



THE MARITIME LAW ASSOCIATION
OF THE UNITED STATES

SPRING MEETING -- MAY 5, 2000

PRESENT:

HOWARD M. McCORMACK
WILLIAM R. DORSEY, III
RAYMOND P. HAYDEN
LIZABETH L. BURRELL
PATRICK J. BONNER
WINSTON E. RICE
JAMES F. MOSELEY

and the following 243 members:

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Stephen A. Agus	Frederick F. Burgess, Jr.
Manfred W. Arnold	Richard C. Binzley
Frank A. Atcheson	Lawrence D. Bradley
Francis J. Barry, Jr.	Lawrence P. Brennan
James W. Bartlett, III	Richard H. Brown, Jr.
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Philip A. Berns	George F. Chandler, III
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Denise Savoie Blocker	Michael Marks Cohen
S. Scott Bluestein	David M. Collins
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Frank P. DeGiulio
Vincent M. DeOrchis
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Edward F. Kenny, III
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Henry A. King
Jean E. Knudsen
George J. Koelzer
Walter M. Kramer
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Alfred J. Kuffler
LeRoy Lambert

John T. Lillis,
 J. Dwight LeBlanc, Jr.
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 Edward F. LeBreton, III
 Raymond T. Letulle Jr.
 Michael W. Lodwick
 Juan A. López-Conway
 Herbert M. Lord
 Henry C. Lucas, III
 Capt. C.E. Lundin
 Francis J. MacLaughlin
 Naresh M. Maniar
 Matthew A. Marion
 David W. Martowski
 Warren J. Marwedel
 Capt. Alex Mastoras
 Margaret D. Mathews
 Stephen E. Mattesky
 Douglas P. Matthews
 Michael B. McCauley
 John Hay McConnell
 Daniel G. McDermott
 Michael J. McHale
 John P. McMahan
 Peter A. McLauchlan
 Samuel P. Menefee
 James E. Mercante
 Brian J. Miles
 William C. Miller
 William B. Milliken
 Dennis Minichello
 Joseph N. Mirkovich
 Jeffrey S. Moller
 Benjamin Allston Moore, Jr.
 Margaret Eddy Morrow
 James F. Moseley, Jr.
 Walter R. Muff
 Douglas M. Muller
 Thomas J. Muzyka
 John Richard Newton
 David A. Nourse
 George W. Nowell
 Michael D. O'Keefe

Patrick E. O'Keefe
 David R. Owen
 Richard W. Palmer
 Armand M. Paré, Jr.
 Patricia L. Parker
 Robert B. Parrish
 Gordon W. Paulsen
 Ronald Payne
 Gregory W. Poulos
 Edward J. Powers
 Lennard K. Rambusch
 William J. Rankin
 William A. Ransom, III
 Mary Elisa Reeves
 Ben L. Reynolds
 James J. Reynolds, III
 Barbara L. Ristow
 Timothy E. Roberts
 David Robles
 Antonio J. Rodriguez
 Howard W. Roth, III
 Thomas S. Rue
 Thomas A. Russell
 James E. Ryan
 John M. Ryan
 Michael J. Ryan
 Robert J. Ryniker
 John P. Schaffer
 David J. Sharpe
 Louis P. Sheinbaum
 James T. Shirley, Jr.
 David F. Sipple
 Kevin Beauchamp Smith
 Michael A. Snyder
 Howard J. Sobczak
 Jonathan S. Spencer
 Graydon S. Staring
 Charles M. Steen
 Alvin L. Stern
 Michael E. Stern
 Dennis J. Stone
 Michael F. Sturley
 Alvin L. Stern

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Eric D. Suben
Norman C. Sullivan, Jr.
David H. Sump
Michael L. Swain
John H. Sweeney
William Tetley, Q.C.
J. Kirk Trombley
Matthew P. Vafidis
Matthew J. Valcourt
Alan Van Praag
John P. Vayda
Alexander F. Vitale
Kenneth H. Volk
Rahul Wanchoo

Daniel Reid Warman
Harold K. Watson
William H. Welte
James F. Whitehead
David McIntosh Williams
Malcolm J. Williams, Jr.
Andrew C. Wilson
Prof. Frank L. Wiswall, Jr.
James F. Young
George R. Zacharkow
Robert J. Zapf
Ahmed Zarnegar
JoAnne Zawitoski

and the following sixteen guests:

José M. Alcántara
John Allen
Theresa Montalbano Bennett
Katharina Kristin Brekke
Sara Burgess
Mrs. Anne Dorsey
Ms. Rebecca Dorsey
Capt. Richard P. Evans

Nigel H. Frawley
PerFredrik Jensen
Mrs. Francis J. MacLaughlin
Mrs. Patricia McCormack
Mrs. O'Keefe
Patty Spivey
Jan Theunis
Doris Warman

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PROCEEDINGS

PRESIDENT McCORMACK: We will start the meeting today which marks the termination of our Centennial year which we started a year ago, marking our 100th anniversary.

