



THE MARITIME LAW ASSOCIATION  
OF THE UNITED STATES

**FALL MEETING - DECEMBER 6, 2011**

PRESENT:

PATRICK J. BONNER  
ROBERT J. PARRISH  
ROBERT G. CLYNE  
HAROLD K. WATSON  
DAVID J. FARRELL, JR  
WILLIAM ROBERT CONNER, III  
WARREN J. MARWEDEL

And the following 79 members and guests:

Anthony Barker	Alexander Giles
Jim Bartlett	Geoffrey J. Ginos
Elizabeth Beazley	Sandra Gluck
Michael Bell	Alice Gran
Phil Berns	Joseph Grasso
Michael Black	Donald C. Greenman
Forrest Booth	Kevin J. Hartmann
Phillip Buhler	Ray Hayden
Lizabeth L. Burrell	Barbara Holland
Francisco Carreira-Pitti	Chester D. Hooper
John Crowley	Lori Hopkins
Christopher Davis	Rob Hopkins
Charles De Leo	Bradley A. Jackson
Susan Dorgan	John P. James
Stephanie Espinoza	Noah Jarrett
John Farmer	Bryan C. Johnson
Robert Fisher	Larry Kahn
Rod Fonda	Allan R. Kelley
Edward Floyd	Terry Kenneally
Joshua S. Force	Sandy Knapp

John Lacy  
J. Dwight LeBlanc  
Keith Letourneau  
Marker Lovell  
Louise Livingston  
Ray Massey  
Dan McDermott  
Eugene McDonald  
Dennis Minichello  
Jeff Moller  
Jim Moseley, Jr.  
Tom Muzyka  
Francis X. Nolan  
David Nourse  
George Noueu  
Ray Paetzold  
Edward Powers  
Katharina Powers  
Salvador Pusateri  
Edward Radzik

Edwin D. Robb  
C. Kent Roberts  
John Ryan  
Robert Ryniker  
Art Severance  
James Shirley  
Jonathan Spencer  
Norman Stockman  
William Storz  
Michael F. Sturley  
Lt. Brendan Sullivan  
Kevin Thornton  
Michiel Van Leeuwen  
Alan Van Praag  
Skip Volkle  
Tom Wagner  
Joseph A. Walsh  
M. Hamilton Whitman Jr.  
JoAnne Zawitoski

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## PROCEEDINGS

MR. BONNER: Good morning, everyone. I'm going to call the meeting to order. I know I could be sitting down, but I want to keep with the MLA tradition that the President stands for the entire meeting. I know Bob Parrish has a bad back and I don't want to give him a break in the years coming up.

This has been a fabulous meeting. The weather has been great. The activities have been great. The CLE program was fabulous and we were particularly lucky having all the Australians and the Canadians.

And I have to admit that I was wrong. The person who is most responsible for this meeting -- she had the idea of it. She came to me in 2008 and suggested it, suggested that we go to Hawaii, and even though my ship was home-ported in Hawaii and I love Hawaii, I told her that I thought it was too expensive. I didn't think it would be a good idea to have a meeting here. But she kept at it. She kept pushing and she pulled it off. So I'd like to introduce JoAnne Zawitoski, and on behalf of the MLA, I thank you and your committee.

(Applause).

MS. ZAWITOSKI: Thank you very much, everyone, but I could not have done this without my wonderful committee, so I'd like to invite my committee to come up here and introduce them to you.

There's Jim and Heather Moseley, Jr., from Jacksonville, who served as vice chair of the committee. Jim was my right hand man for putting together the goodie bags that you received when you checked in and for in pitching in whenever necessary to make sure that everything was done perfectly.

Next is Lisa Beazley, from Long Beach. Lisa handled the golf outing and she also was instrumental in securing Janine Minichello to photograph all of our events. Lisa also helped organize the fun run and I think she is also going to be helping with sailing event today.

Next is Bobby Glenn from Savannah, who organized the tennis competition and fun run and who also worked at the registration desk on many days.

Next are John and Ellen James of New York. John was the guy who made sure we had rooms for all of our meetings. He created the registration brochure and printed the program for the meeting, made sure that we had the right AV equipment for all the meetings, and coordinated with all of the committees with respect to meeting timing and space. That was a huge job, and I appreciate that very much, John.

Kim Kearney from Chicago, who couldn't be here, served as our treasurer for this meeting, and Alex Giles from Baltimore is substituting for her here on location. So thanks to Alex and Kim for helping to keep our books balanced and paying our bills.

Next are Sandy and Charlie Knapp from West Chester, Pennsylvania. Sandy pulled off the most fabulous CLE program here at our meeting, finding topics, organizing speakers in coordination with all of the participating maritime law associations, assembling printed materials from the speakers, and securing CLE credit for the program in coordination with the Tulane Admiralty Law Institute. We all owe her a big debt of gratitude, because that was a very, very challenging job.

John and Elizabeth Lacy, from Honolulu, were our local liaisons. John was responsible for the success of the dine-around program. If you enjoyed the opportunity to try out local restaurants and meet with your fellow members in a smaller setting, John is the man to thank. With some help from Kent Roberts, John organized that entire program, checked out all the restaurants, vetted them for you, got the reservations and made sure that program was a success. And his wife, Elizabeth, is responsible for obtaining all the beautiful leis that we received at the welcome reception and for all the beautiful flowers that you'll see at the dinner tonight.

And Marker and Alli Lovell from San Francisco had a huge job. Marker was in charge of registration and he dealt with all that with great aplomb. I especially appreciate the fact that Marker took over many of the responsibilities for making sure the evening events went well when Janet Marshall, our evening event chair, was unable to be with us. So Marker, we really appreciate all your help.

Janet Marshall, from New Orleans, again, could not be with us, but Janet organized all the evening events, from choosing the locations to selecting the food and beverages, entertainment and décor. She worked tirelessly with the hotel to make sure it all came off perfectly, even though she was unable to see her wonderful plans come to fruition.

And then finally, I want to recognize Kent and Sara Roberts from Portland, Oregon. Kent organized the sailing competition and the fishing event. Although not many fish were caught, I understand that the fishing was a lot of fun for those who participated, and Kent promises an even a better time this afternoon with the sailing competition.

So let's give a round of applause for your Oahu Planning and Arrangements Committee.

(Applause).

MS. ZAWITOSKI: Just one or two reminders. We have the closing dinner tonight. We'll start at 6:30 in the Ocean Ballroom, which is this room, but you won't recognize it tonight. It will look entirely different.

And do remember when you check out that our group gets discounted internet service, so even though you may have been signing up for it daily and you are getting a message that the cost is \$12.95 a day when you sign up, you should only see \$9.95 per day on your bill. If you don't, let me know, because that is the price we negotiated with the hotel. And you should also be receiving discounted self-parking. Usually, the self-parking charge is \$35 a day, but we are getting it for \$15, so make sure that you are being charged at the correct rate.

So hopefully, everybody will get a bill that meets with their approval and, again, thank you all very much for giving me the honor of chairing this Arrangements Committee. And thank you, President Bonner, for appointing me.

MR. ROBERTS: If I may, one comment on the sailing. I got a call from our local liaison at the Kaneohe Yacht Club, for those of you who are sailing or are spectators. He said the clouds you see here are not on the other side. The tradewinds are there. Bring a hat and sunscreen.

MR. BONNER: Thank you, Kent. On behalf of the Association, I have one word to say to JoAnne and the Arrangements Committee: Mahalo.

Now I'd like to introduce a few of our dignitaries. Number one, as always, is Rear Admiral Fred Kenney, who is the Judge Advocate General of the Coast Guard. He's been very active. And we thank him for coming to Hawaii. I'm sure everybody knows Fred.

And of course, sitting two seats away from Fred is Rear Admiral Selectee Steve Poulin, who is Chief of the Office of Maritime and International Law of the Coast Guard. All of you also know Steve, but thanks for coming, Steve.

Søren Larsen, who is Deputy Secretary General of BIMCO. I don't know if Søren is here. He's sitting in the back. Thank you for coming, Søren. If everybody wants to turn around and see who he is, feel free to come up to him and exchange ideas.

Ignacio Melo signed up. He's President of the Mexican MLA, but I don't think he is at this meeting. Is he here? No. Okay.

And of course, I'd like to call Chris Giaschi up. I believe Chris wants to say a word or two for the Canadian Maritime Law Association.

MR. GIASCHI: Thank you, Pat. On behalf of the Canadian Maritime Law Association, I wanted to express our thanks for being invited to this wonderful event. Americans really know how to throw a party -- I mean CLE. We've all enjoyed ourselves tremendously. We've had the opportunity to renew old acquaintances and to make many new acquaintances. But unfortunately, after the golf game later today, I'm afraid that I may, in fact, be in need of yet more acquaintances and perhaps a job in the U.S. I'm sure to be persona non grata in the rest of the world.

One other thing I did want to say is that tomorrow is, of course, a historic day for you, but not just for you; it's a historic day for all of the western world, and that, of course, is the day that formally brought America into World War II and it brought us all together--the United

States, the United Kingdom, Canada, Australia and New Zealand—in a joint effort to defeat what was then our common enemies. And I think it's worth noting that things such as that are only possible when relationships between countries are built at the ground floor level, at events precisely such as this. And we should all perhaps reflect upon that and appreciate just how important these things can be.

In any event, thanks very much for inviting us. We are extremely happy to be here. And we couldn't have been welcomed in a nicer fashion than we were. Thank you.

MR. BONNER: Thank you, Chris. Sarah Derrington, President of the Australia/New Zealand MLA is attending her own organization's functions, but she sends her best and also commends the Arrangements Committee for a job well done.

Now, he asked me not to do this, but I think I have to recognize him. As far as I know, the only MLA member who has attended every one of our resort meetings is Ray Hayden, and I've got to hand it to you, Ray.

Why don't we start with the officers' reports. Secretary's report, Hal Watson.

MR. WATSON: Thank you, Mr. President. [Moving a cup of coffee]. We don't want to have a spill up here with all these Coast Guard officers sitting in the audience.

(Laughter).

First, a couple of housekeeping duties. If you haven't signed in, please do so. There are sign-in sheets at the tables on either side of the room. We need to know who's here. Secondly, if you're going to be making a report, hand a business card to the reporter when you come to the podium, so she will be able to identify you by name.

Speaking of the reporter, our reporter this morning is Sue Flint of Ralph Rosenberg Reporters, who are providing their services to the Association free of charge, which we greatly appreciate. Of course, the



best way to show gratitude is that if you have depositions here in Hawaii, remember the name Ralph Rosenberg Reporters.

The Board of Directors has met twice since our last General Meeting in New York in May. We met in August in Gettysburg, Pennsylvania, and then this past Saturday here in Hawaii.

One issue that came to light when we were going through the debate about the repeal of the Limitation of Liability Act back in 2010 was an ambiguity in the by-laws of the Association. By-law 504 deals with how committee reports are dealt with or acted upon by the membership of the Association, and provides that a unanimous committee report may be acted on in a meeting of the Association. The by-law uses the word "committee," so it's unclear whether this applies only to unanimous reports of Standing Committees or also includes unanimous reports from Special Board Liaison Committees and Special Committees. At the last Board meeting in Gettysburg the Board amended this by-law to make it clear that the intent of the by-laws was that only unanimous reports of Standing Committees were entitled to be considered at a meeting of the Association.

Another bit of housekeeping that we've done dealt with the status of the Uniformity Committee. This committee was established as a Special Board Liaison Committee rather than as a Standing Committee. As the work of the Uniformity Committee is the very heart and soul of this Association, it seemed to be much more appropriate for it to be a Standing Committee, and so it's been redesignated as such.

