrangements Committee, reported on site selection for the 1999 meeting. There followed a general discussion with the views being expressed that a site easily reached and with alternative hotel accommodations should be considered.

There being no further business to come before the Board, the meeting adjourned at approximately 9:20 a.m.

Respectfully Submitted,
William R. Dorsey, III
Secretary