It is indeed with a great deal of pleasure and a little bit of sorrow that I preside over my last meeting as President at the termination of our Centennial year. It has been a fantastic year in many, many ways. It is interesting that although the weather this year is a lot better than the weather was last year, the Museum of Modern Art is on strike so if we planned the Centennial activities this year, we would have been without a place to go on Wednesday evening. I suppose I should be thankful for small favors, and we are indeed thankful for that event.

We will have the usual number of Committee reports. We are missing our Membership Secretary, Winston Rice, who sends his regrets. He had some minor surgery. He's coming out fine, and he is deeply saddened that he was unable to be here today. Our Secretary, Liz Burrell, will take care of his report. With that I would open the meeting and ask our Secretary, Liz Burrell, for the Secretary's report.

MS. BURRELL: Good morning, Mr. President, members and guests.

Two ministerial matters before I report on the Board activities over the last few months. First, if you are going to be speaking today, please remember to leave a card with the reporter so that she may get your name right and we will know who made such remarkably intelligent remarks. The other thing is that I would like all of you to recall that you should record your attendance at this meeting either by leaving your name on the list kept by Robin Becker, who is right outside the door, or by leaving your card with her. Please indicate whether you are a member or a guest.

The Board met yesterday in New York City here in the City Bar and also met on March 3rd by teleconference. We have been using teleconferences at times to spare the Treasury and it is working out very well, although face to face meetings are still invaluable.

We had reports from the Membership Secretary and from the Treasurer and you will hear these later. The Secretary reported on the status of the Proceedings, and in particular the Special Proceedings that were distributed to the membership in honor of our Centennial. I hope that

you have read the Special Proceedings because they provide an exceptional history of our Association and insight into its activities over the years.

President McCormack reported on the positions that will be opening up in the CMI Executive Council that will be filled at the CMI Assembly meeting later this month. President McCormack also reported on his activities on behalf of the Association. Many of the President's endeavors are already described in the President's Newsletter you should all have received, but I wanted to call special attention to his attendance at the Canadian Maritime Law Association Executive Committee in April. President McCormack also reported on the very significant Supreme Court decision in *INTERTANKO v. Locke*, in which the Association had submitted an *amicus* brief. This 9-0 decision is one that we hope will have a significant impact on future regulation of shipping. We also received a letter of appreciation for our *amicus* efforts on this case from INTERTANKO.

President McCormack told the Board about the UNCITRAL meeting in New York in July 2000, and the CMI colloquium in Toledo, both of which will treat issues of international transport law. I expect you will hear more about this later from Vincent DeOrchis, Chair of our Carriage of Goods Committee. Many of the President's activities are described in the Newsletter, which also included a questionnaire about members' opinions on our "away" meetings. We are making every effort to make these meetings more meaningful and convenient for our members in general, so please, dig out the newsletter, read it, take up that questionnaire, fill it in and send it to President McCormack so that your views can be reflected in our planning for future meetings.

I would like to take this opportunity to advise that the Association has now been accorded CLE provider status in the State of New York. It was a very, very major effort on behalf of the Association undertaken by Larry Bowles and several others to gain that accreditation. I hope, therefore, you will be encouraged to attend the program that is being put on this afternoon by the Forum of Maritime Law Professors on personal injury, maritime personal injury and death. New Yorkers and others now can get CLE credit, in addition to improving their knowledge.

As is usually the case, much of the Board's attention was focused on the significant work by our Committees and Study Groups. The Board approved the mission statement of the Study Group on the Marine Insurance Project, which is being co-chaired by Ed Cattell and Mike Sturley.

The Board heard from Fred Kuffler, who heads the Board's special Subcommittee on Environmental Crimes. This is, of course, a very significant area for this Association. In an earlier letter by President McCormack to the House Subcommittee last year, the Association had already recommended that a qualified privilege be extended to communications that occur immediately after a spill so as to enhance the possibility that the consequences of the spill can be minimized. So far, our recommendation has not received a response from the Government. With the Committee on Maritime Criminal Law and Procedure, the Subcommittee will be working on formulating a guide for practitioners who are called upon to act in spill situations. The guide will be published in one of the Association publications.

Fred also described several difficult cases that have arisen in this context, but some of the problems that are involved in dealing with the overlap between pollution and criminal prosecution are so great that we may need to call upon the help of other larger associations to try to remedy some of these matters. If you have been involved in any spill situations that have involved criminal prosecutions, please write to Fred Kuffler and let him know so that he can be aware of how things are actually working in this context.

We heard from Vince DeOrchis, the Chair of our Carriage of Goods Committee on both international issues, as well as the status of our COGSA proposal. He will tell you more about that later.

The Board also took action on a resolution by the Practice and Procedure Committee. As you may recall at our last General Meeting, the Association adopted a resolution of that Committee regarding amendments to Supplemental Rules B and C. With respect to Rule B, the proposed amendment fixed the time for determining whether or not a defendant can be found within the district. With regard to Rule C, the proposed amendment concerned the notice that must be given at the time of arrest. While the Rule B proposal proceeded very smoothly, upon further study, there seemed to be some problems with Rule C. The Board therefore authorized a splitting of the former resolution so that the Committee can continue to advocate the amendment of Rule B while more attention is devoted to Rule C.