President Bonner also formed a new Standing Committee on maritime bankruptcy. So if you deal with maritime bankruptcy issues, you may want to consider working with this committee.

One of the primary functions of the Board is to make sure that the administration of the Association goes forward in a smooth and cost-effective manner. Unlike many associations, we have no employees. The work is done mainly by volunteers. We have out-sourced some of the administration to an independent contractor. For many years this has been done by a company called PC Solutions that was owned by Mr. Doug Petco. The person who actually did the work for PC Solutions

of sending out invoices, sending out communications for the Association, receiving dues, et cetera, is a woman named Robin Becker. Well, fairly recently, Mr. Petco, the owner of PC Solutions, retired, and Ms. Becker moved from New York to South Carolina. Ms. Becker has done a wonderful job for us, but the Board wanted to make sure that with these changes that the work of the administration of the Association was going to move forward smoothly, so we met with Ms. Becker and assured ourselves that with her move she's still in a position to provide the same services, and we feel very comfortable that she is. We've made sure that we have backup on our electronic records that she maintains and that we have access to the materials that she keeps, and so we feel very comfortable going forward with Ms. Becker handling these duties. We think that's the most cost-effective and efficient way to run this part of administration of the Association.

We've also had some discussion about what type of items should be posted on the Breaking News page on the website. The general consensus of the Board is that we certainly want people to post things like formation of new firms, moving from one firm to another, new partners, changes of address, members becoming judges, these sorts of things, essentially anything that would be of interest to the Association. On the other hand, we think purely personal matters like births or marriages probably shouldn't be put on there. But please post basically anything else of interest that you think may be of interest.

One of the most successful ventures of the Association in recent years has been the Coast Guard Forum, which has provided a forum in which issues can be discussed with the Coast Guard and has made the relationship between the two organizations even better. We have now been approached by the Maritime Administration to have a similar forum with that agency, so we have formed the MARAD Forum, and President Bonner has announced that Board members Frank Nolan, Skip Volkle, and Warren Marwedel, and members Robin Minturn, Marjorie Krumholz and Clay Cook are going to serve as the Association's representatives on the MARAD Forum.

One of the benefits of membership in this Association that we certainly see at this meeting is the opportunity to network with foreign lawyers. We all have need of foreign lawyers from time to time and hopefully they have need for our services from time to time, so it's very

valuable to have these relationships. And we've been discussing ways in which we could increase that opportunity, and one idea that we've come up with would be to have committee chairs, when appropriate, to ask foreign lawyers to come and make presentations at our committee meetings. So that's something to keep in mind.

The Comite' Maritime International, or CMI, has asked the Association to state its views on the proposed amendments to the Salvage Convention, which we've discussed here at this meeting. President Bonner has indicated he intends to put this to a vote of the membership in May 2012.

As you may know, until 1966, all of the meetings of the Association were held in New York. Then until 2004, the Fall meetings of the Association rotated between New York and a resort, and since 2004, we've been having the Fall meetings that were not at a resort at out-port cities around the country. But the Board is planning to have the Fall meeting next year in New York. I know that many of our spouses like to come to New York, so the Fall 2012 meeting of the Association is going to be back in New York City.

Finally, I am delighted to report something that Chris Giaschi alluded to a few minutes ago; that the attendance of foreign lawyers and foreign lawyers that play golf has enabled us to reinstitute the Challenge Cup, and this afternoon the United States will be playing the rest of the world, and all I have to say is "U.S.A."

Mr. President, that concludes my report and I move its adoption.

MR. BONNER: Is there a second?

AUDIENCE: Second.

MR. BONNER: All in favor.

AUDIENCE: Aye.

MR. BONNER: Motion passed. Next we'll have the Treasurer's report from Bob Connor.

MR. CONNOR: Good morning. I'm glad to see all of you here in Hawaii and I'm glad to report that the Association continues in good financial shape due to two items. One, we've taken care of expenses, kept them under control, and maybe even more importantly, we've upped the ante by increasing revenue by picking up people who forget to pay their dues from time to time and increased collections tremendously. It does not mean that there aren't still those who forget to pay their dues, and we continue to remind them.

As you know, a couple of years ago we changed the system and we're going to continue that way. Mid-January, you will be receiving an email with an attachment which is your dues invoice. The one change this year will be hopefully that between now and then the techies will have worked out how you can pay your dues by credit card going onto the website. There will be a notice about that on the bottom of the dues statement. We will continue to follow up -- if you forget to pay your dues, there will be an email reminder and eventually you'll be getting letters. But I believe as you're all here, I would be preaching to the choir if I was looking to you. It's those that are not here.

But basically, we're in good shape. We've managed our expenses. The Arrangements Committee has assured me that the budget for this meeting is on target and that we will break-even and that's a good thing, too. And basically, that's my report, Mr. President. I will move its adoption.

MR. BONNER: Is there a second?

AUDIENCE: Second.

MR. BONNER: All in favor?

AUDIENCE: Aye.

MR. BONNER: Motion passes. Next is the Membership Secretary's report, David Farrell.

MR. FARRELL: Thanks, Mr. President. Good morning. Adopting the Committee on Proctor Admissions' recommendation, the Board

of Directors on Saturday approved five new Proctors in admiralty. They are W. Richmond Beevers of Washington, D.C.; Francisco Carreira-Pitti of Panama; Jason W. Gaarder of Baltimore; Normand R. Lezy of Honolulu; and Samuel R. Mandelbaum of Tampa.

Since our New York City meeting last spring, the Board has also elected one Judicial member, two Academic members, 36 Associate lawyer members, seven Law Student members and four Non-Lawyer members.

But I regret to advise that since our last meeting, the following members have passed away: Albert S. Commette of Port St. Lucie, Florida; Gerard T. Gelpi of New Orleans; David J. Kadyk of Tampa; Henry S. Morgan of Annapolis; Joseph P. Milton of Jacksonville; past president David R. Owen of Baltimore; Judge Jamie Pieras of San Juan; Professor Wallace S. Reed of Castine, Maine; George W. Sullivan of Summit, New Jersey; Robert K. Tisdale of Milford, Connecticut; and Frederick W. Turner of New York. And I'm also told that Charles E. Lugenbuhl of Covington, Louisiana; and Arden J. Lea of St. Thomas, Virgin Islands have also died. Let's rise for a moment of silence.

(All rise and observe a moment of silence).

MR. FARRELL: Thank you. As of today our membership stands at 2,970 strong, a figure that's been stable over the last several years. But we are facing a challenge in the maritime economy and in order to keep the MLA strong and vibrant in the years ahead, we need to recruit new members, so as usual, I encourage you to be in touch with people in your region and your colleagues and make sure that they submit applications to me by email so that the MLA can continue to thrive in the decades ahead.

Thank you very much. That concludes my report and I move its adoption.

MR. BONNER: Is there a second?

AUDIENCE: Second.

MR. BONNER: All in favor?

AUDIENCE: Aye.

MR. BONNER: Thank you, David. It's traditional in the MLA to recognize a Past President when he or she passes away, and recently David Owen passed away. He was President from 1976 through 1978. And Jim Bartlett and Tony Whitman will be saying a few words about Past President Owen.

MR. BARTLETT: Thank, Pat. David was my partner and my mentor. He was President of this organization from 7/76 to 7/78, and he was the first editor and, the founder of the MLA Report, which first was published in 1983.

Interestingly, he was born in Honolulu in 1914. He was the son of an Army surgeon. He attained a bachelor's, master's and law degree from the University of Virginia, graduating from the law school in 1939, and it was that year that he began his legal career with Semmes, Bowen & Semmes, an association that would last for over 50 years.

He served in the Navy during World War II and attained the rank of captain in the Naval Reserves.

He was a mentor and colleague to many maritime lawyers at Semmes, including Past President Bill Dorsey, myself, and JoAnne Zawitoski. He was chairman of our firm, but more than that, the thing he really took pride in was his skill as a trial attorney and as an appellate advocate.

Interestingly -- I did a little research -- he participated in at least nine amicus briefs for the MLA. He loved the MLA and he was buried in his MLA tie.

I'd like to call now on Tony Whitman, who, as many of you know -- or maybe you don't know -- was David's nephew. Tony?

MR. WHITMAN: Thanks, Jim. President Bonner, fellows members of the MLA and honored guests: Thank you for granting to

Jim and me this point of personal privilege this morning. On this eve of December 7th and in this place, it's particularly fitting to reflect this morning on the life and career of a member of what has been called The Greatest Generation.

David Owen was born, as Jim said, in Hawaii in 1914 on the island of Oahu. His father was an Army doctor. His first sailing experience was with a homemade sail in an outrigger canoe off the coast of Oahu, and he early on developed a passion for the water and an interest in all things -- a fascination with the oceans.

In his adult life there were four institutions to which David was particularly devoted. Purely chronologically, first was the University of Virginia, second was Semmes, Bowen & Semmes, third was the United States Navy, and fourth was the Maritime Law Association.

David earned three degrees at the University of Virginia, which he preferred to call "The University," and he was a staunch supporter of "The Law School" to which he gave his collection of significant maritime law books.

David went to work, as Jim said, at Semmes, Bowen & Semmes in 1939 and his formal association with that firm lasted some 60 years. Over the final few years, as I would visit him, he would remark and I would observe that he was in ever-smaller office space, until his desk had to go in sideways and so did he, but he was still there. The record of David's recruitment to that firm includes notes of his interview with the senior partner, who wrote: "The interviewee's interests included anything pertaining to the ocean." And that was David.

David was very proud of his accomplishments in his career at the firm, of which he was chairman for a significant period of time. He particularly noted that he was directly responsible for the hiring of the firm's first African-American lawyer, the firm's first Jewish lawyer and the firm's first woman maritime lawyer. How times have changed thanks to people like David.

David took leave from Semmes to serve in the Navy during World War II, chiefly as the navigator and executive officer on the United

States Navy's destroyer ORDRONAUX, in the North Atlantic and Pacific theaters. On April 7, 1944, the ORDRONAUX chased and sank a German submarine in the North Atlantic, and the ORDRONAUX was maneuvered in a very risky attempt to rescue survivors that could be seen in the rough waters because there were, of course, other submarines around at that time. German submarines never operated alone. David was dispatched to the quarterdeck to take the prisoners aboard, and as David would tell the tale, he stood there with his Navy issue 45-caliber pistol in his hand, nervously pointing it as the first prisoner came aboard. That turned out to be the captain of the German submarine, who upon seeing David with his gun, drew himself up, pointed disdainfully and said in perfect English, "I don't think you'll be needing that today." In later years, assisted by my partner, Manfred Leckszas, David was able to track down Captain Fritz Wittenburg in his retirement in Germany and David and Captain Wittenburg established a communication and a friendship which lasted until their deaths. David remained in the naval reserve for 28 years and retired with the rank of Captain, an accomplishment of which he was very proud. To my knowledge, his last action in uniform was in 1969, when he administered my commissioning oath as a newly admitted ensign.

David was an avid sailor and recalled having raced on sailing yachts in the Atlantic, the Caribbean, the English Channel, the North Sea, the Baltic Sea, and of course, Chesapeake Bay. He loved sailing his boats WINDSONG and DYNO, which he skippered with no great success in occasional races on the bay.

His career as an ocean racer came to an abrupt end in 1960 during that year's Newport to Bermuda sailing race aboard his friend Henry Morgan's 63-foot sloop DJINN. Nearing Bermuda in the middle of the night and in what the New York Times later called the world's greatest knockdown, DJINN was unexpectedly capsized, catapulting David and others over the side. David's life was saved by his lifeline. He later mounted the shackle of that lifeline to a plaque which he mounted on the wall in his home office and which announced his status as, quote, "Charter Member, Retired Ocean Racers Association."