The Association continues to be very heavily involved in international activities, one of which is the upcoming CMI meeting in Singapore in February 2001. I anticipate that we will have a report from the Chair of the CMI Committee, Michael Marks Cohen, who will describe more fully all of the efforts that are being undertaken to prepare for that meeting.

In addition, an UNCITRAL working group on arbitration was attended by the Chair of our Committee on Maritime Arbitration, Don Kennedy. I expect he will also tell you more about that later.

We had a very extensive report by First Vice President William Dorsey on his attendance at the IMO Legal Committee meeting in March in London. The Legal Committee has completed work on the draft Convention on Bunker Pollution. The draft, as it now reads, provides for strict liability for registered owners, bare boat charters, manager and operators of ships, but does have exceptions for acts of God, Government compulsion and intentional acts of third party. There is also a requirement that registered owners must have insurance in the amount provided by the 1976 LLMC Convention or national legislation, whichever is greater. The only open issue that seems to persist is the size of the ship to which this Convention will apply. There will be a diplomatic conference in London next spring at which it is anticipated that the Convention will be adopted.

The last Legal Committee meeting also devoted some attention to the Protocol for the 1974 Athens Convention on Passenger Ships, but there is a continuing lack of progress due to disputes about a number of items, one of which is whether the standard for liability should be strict liability or some type of negligence. Not too much progress was made there, nor on the draft Convention on Wreck Removal.

There was also a report at the Legal Committee meeting from the ad hoc ILO/IMO working group on damages for crew injuries and on crews abandoned by their employers.

First Vice President Dorsey also reported on the status of the proposed UNESCO Convention on Underwater Cultural Heritage. The next meeting to consider that Convention will be in Paris in July 2000. At the moment we are trying to get the U.S. State Department to include an Association member, who would probably be John Kimball, Chair of our Study Group on the UNESCO Convention, to be part of the delegation that will be considering this particular Convention. We have had informal meetings with the State Department to discuss various aspects of the draft Convention, including perhaps trying to limit what would fall into the category of underwater cultural heritage. As First Vice President Dorsey said, we don't really want to include coke bottles. The CMI has sent out a questionnaire on this topic. It is possible that the CMI may become more involved in the drafting of this convention, as well as perhaps some other maritime law groups that might also have an interest in preserving the

laws on salvage abandonment laws as we know them. We have also asked Professor Bederman to assist in redrafting certain articles to see if they can be more in tune with MLA goals on issues raised by this Convention.

The Convention's subject matter also overlaps with certain issues that have been raised in the recent Fourth Circuit decision in the *TITANIC* case confirming that the District Court did indeed have jurisdiction to entertain this action and make its ruling. There is also another piece of litigation that has just developed in connection with the *TITANIC*. There is a treaty that is under negotiation right now among the United States, the United Kingdom, Canada and France that would have application to the *TITANIC* and how the *TITANIC* is to be treated. The RMS *TITANIC* Group, which was involved in the earlier litigation, has now commenced a declaratory judgment action in connection with the potential treaty that may eventually affect the *TITANIC*, but naturally this also raises some of the same issues that are involved with the UNESCO Convention. We will continue to follow this, as well.

Finally, I would just like to say that we hope that you have all had a very intriguing week attending the many informative Committee meetings that have been going on this week. I do hope that you will stay this morning and listen to the reports of all the Committees whose meetings you didn't get to attend.

Thank you. That concludes my report, and I respectfully move its adoption.

PRESIDENT McCORMACK: Thank you very much, Liz. May I have a motion to adopt the Secretary's report?

MR. HAYDEN: So moved.

MR. McCORMACK: Second?

(Second.)

MR. McCORMACK: All in favor?

(A chorus of ayes.)

MR. McCORMACK: Any opposition?

(No response.)

PRESIDENT McCORMACK: The motion is carried. Thank you very much, Liz.

In the context of the Marine Insurance Study Group, the ALI type project that they started, I also want to give to indicate that Ed Cattell and Mike Sturley, who are members of our Association, were the ones who were on the ALI project as members of ALI. They are working quite hard and indeed will be co-chairing that activity. I want to thank them for their participation.

At this time I now call upon our Treasurer, Patrick Bonner, for his report.

MR. BONNER: Thank you, Mr. President.

The Association remains in sound financial shape. We have about \$250,000 in assets. This is about \$25,000 less than we had last year at this time. You may ask why.

There have been a number of extraordinary expenses. The Centennial printing bill was much higher than usual for the Spring Meeting. It was a remarkable book, but it was costly. Another expensive item is COGSA. There have been a number of trips, both domestic and international, by various MLA members explaining the COGSA proposal to various groups. The third area where there has been an increase is additional travel at either the request or the invitation of our Government to appear at international conventions to represent the United States' point of view. This is something that the MLA has been trying to do for years. We have been trying to be recognized as experts by the Government, by various branches of the Government in maritime law. We have succeeded, but it has been expensive.