David was, as you all know, President of the MLA. He served the MLA also in other officer positions; as its representative to CMI



meetings, as chair of the Committee on Practice and Procedure. He particularly enjoyed meeting and mentoring young MLA members, and he had the knack for making them understand that he was truly interested in them and in their careers.

David authored or co-authored, as Jim said, I think, at least nine briefs *amicus curiae* sponsored by the MLA. He was also the author of dozens of scholarly articles. In an introduction to a book that David co-authored on the colonial courts of admiralty in Maryland, David was referred to as one of the rare true scholars among the admiralty practitioners of the late 20th century, and that accolade pleased him very much.

David loved to tell tales of his wins and losses in court, and he was lucky enough to be of the generation that actually got to try cases. There was the time that David's expert cheerfully swallowed spoonfuls of a substance that the FDA had declared to be poisonous, using a measuring spoon that David just happened to have in the pocket of his jacket in the court.

Or the case when David sought to have the opposing attorney disqualified because he had to testify, having gone aboard ship to investigate and having held on to the bitter end of the measuring tape, not the tape end where you would actually measure how long the hatch opening was.

David also had a case which he believed was going to be his ticket to the Supreme Court and to beat what turned out to be *Reliable Transfer* in establishing the rule of comparative fault. Unfortunately, the trial judge took four years and four cycles of law clerks to write the opinion in that case, so *Reliable Transfer* overtook him, much to his chagrin.

And there was a case after which David referred to the fact that winning a case in front of that judge against David was like taking candy from a baby, and coining the phrase which I heard many times, that the judge is the natural enemy of the trial lawyer.

David was, all in all, an unabashed patriot, but also a self-professed Anglophile. At the end, he was buried in a coffin bearing the seal of the U.S. Navy, in a ceremony with military honor guard, and after

a service in which the congregation sang both the naval hymn and, at David's particular request, the patriotic song *My Country 'Tis of Thee*, which David chose because it's set to the tune of the British national anthem.

Finally, it is safe to say that the MLA would not have gathered here today if it were not for David. David was one of the MLA officers who began and strongly supported the tradition of resort meetings, and without David's recruitment of JoAnne as his firm's first woman maritime lawyer, she would not have been in a position to select this marvelous venue.

So on this eve of December 7th, I give thanks, and I hope you will, too, for the service and leadership of David Owen to his country and to the Maritime Law Association.

(Applause).

MR. BONNER: Thank you very much, Tony. That was quite eloquent. Thank you.

The next person I would like to recognize is also from Baltimore, which confirms my suspicion that the MLA has always been a Baltimore-centered organization. I'd like to recognize Alex Giles and present him with a placard. Alex is the outgoing chair of the Young Lawyers Committee. He was supposed to get this last May, but something came up and we couldn't give it to him. So Alex, thank you very much for a job well done.

I'd like to start the committee reports with Arbitration, followed by Carriage of Goods.

MS. GLUCK: Good morning. Thank you, Mr. President. I send regards from Keith Heard, who is the chairman of this committee. He could not be here today.

The Committee on Arbitration and Alternative Dispute Resolution has met twice since the Association's Spring meeting. The first meeting was in the offices of Carter, Ledyard & Milburn in New York on

October 26th, and of course we're always grateful when members offer their offices for meetings. I should say also that yesterday's meeting was held jointly here in Hawaii and in New York, and the New York portion of the meeting was held at Curtis Mallet-Prevost's offices. Again, thanks very much to Liz Burrell for that.

At the October 26th meeting, we discussed a variety of topics, including the activities of the International Arbitration Club of New York, the New York State Bar Association's publication of a glossy brochure on international arbitration in New York, and we also discussed efforts to remove New York as a stated option in BIMCO's dispute resolution clause, as well as in the revised version of the Norwegian sale and purchase contract form. Both of these efforts have been contested due to efforts of various members of the MLA, including very much Keith Heard, as well as the Society of Maritime Arbitrators and several private companies.

The committee met again yesterday and again, as I mentioned, it was a joint meeting involving people in New York, as well as here. There were two excellent presentations at the meeting. One was delivered by Don Kennedy of Carter, Ledyard & Milburn, and he discussed CPLR New York Civil Procedure 7502 C, which allows for provisional remedies to be issued, attachment and preliminary injunctions in aid of arbitrations, either domestic or outside of the country. Don presented a very excellent presentation of the possibilities of that section and how we might be able to utilize it.

Bobby Glenn of Ellis, Painter, Ratterree & Adams presented an excellent presentation on mediation, and his topic focused on preparing foreign clients for mediation, particularly those who might not be familiar with the process, and points that should be raised prior to the mediation to ensure its success.

We also touched on ICMA, the dates for ICMA being May 13th to 18th, 2012 in Vancouver, and at this point I would like to turn over the microphone to President Chris Giaschi to elaborate more on that. Thank you very much.

MR. BONNER: Thank you, Sandra.

MR. GIASCHI: Just very briefly, as has been mentioned, the ICMA conference 2012 is to be held in Vancouver. Vancouver is an absolutely beautiful city. It has wonderful people, and last year we had a team in the Stanley Cup finals. Unfortunately, that didn't turn out so well. Perhaps next year in May -- and the dates May 13th through the 18th are, in fact, during the Stanley Cup playoffs. So it's a great time to be in Vancouver.

And to up your return on investment, the Canadian Maritime Law Association is holding its annual general meeting and a full-day seminar on May 11th and 12th, just before the ICMA conference, so you can attend both the CMLA events and the ICMA events all on one plane ticket.

The rainy season is over by May. That's when the sun comes out, but there's still beautiful snow on the mountains, so we'd really love to see you in Vancouver.

And you can get more information on ICMA 2012. They've got a website set up. You can just Google it and you will find it there.

MR. BONNER: Thank you, Chris. Carriage of Goods, Ed Radzik, to be followed by Cruise Lines and Marine Torts.

MR. RADZIK: Good morning, Mr. President, officers, directors of the Association, members and guests. Yesterday afternoon the Carriage of Goods Committee joined with the Uniformity Committee and held a meeting here with about 17 in attendance in person and others connected by telephone conference. The Carriage of Goods Committee has been monitoring the progress of the prospective passage of the Rotterdam Rules as a treaty by the United States. Last year, in Houston, we reported that the prospect of the Rotterdam Rules was that it was going to be vetted by the State Department by the end of the year and presented to the President and then the Senate in early 2011. Our projection was overly optimistic, since we've learned, through Chet Hooper, one of the original delegates, that the Convention is still under review in the State Department. It's expected to be completed as a package and presented to the executive branch by the end of this year for consideration and review by the President and Senate in early 2012.

Our featured speaker at the meeting was Carriage of Goods and Uniformity committees member Professor Michael Sturley. He gave an excellent presentation on the aftermath of the United States Supreme Court decision in *Regal Beloit* and his analysis of that decision and its effect on subsequent decisions from various district courts that have considered how that decision impacts exports in particular. Two district court decisions have decided that *Regal Beloit* should be limited to the imports of intermodal goods. Professor Sturley has offered to make his paper available to any member that presents him with his business contact information.

Finally, we were joined and privileged to have Søren Larsen, Deputy Secretary General of BIMCO, who provided us with a status of how some of the European countries have been dealing with the Rotterdam Rules. Germany had considered going ahead with its own legislation, but they've been counseled and I think the basic tenor is that they're waiting to see what the United States does before they act. Mr. Larsen reported that Germany, Denmark and Norway appear to be ready to act after the U.S. makes its decision.

I'd be remiss if I didn't comment that committee member and the editor of the Cargo Newsletter, Mike Ryan, in New York, has sent numerous copies of the latest Cargo Newsletter here to Hawaii and they're available to be picked up outside the meeting room. This concludes my report. Thank you.

MR. BONNER: Thank you very much, Ed. Cruise Lines and Marine Torts will be followed by Fisheries, and while Charlie is walking up here, I just wanted to point out that Charlie wrote an amicus brief last year and he's doing another one as we speak on the definition of a vessel, which I thought was pretty good until I heard that David Owen had done nine amicus briefs. So you have seven more to go, Charlie.

MR. DeLEO: Thank you, Mr. President. Good morning, members and guests. I'm here on behalf of Lisa Reeves, who is the chair of the Marine Torts and Casualties Committee of which I'm vice chair. I'm also here on behalf of Pamela Milgrim who sat in for the Chair of the Cruise Lines Committee. We had a joint meeting yesterday between the Marine Torts and Casualties, Cruise Lines and Offshore Industries committees, but I'll just report on the Marine Torts and Cruise Line activities.

We started off with a very interesting and thorough presentation by Joshua Klarfeld with the Ulmer firm in Cleveland who gave an update on Medicare Set-Aside reporting, given that the reporting is now due to commence in the first quarter of 2012. That will be posted on the website. It is a very thorough outline of the requirements, as well as the updated reporting provisions that is well worth reading. We also reviewed the newsletter on limitation of liability updates prepared by Christina Schovajsa from Houston who could not join us. That will also be posted on the website.

Pamela Milgrim for the Cruise Lines Committee then reviewed their newsletter dealing with some significant decisions by the 11th Circuit on the arbitrability of crew contracts, going back to the *NORWAY* decision pretty much reinforcing that original decision on the enforcement of these arbitration clauses. This newsletter will also be posted on their website.

The joint meeting then ended with a presentation by the Offshore Industries Committee, but I will defer to their chair for that report. That concludes my report.

MR. BONNER: Thank you very much, Charlie. Next will be Fisheries, Kevin Thornton, to be followed by International Organizations and Alan Van Praag. I just wanted to remind the speakers to make sure you give your card to the reporter.

MR. THORNTON: Good morning, Mr. Bonner, officers, directors, members and guests. I'm Kevin Thornton. I'm chairman of the Fisheries Committee. On Friday, December 2nd at one p.m. we held our committee meeting here on site. We were scheduled for one and a half hours, but thanks to great presentations and lively discussion, we ran over, even over two hours. We had eight people in attendance and four by telephone, which is a robust attendance for our small but enthusiastic committee.

I'm pleased that we had as a special guest Lieutenant Brendan Sullivan from the United States Coast Guard. He's with the Office of Maritime and International Law. Lieutenant Sullivan attended and participated and we're grateful for his presence and also for our ongoing

good relationship with the United States Coast Guard. It's obviously vital to the commercial fishing industry in the United States.

We started off with a report by Mark Coberly. Mark is our vice chairman. He gave a report and led the discussion with respect to President Obama's Executive Order 13547 regarding the National Ocean Policy and coastal and marine spatial planning. It's a controversial Executive Order and it has been the subject of congressional hearings and much discussion. Some folks are for it. Some are against. In Congress, they've dealt with the fundamental issues such as the legality and constitutionality of an Executive Order which has been described by some folks as to be nothing less than an attempt to engage in zoning and planning for the oceans and also for the ocean to be defined including perhaps the Great Lakes. It has an effect potentially upon all levels of shipping, offshore work, certainly commercial fishing and the alternative energy industry in terms of the location, installation and removal of offshore turbine sites. There have been hearings and committee work and there are industry groups and environmental groups that are pushing for their particular agendas. If you have clients and friends who are involved in anything having to do with the ocean and if you're really not yet focusing on the National Ocean Policy, you may be well-advised to turn up the volume and listen to that dialogue, and if it's important to you, participate. That was the report from Mr. Coberly.

Our second report was provided by a former chairman of the Fisheries Committee, Steve Johnson, from Seattle. We had Steve there and also former chairman of our committee, Mr. Dave Farrell. It was an honor to have them there. Steve gave a report on the United States Coast Guard investigative report issued in January of 2011 on Trico Marine Services, Inc. and its related subsidiaries and affiliates. That's of interest to the commercial fishing industry and to all people involved in U.S. shipping, because the Coast Guard took a look at a report that perhaps Trico didn't actually have sufficient domestic ownership and was not eligible for documentation with the Coast Guard and certainly wasn't eligible for Coast Guard endorsement. After substantial investigation, it was determined that they couldn't make the proper proof of the 75 to 25 percent ratio and their documentations were revoked, the Coast Guard registrations were revoked and fines totaling millions and millions of dollars were imposed upon Trico and its subsidiaries. The self-certi-

fication component of the application for documentation with the U.S. Coast Guard Vessel Documentation Center is really being revisited and it's sufficient, of course, that the Coast Guard issued an October 28, 2011 notice of request for comments on mechanisms for compliance utilized by publicly-traded companies in the United States, so they're trying to get their arms around the subject matter if self-certification is not going to be reliable, what have people in the industry used to determine that the shares are held by at least 75 percent U.S. domestic individuals or companies such that you don't put your documentation in jeopardy. That was fascinating and something that I think a lot of folks weren't aware of, so we wanted to pass that along to the organization.

Steve next gave a brief report of great interest to our committee about House Resolution 2838, which was adopted, which appears, pursuant to the text, to state that a fishing permit is not an appurtenance of a vessel, so that maritime liens cannot attach to fishing permits. Steve also reported that the Senate has not yet adopted it. If we can get closer on that issue, whether you like the result or not, it's certainly important to everyone involved. So that was another report.

The fourth report and the final report was presented by me on an issue near and dear to my heart and my firm. I work out of my firm's Atlantic City office, but my homeport is Cape May, New Jersey. Cape May is the third largest port on the East Coast for landings of fresh fish. We have a very, very vigorous and robust commercial fishing industry and I have friends as well as neighbors that work in that industry. And on November 17th, 2011, this year, the National Transportation Safety Board issued a safety recommendation to the Commandant of the Coast Guard, eight pages in length, single-spaced, which by way of executive summary gave a history of commercial fishing industry casualties in the recent decade or so and made five very specific recommendations as to safety regulations or ideas that it wants the Coast Guard to seriously look at, and just very quickly I want to spend a little time on this, because maybe this comes back to the entire Association. The issue is, I think, significant and I've made the recommendation and put to a vote to my committee that the Fisheries Committee ought to do a letter to the United States Coast Guard expressing at least the committee's and hopefully the Association's concern with the high number of casualties and the men and women that are dying at sea and asking that the Coast Guard devote additional attention and resources to these very specific recommenda-



tions. We recognize, of course, that the Coast Guard is already working very hard, has limited resources and has a finite number of people and it's difficult to have unfunded mandates. So that's the second piece of this.

But the bottom line is the following: The National Transportation Safety Board noted that for the period 1992 to 2008, there was an average of 158 casualties per 100,000 people who were working as fishermen who died. Comparing that across all occupations, the average was four people per 100,000. So it's 158 versus four. And for the years 2007, 2008, 2009 and 2010, the U.S. Bureau of Labor Statistics ranked commercial fishing as the most dangerous occupation in the United States of America.

That was the general sort of background to that, but it's clear the NTSB was also very concerned about three tragedies that happened, one off of Nantucket in December of '04; five -- six people going down on the F/V NORTHERN EDGE off the coast of Nantucket; the fishing vessel F/V KATMAI that went down in October of '08 off of the Aleutian Islands with the loss of seven men; and the F/V LADY MARY that sank about 65 miles off of Cape May, New Jersey with the loss of six to seven men on board. And tragically, the cause of all those sinkings was almost predictions just waiting to happen. One of those boats was overloaded with too much catch. Another boat went down because of structural changes made with no inspections and no determination of stability, and tragically they leave a hatch open in bad weather and the boat sinks.

In all, it is clear that a little more safety, a little more inspection and a little more common sense may have saved many lives. So the recommendations are somewhat controversial. We had a vote in our committee. Everyone was in favor of the concept that the MLA should be behind saving the lives of seamen, be they commercial fishermen or bluewater mariners, but we'll have to work out the details. Patrick Flanagan is a member of my committee and he has agreed to work with me to try to draft a letter that may be acceptable. Perhaps we may endorse that new regulation and see how that works for the committee. But I'm cautiously optimistic that we will be able to come up with a letter that can demonstrate the MLA's concern for safety, so that men and women who go to sea can return home safely.

And finally, we had an excellent case summary presentation by Terence Kenneally. Terence is our secretary from Boston. He did a 15-page case summary report of ten cases that were relevant to the commercial fishing industry. That's a record number of cases and pages. I thank Terence and his associate Kirby Aarsheim for a job well done.

And, Mr. President, that concludes our somewhat lengthy report.

MR. BONNER: Thank you very much, Kevin. You've certainly made that committee very active. Next will be Alan Van Praag, International Organizations, followed by Dennis Minichello, Marine Ecology.

MR. VAN PRAAG: Thank you, Mr. President. We had 32 members and guests attend our committee meeting. Our first speaker was Rear Admiral Select Steve Poulin. He gave us a preview of his excellent presentation on Sunday morning. He spoke of the following IMO actions: adequate compensation for pollution from offshore activities; the increase in limits of liability to the '96 protocol to the LLMC Convention -- he believes that this will pass; fair treatment of seafarers who are victims of crimes on vessels; emission control measures through engine control equipment -- he expected this to come into force by August 2012; the first mandatory greenhouse gas regulations to limit emissions from ships; ballast water standards; ship efficiency management plans and a pollution code, which is one of many IMO issues still up in the air.

We had a number of foreign speakers at our committee meeting. The first was Frazer Hunt, who is the former president of the Australian MLA, who spoke of the reasons why, ironically, Australia has sponsored the increase in the limits to the LLMC protocol of 1996 and the politics involved in getting this measure to be sponsored.

Our next speaker was Peter Cullen, former president of the Canadian Maritime Law Association, who spoke on the status of the Rotterdam Rules in Canada. He emphasized that the Canadians are waiting for the U.S. ratification of the Convention before doing anything further. Peter then drafted Doug Schmitt of Vancouver to get the reaction of people who are opposed to the ratification in Canada on other grounds and Doug said that he objected to the Convention on the grounds that the terms of the Convention infringed on freedom of contract.

Søren Larsen was our next speaker. As was previously indicated, Søren is the Deputy Secretary General of BIMCO. He spoke on activities regarding arbitration clauses in various contracts. First he spoke about the issue of deleting the choice of New York as a site for arbitration, which was then withdrawn after vociferous objections of interested groups. He also spoke about the efforts of Singapore to be named as a site in arbitration clauses. Søren also spoke of BIMCO contracts drafted by BIMCO or existing contracts being revised for submission to shipowners for utilization. These are the shipowners' standard service contract for volume agreements designed for users such as Wal-Mart and Ikea, the revision of the NYPE 1993, a new lay-up contract, a new sales form 2012, a new armed guard agreement, a radioactivity clause which is being considered on a fast track basis, and a slow steam clause.

Our next speaker was Piers Davies of New Zealand, who spoke on implementation and activities concerning the UNESCO Convention on the Protection of the Underwater Cultural Heritage, its terms and effects and practices. It was a most interesting presentation concerning cultural heritage remains.

Michael Sturley stated that based upon his travels all over the world, all representatives of the maritime nations he has had contact with are waiting for the U.S. to ratify the Rotterdam Rules. The executive branch supports passage and is currently going through the inter-agency review and political scrutiny prepared for its submission to the U.S. Senate for ratification.

In the absence of John Kimball, chairman of our CMI subcommittee, awaiting the birth of his first grandchild, Chris Davis was kind enough to furnish a lengthy report on the numerous current activities of the CMI and the numerous prospective subjects to be addressed at the October 2012 Beijing meeting. Anybody that wants a copy of that report can just come and ask me.

Mr. President, this concludes my report. Thank you very much.

MR. BONNER: Thank you very much, Alan. Marine Ecology, Dennis Minichello, to be followed by Marine Financing, Frank Nolan.

MR. MINICHELLO: Mr. President, officers and fellow members. I am here to report on the joint meeting of the Marine Ecology and Maritime Criminal Law Committee and Regulation of Vessel Operations, Safety, Security and Navigation Committee meeting, which was held on December 3rd, 2011. I will be sharing these reporting responsibilities with Jeff Moller, who is chair of the other committee and will be following shortly.

We had an excellent attendance of 34 members present in the room, as well as two members present by telephone, who I understand were on the east coast, so they were sacrificing their Saturday evening to attend our meeting by telephone.

We had the privilege of the presence of Rear Admiral Fred Kenney, as well as Rear Admiral Select Steve Poulin. Admiral Kenney was our principal speaker, providing us with an update on various issues in which the Coast Guard is actively involved. In particular, he brought us up to date on developments related to ballast water controls and the progress of ratification of the applicable treaty.

On the regulatory side, the Coast Guard rule on ballast water is with the Department of OMB for consideration. It's also found in the Coast Guard Authorization Act passed by the House of Representatives, which has new ballast water regulations, which include a preemption feature, as well as the IMO standards. Admiral Kenney, I understand, will be taking up the act in the early spring. Obviously, the preemption feature of that, as well as the IMO standards, are very important for uniformity of ballast water regulations in the United States.

Admiral Kenney again emphasized that the environmental crimes continue to be prosecuted vigorously and that there appear to be a small number of companies that don't seem to have gotten the message that they need to pay attention to the law with regard to pollution. Financial penalties don't seem to have done the trick with regard to deterrence, so the government is now imposing other penalties, including requirements for changing out of equipment, banishment from trading in the United States and banishment of executives of companies who are involved in these kinds of crimes.

The new towing vessel inspection regulations have been issued and the comment period is going to be closing on December 9th. The Coast Guard is also seeking comments on the OPA claim procedures, and you can find out more about that if you go to the Coast Guard website.

With regard to the activity in the arctic, Admiral Kenney emphasized that the traffic and the amount of commercial activity has increased substantially, but the Coast Guard does not have the resources to deal with the issues that will arise and have arisen from that increased activity, so they are working with other countries to develop response resources to deal with the increased traffic in the arctic.

He gave us an update on the status of the Law of the Sea Treaty, and finally, with regard to DEEPWATER HORIZON, Admiral Kenney reported that the reports of the various investigative bodies have been issued and generally the conclusion is that the structure that was in place at the time of the spill worked reasonably well. However, there are improvements that can be made and those will be the subject of further consideration and action going forward.

Mr. President, that concludes my report.

MR. BONNER: Thank you very much, Dennis. Marine Financing, Frank Nolan, to be followed by Marine Insurance, Joe Grasso.