I see this trend continuing and I see more and more representatives of the MLA going to Paris, going to Vienna, whatever, but I see that continuing. As Treasurer, I say thank God the Centennial is over; we shouldn't have any more expenses from the Centennial. I just want to say I think that the Association will continue to have sufficient assets to meet all its objectives.

One last thing. Liz mentioned Robin Becker. Robin is outside. She is the voice at the other end of the phone when you call our Buffalo operation. So if you have a chance, stop by and introduce yourself. She knows you, she knows your name, and it would be nice if she could see your face.

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

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MR. McCORMACK: Do I hear second?

(Second.)

MR. McCORMACK: All in favor?

(A chorus of ayes.)

MR. McCORMACK: Any opposition?

(No response.)

MR. McCORMACK: The report of the Treasurer is adopted.

I do want to make one comment, however, that we have been very successful in our attempts to achieve coordination with the State Department and others. As you know, be careful what you wish for because you may get it. Well, in fact, we have gotten it. I am very pleased that we have, but no one has yet volunteered to go to the State Department meeting in Hoboken, New Jersey, so we still need the volunteers for that activity.

At this time I would like to call upon Liz, wearing her temporary hat as the Membership Secretary in place of Winston Rice.

MS. BURRELL: Good morning again. The Proctor Admissions Committee has recommended that the following eight associate lawyer members be advanced to proctor status. They are G. Ray Bratton of Memphis, Tennessee, B. Otis Felder of Los Angeles, California, Allen E. Graham of Mobile, Alabama, Joseph G. Grasso of New York; Geoffrey Losee of Wilmington, Frederick Lovejoy of Southport, Connecticut, Matt Marion of Stamford, Connecticut, and Janet Marshall of New Orleans.

In addition, the following people were approved as new non-lawyer members. Robert P. Umbdenstock of Southport, Connecticut, James N. Craig of New York, and W. Bruce Law of Norfolk.

At the meeting that took place yesterday of the Board, 23 new associate lawyer members were approved. At the March 3rd meeting of the Board, 24 new associate lawyer memberships were approved.

We also regret that we have learned since the last general meeting of the death of following members: Tallman Bissell, Harry Gavalas, Charles Gleason, Richard Hagen, Charles Herbermann, Frank Marston, Don

Mooney, Jim Spahn and Max Taylor. In addition, although he was not a member, Geoffrey Brice, who was a friend to many of us, passed away last November. I would like to ask for a moment of silence.

(Moment of silence.)

MS. BURRELL: Thank you very much. With all of these changes to our membership, the total membership of the Association is now 3,447 maritime lawyers, judges, non-lawyers, academic, and all other categories of membership.

That concludes the Membership Secretary's report, and I would respectfully move its adoption.

MR. McCORMACK: Do I hear a second?

(Second.)

MR. McCORMACK: All in favor?

(A chorus of ayes.)

MR. McCORMACK: Any opposed?

(No response.)

MR. McCORMACK: The Membership Secretary's report is adopted.

At this stage, before we get to the Committee reports, I would like to recognize some of the distinguished foreign visitors who are here today. I would like to introduce to the group some of our Canadian colleagues: Nigel Frawley, the Past President of the Canadian Maritime Law Association; Sean Harrington, who has just returned from a sojourn in London and now is back in Montreal—I'm delighted to see you back, Sean; and the President and Vice President and President Elect of the Canadian Maritime Law Association, Jim Gould, Q.C. Thank you very much, gentlemen.

I had the opportunity of attending the CMLA Executive Council meeting in Ottawa last week. Barry Oland, the President of the Association, has expressed his regrets that he had to be in Ottawa testifying before the Government in connection with a bill pending and then go to London. We will see him next week at the CMI assembly meeting. Jim takes over in Halifax on July 22nd and has graciously invited the members of the Board

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and others, at our own expense, I might add, to come to Canada for the CMLA Executive Council meeting, which also coincides with the visit of the tall ships in Halifax. I know that some of our Board members will be going up. I know from experience the hospitality of the Canadian Maritime Law Association, and I want to thank you very much.

Jim, would you like to say a few words on behalf of the Canadian MLA?

MR. GOULD: If I may speak from here, Howard?

MR. McCORMACK: Yes.

MR. GOULD: I do want to thank you and Patti for the many kindnesses that you have extended to all of us during your term, and congratulate you on a job very well done and to assure you that our new executives will look forward to working with your new executives and cooperating with you on many matters of common interest, including, of course, of the CMI. So thank you very much from all of us for your kindness and hospitality.

MR. McCORMACK: Thank you very much. Jim will be at the dinner tonight, so those who have not had an opportunity to see Jim, please feel free to introduce yourself. Our relationship with the Canadians goes back a long way, and we hope to be able to assist them in some manner next year when they will be celebrating the 50th anniversary of the founding of the Canadian Maritime Law Association. I understand from Barry and from Jim when I spoke to them in Ottawa that you expect that meeting to take place in Montreal sometime in the latter part of May, early June next year.

I also would like to indicate the presence of Jan Theunis from Antwerp who is visiting us. I don't know whether José Alcantara, the President of the Spanish Maritime Law Association is here. He was present at our Board meeting yesterday and will be attending the dinner tonight.