MR. NOLAN: Good morning, Mr. President, ladies and gentlemen. There was a joint meeting of the Marine Financing and Practice and Procedure committees yesterday, and we suspended the bulk of our customary agendas and instead had a program on the subject of the pending activity in the Comité Maritime International ("CMI"), which is considering a convention for recognition of foreign judicial sales of vessels. We put a very interesting panel together of myself, of course, Josh Force, who's the chair of the Practice and Procedure Committee, who had the inside track to get on this panel, Sarah Derrington of the Maritime Law Association of Australia and New Zealand, and Robin Minturn of Caterpillar, who has extensive practical experience with the unpleasant side effects of financing vessels in various parts of the world, including, most notably, Turkey. So we went through with -- by the way, Josh agreed that I could make his presentation and explain it to all of you, which shows a lot of courage on his part, but he's going to come

along later and clean it up. In any event, we discussed the reasons for the Convention and also discussed the fact that the '93 Convention on Liens and Mortgages has failed to gain much traction. In fact, efforts to harmonize the views and procedures in exercising rights and enforcing maritime liens and mortgages have not been terribly successful. So the way the world is, those efforts at enforcing mortgages, in particular, which is my own personal concern, as well as other liens, is very much a country-by-country, case-by-case exercise. We discussed the limitations of that approach and the concern particularly in today's environment where capital access is a problem for shipowners and that it really is important that some of these things be ironed out. That is not to say that any of us involved in this -- Sarah Derrington and I are both members of the international subcommittee appointed to draft this convention--have a great deal of hope for the success of it. Much of the Convention is a rewrite of concepts that appear in the existing '93 Convention, which is not subscribed by any common law country other than perhaps, Nigeria, if it in fact is a common law country, and no major tonnage is represented by the countries who have signed it. So that none of the flags of convenience, other than, I believe, Malta, are parties to the '93 Convention. The issues, as I say, persist. It was an interesting discussion in terms of the procedural aspects that go into arrest and foreclosure, the concepts of the separate person of the vessel, which of course is observed in common law jurisdictions but does not exist in civil law, and there's quite a rift between the common law and the civil law in this area. So we had, unfortunately, a rather small crowd for this, and it got even smaller when Phil Berns announced that the room was too cold and that I mumbled, so I apologize for that, and I'm working on diction from now on.

We did discuss a couple of other items. The Marine Finance Committee has been engaged in an exercise to connect all of the dead ends in Part 67 of Title 46, which, thanks to the efforts of Steve Johnson and others, is probably going to be available between now and, say, the first of March, and we'll make that available to the Coast Guard. It's an attempt not to be adventurous in revising the Part, but to actually clean it up for everybody's sake. As a byproduct of it, we're developing a -- I wouldn't call it a wish list, but a common sense list which we hope we can prevail on the regulatory lobbyists to take a look at.

And that, Mr. President, concludes my report.

MR. BONNER: Thank you very much, Frank. Marine Insurance, Joe Grasso, to be followed by Offshore Industries, Brad Jackson.

MR. GRASSO: Thank you, Mr. President. The committee on Marine Insurance and General Average met Saturday afternoon. We had 23 members and guests present. We started off with a really good presentation by Hal Watson and energy adjuster Bryan Johnson on basics of offshore energy insurance. It turned out to be really focused on the types of losses that occur when offshore facilities go on, as Bryan called it, "walkabout," in the Gulf. So it was a very interesting presentation.

We had the introduction of our resort edition newsletter, prepared by Gene George. As always, it's very informative and we had hard copies available at the committee meeting and I'll arrange to post it on the MLA's website for those who are interested after the meeting.

And we had an update on our project on the definition of marine insurance. This is something that at President Bonner's suggestion we've taken up following on some excellent work by Gray Staring a number of years ago. We have the committee -- or the working group, I should say, in place and with the help of three or four members of the Young Lawyers Committee, we started the work, we defined the project. We can't really improve on what Gray did, which is an analysis of the various definitions of marine insurance and a proposal for a uniform definition. Our time frame is going to be to try to complete that project by next fall's meeting in New York.

We also had a brief update from Michael Marks Cohen on his and Bob Zapf's work following the ALI project on liability insurance.

And last but not least, we have a volunteer, I think, finally to fill the vacant post of chair of the Subcommittee on General Average, and it didn't require me to beg, Jonathan Spencer.

That concludes my report.

MR. BONNER: One thing we should mention is that Joe has agreed to be on the CMI Working Group on Marine Insurance, so I thank you for taking up that job, Joe.

MR. GRASSO: Happy to do it. Thank you.

MR. BONNER: Offshore Industries, Brad Jackson, followed by Practice and Procedure. Josh, did you want to give a report?

MR. Force: No.

MR. BONNER: -- followed by Regulation of Vessel Operations.

MR. JACKSON: Aloha, Mr. President, fellow directors and officers, members and distinguished guests. Offshore Industries, as was mentioned earlier, met yesterday in conjunction with Maritime Torts and Cruise Lines committees, which was, I think, an excellent idea given the distance of travel to this particular meeting. We also had some participants by telephone and about 25 folks in the room.

The focus of the Offshore Industries portion of the program was on two aspects of the law important to offshore industries. We were given an update about the Transocean/BP litigation by Bob Cunningham of Houston. Bob talked to us about the efforts of BP to get into Transocean's underwriters' pockets for indemnity for oil spill liability, and Judge Barbier had recently decided that that effort was not going to succeed, although the language of the policies was somewhat broad, and that decision, I think, would call upon us to advise underwriters that you need to look carefully at your policies and the relationship to the indemnities in the contracts of your insureds.

The second aspect of our program -- and let me just say Professor Michael Sturley is a resource that many of us draw upon. Professor Sturley gave a presentation about a case that has been argued in the United States Supreme Court, but no decision handed down as of yet, and it's a case that could have great significance for people involved on the outer Continental Shelf, but it's a case which nobody seems really to be much aware of, and the problem with telling you more about it is that I just simply cannot pronounce the name of one of the parties. Is the other party Pacific Marine?

MR. STURLEY: *Pacific Operators v. Valladolid*.



MR. JACKSON: That's the case -- without my having to tell you about it. The question concerns a situs requirement on an injury on the outer Continental Shelf via the Outer Continental Shelf Lands Act. The Lands Act, as you may know, makes the Longshore and Harbor Workers Compensation Act scheme applicable to injuries on the outer Continental Shelf. And as with many things I've found in my over 35 years of practice, we make assumptions about what the statute says without necessarily going back every now and then and reading the language of the statute. But we all, I think -- at least for my part -- assumed that there was a situs requirement in the Outer Continental Shelf Lands Act in order for someone injured to take advantage of the extended L & H coverage. But this case raises the issue of whether that is really true.

There have been some conflicting circuit court decisions, for instance, involving someone injured on the New Jersey state -- Garden State Highway, who was on his way to board a helicopter to go to an offshore platform. In that situation, the question was even though he was injured ashore, is he covered by L&H as extended by the Outer Continental Shelf Lands Act because of his activities arising out of operations on the outer Continental Shelf.

In this particular case, a worker was killed not on the outer continental shelf, but while he was assigned for one percent of his time or two percent of his time to do some work in the yard ashore. So he spent 98 percent of his time working on the outer Continental Shelf, was temporarily assigned to work in the yard and circumstances arose such that he was killed. And the question was whether he would be entitled to L&H coverage through the Outer Continental Shelf Lands Act or through state worker's compensation, and of course, the L&H benefits are far more generous.

So that case has been argued. As with many cases, when you read the transcript of the argument, you wonder if they get it at all. But the decision should be forthcoming perhaps after the first of the year. So we had a very, very good presentation on a subject that I think is important to all of us.

With that, Mr. President, that concludes my report.

MR. BONNER: Thank you very much, Brad. Jeff Moller, Regulation of Vessel Operations. Bill, does Salvage plan on a report? Young Lawyers, any representative? Are you going to give a report?

MR. STORZ: No.

MR. BONNER: One thing I wanted to remind everybody today, too, is that you sign in. I think there are attendance cards over there. Please sign in so we know who attended the meeting.

MR. MOLLER: Thank you, Mr. President, and good morning to all. Dennis Minichello did a very able and thorough job of describing the joint committee meeting that we held here on Saturday, so I won't double up on that presentation. But I did want to take a couple of moments to discuss the status of the case *Pacific Marine Shipping Association ("PMSA") v. Goldstein*, in which the MLA submitted an amicus brief in favor of the grant of writ of cert upon petition of PMSA. At the spring meeting, I described the case, quoting some of the language from the Ninth Circuit. The Ninth Circuit had issued an opinion which allowed the enforcement of California Air Resource Board regulations which imposed requirements on vessels well beyond the three mile traditional limit of state sovereignty with respect to what kinds of fuel they can burn. The Ninth Circuit, as I said, allowed the regulations to go forward and be enforced, and PMSA filed a petition for writ of cert with the Supreme Court. When the case came to our attention, I suggested that Erich Wise, a member of ours who represented PMSA, submit an application to the Board for an amicus brief. The Board approved it in conjunction with the May meeting and I was asked to go ahead and submit the brief in support of the petition. We did so on July 27th. In our brief, we pointed out to the Supreme Court that there had never been a Supreme Court case which had allowed a state to enforce its regulatory authority beyond three miles; that if it were to be allowed in this particular case, it ought not to be done by the Ninth Circuit, but ought to be done by the Supreme Court itself, being the ultimate arbiter of maritime law; that we thought that as the law stood now, it was a bit of an abomination in that it certainly defiled our principles of uniformity that we strive for and that it was an important case for the Supreme Court to take up.

The respondents, which consisted of the California Air Resources Board ("CARB") and some formidable environmental entities

-- among them the National Resources Defense Council ("NRDC")-- obviously objected to the petition and decided to spend a lot of their time arguing the case on the merits.

We have yet to see what the Supreme Court is going to do. Interestingly, they reached out and invited the Solicitor General of the United States to let them know what the position of the United States would be with respect to the petition. That invitation was issued in October. It has not yet been responded to by the Solicitor General. Ten days after the invitation, Erich Wise submitted a letter on behalf of PMSA to the Solicitor General urging the government to support the petition for certiorari.

It is our understanding that the four or five agencies of the federal government that are concerned with the issue, including the Coast Guard and the EPA, are now debating the point, and that there may be a response from the Solicitor General in the near future. No matter what, it looks like now that if the petition is granted, the case won't be brought on until next term.

The interesting dynamic in the case from the standpoint of the federal government is that the California Clean Air Act State Implementation Plan ("SIP"), which has to be approved by the EPA and which cites all of the various kinds of regulations that are in effect for the state in order to comply with the Federal Clean Air Act guidelines -- the California state SIP includes this regulation of vessels at sea as part of their compliance program. So therefore, if the CARB regs should be struck down, then they have to go back to the drawing board in terms of SIP and complying with the Federal Clean Air Act requirements. That may be sort of the political tussle which is taking place behind the scenes.

That is actually all I wanted to say on the subject, Mr. President, and therefore concludes my report.

MR. BONNER: Thank you very much, Jeff. I forgot to mention and thank you publicly for the Association for doing the amicus brief. You did an excellent job and I think it caught the interest of the Supreme Court.

MR. MOLLER: It was my privilege. Thank you.

MR. BONNER: Next will be Young Lawyers, Betsy Bundy.

MS. BUNDY: Good morning. Thank you, Mr. President. On behalf of the Young Lawyers Committee, I'm offering no report as we did not have an official meeting at this event, but we are continuing to do the work of the Young Lawyers Committee. The main work that we do is we offer support to the standing committees by volunteering, doing research, whatever we can do to help projects to develop the committee's work.

Most recently, Alex Giles was working on an MLA resolutions project, doing some indexing of past MLA reports and things of that nature, which has been taken over by Norman Stockman. That project is nearing completion. We've recently completed the MLA Report. We had a couple of volunteers for that and that is, I think, done. I think it was mentioned earlier that Stephanie Espinoza is spearheading a project for the Marine Insurance Committee to work on the definition of marine insurance, so that's a new project that we're working on.

But the most important thing I'm here to say is if you have more projects that you need help with, please let us know, because volunteering is what we're all about, getting involved, getting our members active in the various committees.

More importantly, what I think people usually want to hear about is our social event, which we had last night, and it was very well attended, I'm pleased to report. We had over 30 people, most of them Young Lawyer Committee members, but we did have some "crashers," as we like to call them, some of our esteemed alumni who joined us. We had a really great time in Waikiki, and I wanted to thank Jared Washkowitz for planning this event. He arranged transportation and did a wonderful job. Also, our vice chairman, Norman Stockman, was very helpful. Pamela Shultz and Sean Houseal were basically our volunteers on the scene to get everyone corralled and ready to go. So we had a really good time. But we reiterate, as always, that what happens at the Young Lawyers events -- in this case, in Waikiki, stays in Waikiki. So whether you're part of our committee or not, that rule applies.

So thank you very much, and that concludes our report.

MR. BONNER: Thank you very much, Betsy. Are there any standing committees that we missed that want to give reports?

Warren, did you want to report on the Coast Guard ad hoc committee on Coast Guard relations?

MR. MARWEDEL: I'd just like to report this afternoon that we're meeting right after this meeting, so anybody that wants to come back -- we do have some topics that we're going to discuss with the forum, and I'll wait until a later meeting to go over those topics once we've had a chance to talk with the Coast Guard.

MR. BONNER: Thank you, Warren. The next issue is the next fall meeting. And Bob Clyne, would you like to talk about that?

MR. CLYNE: As mentioned, the next fall meeting will be in New York and the Board has approved holding the dinner dance on Friday night, November 9th. There was a lot of discussion that went into this, and we wanted to hold the dinner dance somewhere different than we've had it in the past and we wanted it to be also affordable and accessible. We think we found a place in the Edison Ballroom. We haven't signed a contract yet but we're close to doing that. The Edison Ballroom is next to the Edison Hotel on 47th and Seventh Avenue, and we think it's going to be a great venue for the dance and we're hoping that everybody can come to New York and join us for that party. Thank you.

MR. BONNER: Thank you, Bob. Is there any other old business? Is there any new business? Is there a motion that I see? Mr. Hooper?

MR. HOOPER: Thank you, Mr. President. Congratulations on running this meeting and your administration. Sitting here, I was just thinking of one thing a chief mate told me years ago. He's the one who encouraged me to go into maritime law. He was conducting a tour of the bridge for passengers of the SS CONSTITUTION and he described the radar. A woman in the tour patted the radar and said, "Thank God for this." The chief mate asked her, "Are you nervous being out here?" She answered, "Oh, no, I'm not nervous at all. If it weren't for the radar my husband wouldn't have a job." He asked whether her husband worked for Raytheon. She said, "No, he's an admiralty lawyer."

[16425]

(Laughter).

So I'd like to congratulate you on this meeting, and I hope that you finish the work you started as President faster than I have. And I move to adjourn.

MR. BONNER: Is there a second?

AUDIENCE: Second.

MR. BONNER: All in favor?

AUDIENCE: Aye.

MR. BONNER: Motion carried.

(Meeting adjourned at 10:36 a.m.)

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

Held at the Wyndham Gettysburg Hotel  
Gettysburg, Pennsylvania  
on  
Saturday, August 13, 2011  
at  
9 a.m.

The August 13, 2011 meeting was called to order by President Patrick J. Bonner at 9:00 a.m. In addition to President Bonner, the following officers were also present:

Robert B. Parrish, First Vice President  
Robert G. Clyne, Second Vice President  
Harold K. Watson, Secretary  
William Robert Connor, III, Treasurer  
David J. Farrell, Jr., Membership Secretary  
Warren J. Marwedel, Immediate Past President

The following directors were also present:

Joshua S. Force	Bradley A. Jackson
Dennis Minichello	Arthur J. "Skip" Volkle
Francis X. Nolan, III	Thomas J. Muzyka
Susan Dorgan	George W. Nowell
Edward J. Powers	Robert B. Fisher, Jr.

Also present at the invitation of the President was Raymond P. Hayden.

**SECRETARY'S REPORT**

On motion duly made and seconded, the minutes of the May, 2011 meeting of the Board of Directors were approved. Mr. Watson also reported that the November 2010 Proceedings and the MLA Report were both at the printer, and should be mailed soon.

## **TREASURER'S REPORT**

Mr. Connor reported that the Association currently has approximately \$630,000. Of this amount, \$19,225 is registration fees for the Hawaii.

Mr. Connor also reported that approximately \$196,000 is being held in United States Treasury notes that earn virtually no interest, and that he intends to move these to an insured money market account. This generated a discussion of whether there might be safe investments that might generate better rates of return, particularly in view of the fact that the Association now has a sizeable reserve that should not be needed for normal operations. President Bonner asked Messrs. Nolan, Volkle, Clyne and Connor to investigate this issue and report at the next Board meeting.

Mr. Connor reported that HSBC may have a check scanner available next month, and that the audit has been completed and that we are awaiting their report. No issues were raised, although the auditors did inquire regarding the fact that the Association posts receipts for the May dinner in one fiscal year, which ends April 30 because of the change of officers at the May meeting, whereas the payment for the May dinner is made in the next fiscal year after the dinner.

With regard to the May dinner, Mr. Connor reported that the Association made a small profit of approximately \$5000 on this year's dinner. Since the expenses of the May meeting are almost twice this amount, Mr. Connor recommended raising the ticket price by \$5 next year.

The Board also continued the discussion of the feasibility of paying dues by credit card or PayPal. There was a general consensus that this was desirable, but that it was premature to move forward until the Association concluded how its outside management should be handled going forward.

Mr. Connor reported that members delinquent in their dues would be written a letter, and that members who are three years in arrears would be removed from the rolls at the end of the year.



On motion duly made and seconded, the Treasurer's report was approved.

## **MEMBERSHIP SECRETARY'S REPORT**

Mr. Farrell reported that the following applications for membership had been received:

### Academic (1)

Professor John T. McDermott  
Loyola Law School  
Los Angeles

### Associates (20)

Gavin R. Black, Providence, Rhode Island  
John D. Blaisdell, Newton, Massachusetts  
M. Andrew Boran , Norfolk  
Lawrence R. DeMarcay, III, New Orleans  
F. Robert Denig, New York  
Stephen W. Dummer, Gulf Port, Mississippi  
R. Michael Ethridge, Charleston  
Adelaida Ferchmin, New Orleans  
John Flym, Paris, France  
Trey R. Kelleter, Norfolk  
Christopher R. Koehler, Tampa  
Jeffrey R. Kuhns, Punta Gorda, Florida  
Timothy J. Nast, New York  
Timothy B. Parlin, Basking Ridge, New Jersey  
Svetlana Spivak, Seattle  
Christopher C. Storm, Boston  
Katherine Walker Sullivan, Charleston  
Alessandra Tebaldi , New York  
Kelley Leann Tiffany, Washington, D.C.  
Lisa Torron-Bautista, Orlando, Florida

Non- Lawyers (4)

Jon-Peter LaMore, Caledonia, Michigan

Capt. Jorge Pecci, New York

Bill Pinchak, Caledonia, Michigan

Robert G. Tower, Jr., Caledonia, Michigan

Law Students (1)

Christian A. Packard, University of Florida

Mr. Farrell also regretfully reported that the following members had passed away since our New York meeting:

David J. Kadyk, of Tampa, FL; Life Member: elected 1969

Henry S. Morgan, of Annapolis, MD; Proctor Member: elected 1979

Hon. Jamie Pieras, of San Juan, PR; Life Member: elected 1967

Prof. Wallace S. Reed, of Castine, ME; Academic Member: elected 1995

Francis W. Turner, of New York, NY; Associate Member: elected 2003

Mr. Farrell reported that the membership now stands at 2,967, down from 3,073 one year ago. This is the result of the purging of the rolls of members who owed three years dues.

Mr. Farrell reported that over the summer he has have sent out invitations to join the MLA to lawyers from the following groups: AMC subscribers who are not MLA members (nine); Golden Gates Ports Handbook (four); maritime lawyers in Massachusetts (five).

He also reported that George Nowell suggested that admiralty CLE programs such as Tulane, Houston, PAS, and SEALI should be fertile grounds for MLA recruitment. If we could get access to attendance lists for their last two sessions we could directly target non-MLA members with emails and/or letters inviting them to join, and requested that Board members affiliated with these organizations assist in obtaining these lists.

President Bonner then requested a discussion of whether the current procedure for attaining Proctor status should be retained or altered. A majority of Associate members who are eligible for Proctor status never apply to become Proctors. It was pointed out that separate Proctor and Associate status had its origins in the early 1980's to counter the Florida Bar Association's move towards certifying maritime law as a specialty. After discussion, President Bonner asked the newest class of Board members to review the issue and report back at the next meeting of the Board.

## **SECOND VICE PRESIDENT'S REPORT**

Mr. Clyne presented the following amendment to Section 5 of the By-laws of the Association to clarify that only Standing Committee reports are entitled to consideration by the Association:

### **SECTION 5**

#### **STANDING COMMITTEES**

##### **501. RESPONSIBILITIES OF COMMITTEES**

All Standing Committees shall discharge their responsibilities in conformity with the Association's objectives

##### **502. ELIGIBILITY TO SERVE ON STANDING COMMITTEES**

All members of the Association in good standing, with the exception of Law Student members, may become members of the Standing Committees of the Association and vote in the proceedings of such Standing Committees. However, no member shall serve simultaneously on more than three Standing Committees in any capacity other than as representative of the Board of Directors, unless, in the President's sole opinion and discretion, there are exceptional circumstances. Membership on the Young Lawyers Committee shall not prevent a member from serving on three additional Standing Committees.

The right to vote on the business of any Standing Committee does not accrue until 90 days have elapsed from the date that the mem-

ber joins such Standing Committee. Provided that the limitations pertaining to membership on three-Standing Committees and the time limitations pertaining to voting as stated in this By-Law are observed, Association members are free to join or withdraw from Standing Committees at will.

Only a Proctor member or a Non-Lawyer member shall be eligible to serve on the Board of Directors or as a Committee Chair or Vice-Chair of a Standing Committee, Special Board Liaison Committee or Special Committee unless, at the request of the President, the Board of Directors shall waive this requirement.

### **503. APPOINTMENT AND TERM OF OFFICE OF STANDING COMMITTEE CHAIRS**

No Standing Committee chair or Subcommittee chair, or other officer, shall serve as such for more than four consecutive years unless, in the President's sole opinion and discretion, there are exceptional circumstances that justify reappointment for an additional year.

### **504. CONSIDERATION OF STANDING COMMITTEE REPORTS**

Unanimous Standing Committee reports may be acted upon at any meeting of the members

In the event of a dissent, a majority report requesting action must be sent to the Secretary at least 45 days prior to the date of the meeting at which it is to be acted upon. Abstentions shall not be considered as dissents. A minority report must be submitted to the Secretary at least 30 days prior to the date of the meeting at which it is to be acted upon.

If not less than one-third of the members of a divided Standing Committee so request in writing, the President shall authorize proxy voting in accordance with Section 212 of these By-Laws.

The Secretary shall, at least 20 days prior to the date of the meeting at which such reports are to be acted upon, send copies of both reports, together with a notice of such action by the President, to each member of the Association.

The requirements of this By-Law or any part thereof may at any time be waived or suspended by action of the Board of Directors for good cause.

On motion duly made and seconded, the Board unanimously adopted this amendment to the bylaws.

## **DISCUSSION ITEMS**

### ***Association administration***

The Board discussed how the administrative functions that are currently outsourced to Ms. Robin Becker should be handled in the event that Ms. Becker's services should become unavailable. There was general agreement that Ms. Becker is continuing to provide the support that the Association needs, but that steps need to be taken to ensure a smooth transition when and if that becomes necessary. Mr. Parrish agreed that he would visit with Ms. Becker in South Carolina and take steps to ensure that the Association would have access to physical records that she maintains there in the event of an emergency.

### ***Charges for e-mail blasts***

After discussion, the Board voted to continue in place the previously agreed prices for sending announcements of seminars, etc. to the members of the Association.