I also want to publicly acknowledge the presence of Captain Malcolm Williams of the United States Coast Guard. I will have something more to say about that later, but Malcolm is one of our longstanding friends. He is head of the International Law Section of the Chief Counsel's Office of the Coast Guard. Malcolm, I will be calling upon you a little bit later for some remarks.

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If I missed anyone, or any one of our foreign friends I have failed to mention, I apologize, but we welcome you here. It's nice to have some of our foreign colleagues who came to the opening of our Centennial year last May and now are here to wish us well on the closing of our Centennial year.

I will now get into the various reports. The fact that you may not hear reports from all the Committees does not mean that they are not doing anything. Many times the oral reports are designed to highlight some of the issues that are coming up. I have encouraged all Committee Chairs, and continue to do so, to submit a formal written report which will appear in the Proceedings of this meeting. I also will mention, as we go down the list, those Committee Chairs who are departing after their four or five years in some case of service. Some of those gentlemen and ladies are here today, some are not.

I would like to indicate that two of the Committee Chairs who will not be giving reports are, in fact, departing. That is the Alternative Dispute Resolution Committee, Harvey Wittenberg of California, and the Chair of the American Bar Association's Relations Committee, our own dear former President, Bunky Healy.

I will now call upon Vince DeOrchis, the present Chair of the Carriage of Goods Committee to submit his report. Vince is also leaving after five years of extraordinary service. I can only tell you that during the times that Vince and I have been heavily involved in this COGSA project, when I took over as President, Vince and I were optimistic that this would be the time that I could announce that it had been signed. Such is not the case. Vince will bring you up to date on that.

This Association owes Vince DeOrchis a tremendous debt of gratitude for his hard work and efforts on behalf of this organization.

MR. DeORCHIS: Thank you, Howard, sincerely, for those kind words.

Board of Directors, officers, members of the Maritime Law Association, ladies and gentlemen. Five years ago Chet Hooper asked me to take over as the Chair of the Carriage of Goods Committee. At that time, I certainly had no idea that five years later I would still be pressing for the introduction of the Carriage of Goods proposal.

We are very close. Indeed it's somewhat disappointing that I have to appear before you today, my last day as Chair, to report that the proposal

has still not been introduced. But I can say that it sits on the corner of the desk of Senator Hutchinson in Washington, D.C. and it is on the verge of being introduced. There was a meeting on February 24th of this year, called by the Senator's office, and attended by her staff, and also attended by about a dozen organizations from around the United States involved in the maritime industry. All present gave good solid support for the proposal.

The Senator's staff indicated that she was very much in favor of it. She has gone on record in writing and in speeches that she is in favor of it, and that she intends to introduce the bill.

There was a minor concern raised by the National Association of Waterfront Employers at the meeting with Senator Hutchinson over some concerns as to how the bill would operate. They invited me to go out to the West Coast to speak on the proposal, which I did. Although I have not yet heard formally back from the Association of Stevedore Terminal Operators, I understood that it was a very good meeting, that they were well-informed. They are going to reconsider their position on the proposal.

At this point opposition to the proposal, as it was back in 1996 and thereafter, comes from abroad, principally from organizations like CENSA, BIMCO, and to a certain extent organizations like the Canadian Maritime Law Association. With some organizations, we have been able to sit down with and work out our differences, as you have heard in the past. FIATA is an example, the AWO, even the Stevedore and Terminal Operators, and, I might add, to a certain extent the Canadian Maritime Law Association, who has been extremely open to reviewing the problems they have with this particular bill. It has been basically a matter of education. That is why a tremendous amount of travel has been required and good efforts of people like Chet Hooper, Mike Sturley, George Chandler and so forth have all been required.

At this point, I believe the reason why the proposal has not been introduced is because the staff of Senator Hutchinson is concerned that if there is anything wrong with the bill, they will get into trouble. They simply don't have any technical expertise in this area. They are concerned as to how it's going to operate, what will be the effect once it's put into place, and if there is something that is unexpected, something that disappoints one of the constituents out there.

There has been a recent allegation that the COGSA proposal may conflict with the Ocean Shipping Reform Act. I don't believe that's so. NIT

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League, who have been working with us for five years, have studied it very closely. They have found nothing in our proposal which is in conflict with the OSRA, and NIT League helped sponsor OSRA. They should know.

It is an allegation, however, and one which Senator Hutchinson must dispel before she is going to go forward with our proposal. There are other senators who are looking at this proposal as well. We are not relying on a single senator. We have been told that Senator Inouye has taken a look at this, Senator Lott, Senator Brough. So this is not a bill that is sitting out there in a void, but it does need a push to get from that desk into the laps of the senators. The only ones who are going to accomplish that are formal lobbyists in Washington, D.C., the organizations such as NIT League, AIMU, various carriers who supported us in the past, FIATA and others. They have the clout, and they have the power. More importantly, they have the personal interest as to why this proposal should go into effect.

I do think that they are working as hard as they can. They are taking as much interest in the bill as they can. In their opinion, the proposal is moving as quickly as it can. This will certainly be an education for me; it's not "Civics 101."