### ***Name and responsibilities of Website and Technology Committee***

The Board discussed the recommendation of the chair of the Website to change the name of the committee to the Technology Committee and to focus more on issues other than the Association website. No action was taken on this request.

### ***Uniformity Committee***

On motion duly made and seconded, the Board passed a resolution changing the Uniformity Committee from a Special Committee to a Standing Committee.

### ***Contents of Breaking News***

The Board discussed what items should be posted on the Breaking News page of the website. The Board agreed that the following items should be considered for inclusion: firm mergers, splitting up or dissolving; deaths of members; members receiving awards; changes of address or phone numbers; retirements; new partners; members becoming judges; books and law review articles authored by members; and speeches before industry groups. The Board agreed that purely personal matters such as marriages and births should not be considered for inclusion.

### ***Open Houses at May meeting***

The Board discussed the open house that was held by a German law firm at the May meeting, and agreed that such receptions could be listed on the schedule of events so long as they were open to the entire membership.

### ***Event Planner for Spring and Fall Meetings***

There was a discussion regarding the activities that are outsourced for the May meeting. Messrs. Clyne and Connor have been asked to review this and make recommendations for future meetings. Mr. Parrish reported that he is working with Jerry Janove to find a venue for a dinner dance in New York in the fall of 2012.

### ***Amicus Brief Filing***

Two requests for amicus curiae briefs were voted on. In the first case, *Minton v. Exxon*, the Association was asked to file an amicus in support of a writ of certiorari to the Virginia Supreme Court in a case involving the Longshore and Harbor Workers Compensation Act. While a number of members of the Board expressed the view that the decision being appealed might be inconsistent with existing law, it was pointed out that the decision being appealed was merely a jury verdict rather than a reported decision, and thus had no precedential value. Accordingly, the Board did not believe that Association participation at this stage of the proceedings was appropriate.

The Association was also requested to file an amicus brief in *Cape Flattery v. Titan Maritime* in support of a request for an en banc rehearing in the United States Court of Appeals for the Ninth Circuit. The case involved the question of whether a clause in a salvage contract requiring arbitration of “any dispute arising under this Agreement” required arbitration of tort claims arising out of the salvage operations. In view of the fact that there was a split among the circuits that could not be resolved by a decision by the Ninth Circuit, the Board did not believe that Association participation at this stage of the proceedings was appropriate.

### ***Maritime Law Subcommittee Report***

The Maritime Law Subcommittee of the Board made a presentation of the discussions that they have had regarding how the Association is fulfilling its core mission to work for improvement and uniformity of maritime law. Issues included the Association’s participation in shaping the law by amicus curiae briefs, participation in the legislative process, education of judges, and serving as a forum where issues can be discussed.

### ***New Board Member Orientation***

A number of Board members indicated the desire for a document that would provide guidance to new Board members regarding what is expected of them. This will be given further consideration to see if an appropriate document can be created.

## **REPORTS**

### ***Rotterdam Rules status***

It was reported that the Rotterdam Rules are currently at the State Department. A transmittal package is being prepared to send to the Senate.

### ***MARAD Forum members***

President Bonner announced that he has named Board members Volkle, Nolan, and Marwedel, and Robin C. Minturn, Marjorie F. Krumholz and H. Clayton Cook, Jr. to serve as the Association’s representatives on the MARAD Forum.

*UNCLOS status*

President Bonner reported that the State Department is hopeful that the United Nations Convention on the Law of the Sea will be presented to the Senate for ratification this fall. Doug Burnett is the Association's point person for monitoring developments in this regard.

*American Marine Highways*

Mr. Farrell reported that he had attended a meeting of port authority officials, where the view was expressed that the widening of the Panama Canal is likely to overburden land-based transportation. Accordingly, there is some hope that the Marine Highways initiative may gain traction.

*CMI Working Group on Recognition of Foreign Judicial Sales*

Mr. Nolan reported that problems have arisen in connection with judicial sales when there are difficulties in getting the flag state to deregister the vessel after the sale. The issue will be addressed at the CMI meeting in Beijing in 2012. Also, the Practice & Procedure and Marine Financing Committees will make a presentation on this issue in Hawaii.

*OFAC*

Mr. Volkle reported that there is growing concern in the shipping community that as intelligence identifies the ringleaders of organizations involved in piracy in Somalia, there may be more risk for owners that ransom payments will violate the Executive Order forbidding payments to groups involved in terrorist activities. The Piracy Subcommittee of the Committee on Regulation of Vessel Operations, Safety and Navigation will be asked to look into this issue.

Respectfully submitted,

Harold K. Watson, Secretary



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

Held at the JW Marriott Ihilani Hotel  
Ko Olina, Oahu, Hawaii

on

Saturday, December 3, 2011

at

3:30 p.m.

The December 3, 2011 meeting was called to order by President Patrick J. Bonner at 3:30 p.m. In addition to President Bonner, the following individuals were also present:

Robert B. Parrish, First Vice President  
Robert G. Clyne, Second Vice President  
Harold K. Watson, Secretary  
William Robert Connor, III, Treasurer  
David J. Farrell, Jr., Membership Secretary  
Warren J. Marwedel, Immediate Past President

The following directors were also present:

Joshua S. Force	Bradley A. Jackson
James F. Moseley, Jr.	Arthur J. "Skip" Volkle
Dennis Minichello	Thomas J. Muzyka
Francis X. Nolan, III	George W. Nowell
Susan Dorgan	Robert B. Fisher, Jr.
Alexander M. Giles	Edward J. Powers

Also present at the invitation of the President were Raymond P. Hayden and Joanne Zawitoski.

**SECRETARY'S REPORT**

On motion duly made and seconded, the minutes of the August 13, 2011 meeting of the Board of Directors were approved.

## **TREASURER'S REPORT**

Mr. Connor reported that the Association currently has assets of \$597,337, of which approximately \$127,000 will be spent in connection with the Fall 2011 meeting. This represents an improvement over prior years as a result of improved dues collection and a reduction of administrative costs as a result of the transfer of administrative functions from PC Solutions to Robin Becker.

Mr. Connor also reported that the check scanner should be available by the beginning of 2012, and that the accountant who has been handling the Association account has moved to another firm. Mr. Connor will investigate whether moving the account to the new firm could effect savings in the amount paid for accounting services, and make a recommendation at the next meeting.

Delinquent dues amount to approximately \$60,000. Members who are three years in arrears will be informed that they will be dropped from membership, and members who are one or two years in arrears will be requested to become current.

The arrangements with Affinipay to allow members to pay dues by credit card should be complete by the time the next dues statement goes out in January 2012, and the Association will explore expanding the use of credit cards to pay for the May dinner. There will be a \$150 startup fee to establish the gateway for this service, a \$10 per month fee, and a charge of 2.19% per transaction for use of bank cards, and 2.8% for use of non-bank cards such as American Express. Mr. Connor recommended an across-the-board dues increase of \$5 to offset these costs.

On motion duly made and seconded, the Treasurer's Report, including the proposed dues increase, was approved.

## **MEMBERSHIP SECRETARY'S REPORT**

Mr. Farrell reported that the following applications for membership had been received:

**Ex-Officio**

Rear Admiral Wendi B. Carpenter, President, SUNY Maritime College,  
Bronx, New York

Rear Admiral Sandra Stosz, Superintendent, United States Coast Guard  
Academy, New London, Connecticut

**Judicial**

Hon. Thomas A. Dickerson, White Plains, New York  
Academic

Michael A. Sevel, University of Miami School of Law, Coral Gables,  
Florida

**Proctor**

W. Richmond Beevers, Washington, D.C.  
Franciso Carreira-Pitti, Panama, Republic of Panama  
Jason W. Gaarder, Baltimore  
Normand R. Lezy, Honolulu  
Samuel R. Mandelbaum, Tampa

**Associate**

Theodore H. Adkinson, Long Beach  
John R.C. Bowen, Hilton Head Island, South Carolina  
Noe S. Hamra, Jersey City, New Jersey  
Adam D. Johnson, Dorchester, Massachusetts  
Jin Jeong Kim, Garden Grove, California  
Pamela F. Lafreniere, New Bedford, Massachusetts  
Rebecca Lasoski, New York  
Guy Manchuk, Bellevue, Washington  
Kurt C. Odell, New Canaan, Connecticut  
Timothy F. Schweitzer, New York  
Jude Smith, Pittsburg, Pennsylvania  
Christina H. Sullivan, New York  
Jill S. Willhoft, New Orleans  
Nathan T. Williams, New York  
Justin M. Woodard, Charleston, South Carolina  
Paige Young, New Orleans

## **Law Student**

Kevin P. Albertson, Tauro Law School, Floral Park, New York

David Garfinkel, Columbia Law School, New York

Randall B. Gleason, Suffolk Law School, Dedham, Massachusetts

Julie Nociolo, New York Law School, Brooklyn, New York

Kyle C. Smith, Roger Williams School of Law, Warren, Rhode Island

Ryan F. Tennant, Charleston School of Law, Mt. Pleasant, South Carolina

On motion duly made and seconded, these applications for membership were approved.

Mr. Farrell also regretfully reported the deaths of the following members since the last meeting of the Board of Directors:

Albert S. Commette of Port St. Lucie, Florida; Life Member:  
elected 1954

Gerard T. Gelpi, of Bay St. Louis, Mississippi; Life Member:  
elected 1962

David J. Kadyk of Tampa, Life Member: elected 1969

Arden J. Lea, of St. Thomas, Virgin Islands, Proctor:  
elected 1975

Charles E. Lugenbuhl of Covington, Louisiana, Life Member:  
elected 1956

Henry S. Morgan, Jr. of Annapolis, Proctor: elected 1979

Past President David R. Owen, David R., of Lutherville,  
Maryland; Life Member: elected 1952

Hon. Jamie Pieras of San Juan, Puerto Rico, Judicial Member:  
elected 1967

Prof. Wallace S. Reed of Castine, Maine, Academic Member:  
elected 1995

George W. Sullivan Summit, New Jersey; Life Member:  
elected 1953

Robert K. Tisdall of Milford, Connecticut; Life Member:  
elected 1970

Francis W. Turner of New York, Associate Member:  
elected 2003

With these changes, the current membership of the Association currently stands at 2,969, a figure that has remained relatively stable over the last several years.

Mr. Farrell also reported that approximately 400 persons attended the Pacific Admiralty Seminar or the Tulane Admiralty Law Institute that are not members of the Association. Mr. Farrell is going to contact these persons and invite them to join.

## **DISCUSSION ITEMS**

### *Association administration*

Mr. Parrish reported that he had met with Robin Becker at her home outside Charleston, South Carolina and reviewed her operation in great detail. He reported that he is very comfortable with the transition to her from PC Solutions. The Association has remote access to the electronic records that Ms. Becker maintains, and ICVM has offsite backup. He also reported that Ms. Becker is preparing a detailed outline of all of her activities so that someone could step in if she was incapacitated for some reason.

Mr. Marwedel reported on his review of companies that provide web support and planning support for associations and noted that many are relatively small family run businesses. He has identified three larger companies that provide this type of service. Further review of these companies will be on going.

The Association is currently paying Ms. Becker approximately \$60,000 a year for her services, which are provided as an independent contractor through a company that she owns. This is a savings of approximately \$30,000 over what the Association was paying PC Solutions. President Bonner reported that he wanted to increase Ms. Becker's responsibilities to include activities in connection with the Spring dinner and future city and resort meetings.

On motion duly made and seconded, the Board approved the continued use of Ms. Becker's services for the foreseeable future, and agreed to pay her a \$5000 bonus as a sign of the Association's appreciation for her excellent service. The Board also authorized the hiring of an outside consultant to review the Association's software, website and administrative procedures, and make recommendations regarding possible improvements.