I have heard everything from Senator Hutchinson showing interest in being Governor of Texas to problems with Monica Lewinsky affecting the movement of our bill. They may all be true, they may not be true. What I do know the MLA is not the organization that is finally going to push this bill forward.

The MLA has come up with a very good proposal. We have put it on the laps of the industry. We have made the changes that have been requested. It is now up to the industry to get it through Congress. If they do, that's their success, as well as ours. If it doesn't get accomplished, that's a reflection upon the industry itself.

Let me also speak briefly about the results of the CMI meetings in London. Howard, I assume you want me to touch on that?

MR. McCORMACK: Yes, I would. It's a very important activity and it's going to be continuing. It is something I think the entire Association will want to know about, both in the minutes and also from those present.

MR. DeORCHIS: The reason I would like to touch on the CMI is because, as you may recall, one of the most compelling reasons for this Association to have worked on the new COGSA proposal is because we were disappointed

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with the inactivity or the slowness of the CMI to meet the industry's demands to come up with a new convention, a new scheme to replace COGSA. The Hague-Visby and Hamburg Rules have been criticized for 20 or 30 years. Something newer was needed to meet today's requirements in our industry. Unfortunately, even as of three years ago the CMI seemed to be moving very slowly in response to coming up with something new.

I am very pleased to report that, in large part because of the efforts of the MLA to come up with its proposal, the CMI has taken great strides in the last six to eight months to come up with a new Sea Transport law. This is a study that is going on in London. I congratulate Stuart Beare and others with the CMI who are working on this study. Several productive meetings have already occurred in London. Our own Mike Sturley is the rapporteur for that committee. It is moving forth quickly. It is moving forth with purpose and direction. And I do think that will ultimately come to fruition. Indeed, UNCITRAL has been attending some of the last meetings. They are very impressed with the direction, and the speed at which it is moving.

Initially, this CMI conference was going to be dedicated only to looking at matters outside the realm of the present worldwide conventions. It was going to get primarily into areas that our present Pomerene Act and Harter Act cover, and so forth. The CMI has recently realized that there is a need for an all-encompassing statute which will cover Sea Transport as a whole. The consequence is that now a liability scheme is going to be included in the discussions. An outline draft will probably be introduced sometime in June.

The bottom line is that the CMI is presently working on a convention that contains many elements of the Pomerene Act, which is exactly what we have already done with our new COGSA proposal.

The CMI is also looking at multimodal transport, something we have already done in our COGSA proposal, although it has been the subject of some criticism. Multimodal coverage is going to be part of this new Sea Transport convention.

The CMI is looking at liability schemes, and specifically considering whether the defenses such as error in management and error in navigation should be omitted.

In short, the CMI is looking at our COGSA proposal. There is no doubt that if our COGSA proposal is not providing a template for the CMI, it is certainly a motivating factor for what is going on in London. I think

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this organization should be proud and feel that it has indeed accomplished something, not just for the involvement of our Senate, but also for having affected the world stage through the CMI.

My picture appeared on a certain magazine as a result of an article I recently wrote. Trust me, I'm not getting any royalties from its distribution today. I appreciate what *The Maritime Advocate* has done to provide important information about our COGSA proposal.

I certainly hope that Bob Connor, who will be taking over as the new Chair of this Committee, will add some new strength and some new vigor in pushing our proposal forward. It is persistence, it is patience that will bring this proposal to fruition. That is something we have to remember.

My father reminded me this morning that the original COGSA proposal took 12 years to pass Congress. He said, "You know, you are seven years ahead of schedule, that's the way you should look at it." Perhaps that is the way we should be looking at it.

Mr. President, that concludes my report. I thank the Association for having given me the opportunity to chair these past five years.

MR. McCORMACK: Vince, thank you very much.

(Applause.)

MR. McCORMACK: Vince remains on the Board of directors and will continue to serve as one of our delegates to CMI's International Subcommittee on Transport Law. I will now call upon the Chair of the CMI Committee, Michael Marks Cohen for his report.

MR. COHEN: Mr. President, good morning, ladies and gentlemen.

The CMI will have a plenary meeting in Singapore on February 12th through 16th at which four topics will be considered. The MLA delegation will be organized into working groups for each of the topics, to prepare for and to participate in the Singapore proceedings. If you go to Singapore to attend this plenary, you will not be there just to observe. This is not an exercise in legal tourism. There will be four and a half days of conferences and everyone who attends should have significant work to do.

If you are interested in one of the four topics, get in touch with the contact people I will tell you about this morning so that you will be put

on the mailing list to receive all the documents you will need to get up to speed and prepare as well as participate in the meeting, thereby contributing to the development of international maritime law.

The first topic is issues of transport law. You have heard from Vince DeOrchis about some of the work that's been going on. Primarily it will deal with the interface of the bill of lading with the sales contract, with negotiability, with electronic bills of lading, with freight, with liens, rights and liabilities of cargo interests and, of course, liabilities of ocean carriers. The contact person is George Chandler, who is one of the delegates on the International Subcommittee. There are already several papers available on this topic arising out of the first two meetings of the International Subcommittee, and there will be other papers available within the next four to six weeks. So if you interested in working on this topic in Singapore, send a fax to George and get your name on the mailing list. He will send all of these papers and other information too as it comes out.