*Web page*

President Bonner reported on efforts that have been made to determine whether the membership is satisfied with the web page. He reported that complaints have generally been few. As noted above, a consultant will be asked to address possible improvements.

*CMI—New York, Spring 2012*

The Board approved President Bonner's recommendation that the Association invite the CMI to hold a meeting in New York in the Spring of 2016.

*International Bar Association*

The Association has been asked to post the dates of meetings of the International Bar Association. While recognizing the importance to members of the MLA of having opportunities to meet and network with foreign lawyers, the consensus of the Board was that this could be better accomplished by increasing the attendance of foreign lawyers at MLA events, and that committee chairs should be asked to look for opportunities to invite foreign lawyers as speakers at MLA committee meetings.

*Bankruptcy Committee*

President Bonner reported that he is forming a new Standing Committee on Maritime Bankruptcy, and that he has asked John Bradley to serve as chairman.

*Fall Meeting, New York 2012*

President Bonner and Mr. Clyne reported on the plans for the Fall 2012 meeting in New York. The Edison Ballroom on 47th St. and Seventh Ave. is being considered as a venue for the closing night dinner dance. The only potential drawback is that the room can only accommodate approximately 500 people. However, the attendance at the last dinner dance held at a Fall meeting in New York was approximately 500, and the Board was of the view that attendance would probably not exceed this. The dinner dance is being scheduled for November 9, 2012 so as not to conflict with the New York Marathon the week before. The Board approved this date.

### *Ship Finance Membership*

In an effort to increase membership of lawyers who do ship finance work, a seminar on this subject is being planned.

### **Board Subcommittee Reports**

#### *Proctor Status*

Mr. Powers reported that the subcommittee had canvassed a sampling of the membership about the idea of eliminating the distinction between Proctor and Association membership. Younger members generally opposed elimination of an elevated class of membership, and former Board members did not believe that the failure of some Associate members to seek Proctor status presented a problem. Accordingly, the subcommittee recommended retaining the current distinction. On the other hand, the subcommittee did recommend having the Membership Secretary reminding eligible Associate members of their eligibility for Proctor status and sending these members applications, amending the by-laws to allow one of the Proctor members sponsoring an application of Proctor status to be a colleague of the applicant, and waiving the four year waiting period where appropriate. The subcommittee will prepare a document to be sent to eligible Associate members urging them to apply for Proctor status.

#### *Membership Issues*

Mr. Muzyka reported that two factors that inhibit membership growth are the shrinking business base of maritime practice and the unwillingness of some firms to support membership financially. He recommended a survey of the membership to determine ways in which the Association can enhance the value of membership.

### **Reports**

#### *UNCLOS status*

President Bonner reported that the Senate plans on scheduling hearings on ratification of UNCLOS in May 2012 after the Republican Party primaries are concluded. The Association has offered to provide testimony.

*American Marine Highways*

Mr. Farrell reported that he has coordinated with the Coastwise Coalition to write Congress in support of a repeal of the portion of the Harbor Maintenance Tax that inhibits coastwise shipping.

*NAVSAC Membership*

President Bonner reported on changes the Coast Guard has made regarding this organization. Jeffrey S. Moller is the Association's official delegate, but the Coast Guard has asked that other Association members who serve on this organization also be appointed by the MLA.

*BIMCO/NSA SALEFORM*

President Bonner reported that Keith Heard had been successful in his efforts to have BIMCO retain New York as one of the venues for arbitration under this form.

*Salvage Convention*

Stuart Hetherington, Chair of the CMI International Working-Group on the Salvage Convention, has asked the Association to state its views on the proposed amendments to the Convention regarding environmental salvage. President Bonner stated that he intends to put this to a vote of the membership in May 2012.

**Calendar**

The next meeting of the Board of Directors is scheduled for March 31, 2012 in Norfolk, Virginia. President Bonner asked Messrs. Parrish and Clyne to explore possible sites for future Board meetings.

There being no further business to come before the Board, the meeting was adjourned.

Respectfully submitted,

Harold K. Watson, Secretary



## Report of the Young Lawyers Committee

Vol. 2011-2 (November 2011)

**TQ**

*“THEORETICALLY QUARTERLY”*

**Young (and Young at Heart) Lawyers Committee**

**The Maritime Law Association of the United States**

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### *Message from the Chair*

Aloha! I am pleased to be writing my first TQ as Chair of the Young Lawyers Committee. I am also quite pleased to be planning for the Fall MLA meeting in Oahu, Hawaii, which is coming up in two short weeks.

Coincidentally, as I prepared to write this newsletter I had a visit from past Chair, **Andy Tsukamoto**. Andy was the third Chair of this committee and the founder of “Theoretically Quarterly.” I was always tickled by this title and appreciated that it gave me an “out” if I was unable to get my act together to finish the latest Volume. It also dawned on me that during my time in the YLC, the TQ has never been “Theoretically Quarterly,” but instead has been “Literally Bi-Annually.” Indeed we try to report to the troops before each Spring and Fall meeting, and Andy may have been one of the few to ever crank out four in one year. In any case, the TQ has a nice ring to it so I see no reason for a change!

Talking to Andy also got me thinking about other past committee Chairs. After a little digging, I discovered that the YLC took hold around 1989, and I am now the 12th Chair. Looking over the list, I am proud to be among this group that includes individuals I now consider to be good friends. Some have gone on to serve other leadership roles in the MLA, and all have continued on in successful careers in the maritime field. I can see that I have big shoes to fill, starting with **Alex Giles**, the outgoing Chair and a tough act to follow.

I’m happy to say, that I will not be alone. **Norman Stockman** is now the Vice Chair and **Draughn Arbona** is our incoming Secretary. I speak for all of us when I say that we look forward to continuing the work of this strong group.

The YLC serves many functions. We are a social group and certainly enjoy gathering to swap stories over cocktails. But more importantly, the YLC offers newer members of the MLA the opportunity to get involved. The main way that we do this is by assisting standing committees with projects that may arise, preparing of CLE materials or presentations, and even contributing to amicus briefs prepared on behalf of the MLA. I hope you will join Norman, Draughn, and me in carrying on the tradition and taking advantage of all that the YLC has to offer.

- Betsy Bundy

### **YLC Fall Meeting in Oahu**

As you all know, the MLA Fall meeting is coming up the first week of December and is being held in Oahu, Hawaii. Early reports show that YLC members are taking advantage of the reduced registration fees as at least 12 attendees have registered as young lawyers. Additionally, several of our members and recent alumni will be presenting CLE at this upcoming meeting, including, yours truly, **Alex Giles, Norman Stockman, Pamela Schultz, Katherine Newman, and Larry Kahn**. Thus, we are expecting a strong showing at the Fall meeting this year.

### **YLC Oahu Social Outing**

We will not be scheduling a formal committee meeting in Hawaii, but as usual, the YLC will host its usual "dutch-treat" social event while in Oahu. Special thanks goes out to **Jared A. Washkowitz** of the **O'Connor Playdon & Guben LLP** law firm for coordinating this event.

### **Committee Liaison Program**

I am pleased to report that our Committee Liaison Program is up and kicking. The purpose of the liaison program is to assign one YLC member to each of the MLA's standing committees to serve as a liaison. The obvious goal of this program is to increase the flow of communication between the standing committees and the YLC, which hopefully will lead to opportunities for our members in those standing committees as well as allowing for the mobilization of our membership to assist in projects being undertaken by the standing committees. Additionally, Liaisons will provide a brief status report at each YLC Spring meeting pertaining to the work of that particular standing committee.

A chart identifying the appointed Liaison volunteers is posted on our page of the MLA website for everyone's reference. Let this serve as a reminder to our Liaisons that this committee is ready to work. Spread the word to your respective committees and please call on us if we can be of service.

If you have any questions regarding the Committee Liaison Program or a request for volunteers, please contact **Betsy Bundy**.

### **Recently Completed Projects**

MLA Report Project – **David Nourse** and **Chet Hooper** requested the assistance of the Committee in preparing the current edition of the MLA Report. The work is now complete. We would like to thank **Asher Chancey**, **Art Severance**, and **Patrick Ward** for their assistance on this project.

### **Current Ongoing Projects**

MLA Resolutions Project - The Secretary of the MLA, **Hal Watson**, requested the assistance of the Committee for a project to research and compile all of the Resolutions passed by the Association since its formation in 1899. This project was spearheaded by former Chair **Alex Giles** and has since been taken over by Vice Chair **Norman Stockman**. Our members have been tirelessly working to finalize this project, which is nearing completion. We would like to thank the following individuals for their contributions thus far: **Patrick Ward**, **Joseph Peck**, **Tara Voss**, **Patricia O'Neill**, and **Luis Raven**. Fingers-crossed that by the spring this project will be complete.

### **New Projects**

Thanks to our YLC Liaison to the Committee on Marine Insurance and General Average, **Stephanie Espinoza**, work has begun on a project to analyze the definition of Ocean Marine Insurance in U.S. jurisprudence and regulation, and a proposal for a uniform definition. This project will be building on the initial research of **Graydon Staring**, former president of the MLA, and will hopefully provide a comprehensive analysis that can be used in practice. We would like to thank the following YLC members who have volunteered to assist with this project: **Jonathan Wright**, **Scott Sheffler**, and **Abby Nitka**.

### **Call for Projects**

To the standing committees: Please let us know how we can help with your projects. If you have projects in need of research or have writing opportunities that are well-suited for younger lawyers, please keep our committee in mind. Additionally, we can usually find a YLC member to assist with staffing your meeting (handling CLE paperwork, sign-in sheets, handouts, and assisting with presentation set up, etc.).

### **Publication Opportunities**

Do you have any war stories from your practice you wish to share with others? Do you think you have a sense of humor? Consider submitting your written piece for consideration for inclusion in the **Benedict's Quarterly Maritime Bulletin**. You may write to Managing Editor Joshua S. Force at [jforce@shergarner.com](mailto:jforce@shergarner.com).

### **Proctor Status**

Any Associate member of the MLA who has been a member of the MLA for four years or more is eligible to apply for Proctor status with the MLA. The advantages of Proctor status are numerous, not the least of which is that a member cannot serve as a committee chair, vice-chair or director unless s/he is already a Proctor or Non-Lawyer member. Proctor applications may be obtained from the MLA Membership Secretary or may be downloaded from the MLA website ([www.mlaus.org](http://www.mlaus.org)) in the "Membership Forms" section.

### **YLC Membership List on Website**

We would like to remind everyone of our recent efforts to clean up the Membership List that appears on the Young Lawyers page of the MLA website. In reviewing the list, which is generated by the selections made by each of you in your own profiles, it is apparent that some individuals who are currently identified as a "Voting" member of the Committee probably should be a "Listening" member instead, and there are other individuals where the opposite should be the case.

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Many of you have responded to our previous requests, but there is still work to be done. Therefore, we ask again that everyone please review their profiles and make the necessary changes to help us identify the core, active members of our Committee.

We also use the membership list on the website as a vehicle for communicating with our members. In this regard, we have reason to believe that some of our young lawyers are not signed up as member and thus do not receive our communications. If you know anyone that might fall into this category, please pass this along and encourage them to formally join via the website so they can stay in the loop.

We look forward to seeing you in Hawaii next week!

*Betsy Bundy, YLC Chair  
Freehill Hogan & Mahar LLP  
New York, New York  
bundy@freehill.com*

*Norman Stockman, YLC Vice Chair  
Hand Arendall  
Mobile, Alabama  
nstockman@handarendall.com*

*Draughn Arbona, YLC Secretary  
CMA-CGM (America) LLC  
Norfolk, Virginia  
usa.darbona@usa.cma-cgm.com*