The second topic is issues of marine insurance law. There are 12 issues. Coincidentally, the Government of Australia has announced that it will be looking at a review of the Australian Marine Insurance Act this year. The Australians have identified several issues they want to take up. These issues sound very familiar because they are similar to the ones that UNCTAD described almost 20 years ago when it took a look at marine insurance. Three of them, I think, are of particular interest. One has to do with warranties, whether or not there should be a causation connection between breach of warranty and avoidance of the policy. The second is a failure to disclose something material in the application for the policy. Again, whether there ought to be causation between the failure to disclose and avoidance of the policy. Finally, insurable interests: whether a party who purchases goods after they have been damaged can acquire an insurable interest to sue the underwriters for damage to the goods, and also whether under a hull policy the assured can get excess disbursements insurance, which is now PPI. Gray Staring is our representative on the International Working Group. However, the Chair of the Marine Insurance Committee, Jean Knudsen, will appoint someone to act as the contact person to distribute all of the papers in connection with this project. Until Jean appoints someone, I urge you to contact her. Send her a fax, tell her you want to be put on the list, and she will relay it to whoever is going to be the contact person.

The third topic is general average. This is a IUMI proposal to eliminate post-peril general average expenses for the common benefit. The proposal has not been favored by our Association. However, there may be one or

two issues that are worth taking a look at, particularly the statute of limitations. Howard Myerson, a non-lawyer members of our Association, has been appointed as our representative of the Association on the International Working Group, along with Brett LeBreton, and Brett is the contact person. So if you want to find out about the IUMI proposals and you want to know what the CMI questionnaire was all about, what the U.S. answers were, and other associations' answers, too, get in touch with Brett and he will fill you in, put you on the list and keep you informed.

Finally, the fourth topic is piracy. The CMI proposes to develop a model law for the multi-national prosecution of piracy and what are called crimes of maritime violence, not only on the high seas, but also in territorial waters where most of the piracies actually occur today. The Chair of the subcommittee is Frank Wiswall, and Sam Menefee is the reporter. Sam is the contact person. There is a proposed model law. He can give you a copy of it. There is a paper about a related IMO project. Sam can provide you with this information. There is a CMI questionnaire. There are U.S. answers. There is a compendium of answers of other countries. If you are interested in piracy, Menefee is your pirate man.

Now, because they think you are not going to have enough to do in Singapore, the CMI is also putting on two seminars, one will be a comparison of passenger rights under the Warsaw and the Athens Conventions. The second seminar will the implementation of the 1976 Limitation of Liability Convention. This second program is a pilot program. The CMI wants to see whether they ought to have this kind of program at future CMI events. Therefore, some of us will be looking at it for the structure more than content since, of course, the United States has not ratified the '76 Convention, and as far as I know, is unlikely to do so.

In addition to all this, the Assembly will meet. Chris Davis, the Vice Chair of the Committee is a member of the Long Range Planning Committee, which will report to the Assembly about what the CMI should do next. If you have any ideas about future work for the CMI, drop a note to Chris and clue him in so that he will be able to pass it on when he makes his report in Singapore.

I want to say something about expenses. The registration fee is estimated to be about \$900. It hasn't been set yet. The hotel rooms probably will run about \$150 a night, which if that's true, I think is quite reasonable. The airfare: You ought to be able to get a round trip coach ticket to Singapore by the time all this comes together for about 1,000 bucks. A business class fare would cost 6,000 dollars. However, if you buy an Amex

Platinum Card, you can get two business class tickets for the price of one. They give you a companion ticket free. So that if you want to take your wife, or as Gordon Paulsen is so fond of saying, other loved one, down to Singapore, you can do it for 6 grand, or if you want to form an odd couple and buddy up, two of you can go there for \$3,000 apiece. Since I'm not a tax lawyer I won't explain what the tax consequences of all that are.

In the run-up to the Singapore Convention the CMI is holding two Colloquia. One will be right here in New York on the 6th of July at the United Nations. It's free, but by invitation only, for security reasons. If you want to attend, and perhaps even have an opportunity to speak—it will be on issues of transport law, and my recollection is in the past UNCITRAL has encouraged people to put in papers and even to address the meeting—you can get an invitation by sending a fax to Chet Hooper, and he will put you on the invitation list.

The second Colloquium will be in Toledo, Spain with the cooperation of Spanish Maritime Law Association. It will take up all four issues that will be eventually debated in Singapore and it runs from the 17th to the 20th of September. Registration forms for that are available from Chris Davis, the Vice Chair of the Committee. I would tell you it's a fairly inexpensive program to attend. The registration fee is 800 dollars, but it covers four nights in a hotel, several meals, and a tour. In addition to that will be the airfare, of course, but the airfare should be quite low around that time of year for travel to Spain.

There are many other international law and Committee projects which I am sure will interest many of you. You will see the details in the written report. I do want to mention now only one: The project to recycle obsolete and excess maritime law books.

Ladies and gentlemen, please do not throw your advance sheets away. When you get a third edition of a maritime law treatise, please do not throw the second edition away. There are maritime law libraries at universities abroad that cannot afford to pay for law books to accumulate an American maritime law collection. They would love to get our excess books and advance sheets. Hill Rifkins is sending its books and advance sheets to the University of Capetown. Burlingham's is sending theirs to Malta. There are at least three dozen other maritime law libraries abroad that would be delighted to receive books. If you would send me a fax, the Committee will try to pair you up with one of them. But please, don't throw those books away. They really are valuable and could help us in educating people abroad about American maritime law.

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Thank you, Mr. President.

MR. McCORMACK: Thank you very much, Michael.

(Applause.)

MR. McCORMACK: Frank Wiswall was kind enough to advise me of the new web site for the CMI. They have been working on it quite a bit and it's very worthwhile to visit. The web site address is the usual [www.comitemaritime](http://www.comitemaritime.com), one word, dot org. I repeat that, www.comitemaritime.org, and I would encourage you all to visit this web site.

I now call upon the Chair of our Fisheries Committee, George Birkhead, for his report.

MR. BIRKHEAD: Thank you, Howard.

Ladies and gentlemen, my Committee met yesterday at the offices of Bigham Englar. Before I give my report, I would like to express as a non-New York Chair my appreciation for the hospitality that all of us get from the New York law firms. In my case Bigham Englar gives unstinting support. One of their attorneys, Joe Yamali, just gets me anything I need, including good conference rooms and support. We needed a television for a video presentation yesterday; it was forthcoming immediately. So I do want to thank and to let the New York firms know that we out-of-towners do appreciate the hospitality we get every time we come up here.

(Applause.)

MR. BIRKHEAD: A good part of our meeting was taken up with pursuing and discussing the federal regulations requiring ecosystem damage evaluation with respect to new fisheries regulation and with respect to almost all federal water activities. We would like to get some uniformity, some *Daubert* type of approach to the question of ecosystem damage instead of having in each instance a duel of experts who are 180 degrees apart.

We have Andy Wilson of New Orleans and Dave Farrell from Massachusetts as a Subcommittee looking into this. Once their pilot program is put together, we intend to approach the National Marine Fisheries Service to see if we can get them on board. They have indicated a real interest in trying to work on this topic with us.

The next topic we had discussed was the American Fisheries Act and the overdue regulations. Steve Johnson from Seattle gave us a report on that topic. That is going to have a major effect, especially on the West Coast, on the ownership and operation of the fishing vessels, since the Act and the expected regulations will make significant changes to the citizenship requirements, both for owners and mortgagees and even others who have a strong relationship with fishing vessels. That law and the regulations which are still not promulgated are supposed to become effective in October of next year and will create some real changes.

The fisheries industry—and that's not a good term because it's made up of many distinct industries—is probably the least uniform of the maritime disciplines. I from the East Coast know very little of the fisheries on the West Coast, and especially in Alaska. Our Committee, while we have representation from all coasts, really needs to be beefed up. So this is a commercial. I would like to have additional people, especially from the Gulf Coast and the West Coast, added to our Committee so that we can appreciate the fisheries questions and problems from all over the country and not just from the East Coast.

That concludes my report. Thank you.

(Applause.)

MR. McCORMACK: Next will be a report from the Vice Chair of the International Law of the Sea Committee, Sam Menefee.

Doug Burnett, the present Chair of this Committee, is one of the outgoing Committee Chairs, having served his four years as Chair. The new Chair of the Committee will be Professor Sam Menefee.

PROF. MENEFEЕ: After Mr. Cohen's kind words, I feel like beginning "Arrr, matey."

(Laughter)

PROF. MENEFEЕ: In any case, we had a meeting of our Committee on Wednesday at the South Street Seaport Museum.

Our first order of business was the introduction of new Committee officers. A vote of thanks to Doug Burnett for his leadership as Chair of the Committee was passed unanimously.

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One of the things that the Committee on International Law of the Sea will be doing is to revise its Subcommittees; we will be going into new areas, such as the IWC and whaling issues, as well as naval matters. While we have further areas under consideration, we will try to make sure we do not step on any other Committee Chair's feet. If there is any possibility of an overlap, we will be touching base with you.

We had a report on contemporary piracy from Phillip Buhler, which was followed by a discussion of initiatives by the CMI Working Group on Uniformity of the Law of Piracy.

Professor David Bederman reported on the UNESCO draft Convention, and Mark Davis offered his views about the TITANIC draft treaty. There was also which was followed by a general discussion on the use of naval forces in the Persian Gulf.

The Committee urges young lawyers to participate in our work. Finally, we are considering publication of a newsletter.

Thank you very much, Mr. President.

(Applause.)

MR. McCORMACK: The next report will be given by my partner, Matt Marion, as Chair of the Marine Ecology Committee.

MR. MARION: Thank you, Howard, members of the Board, officers, ladies and gentlemen.

The Marine Ecology Committee met on Wednesday to a standing room crowd. I won't add to what has already been discussed about marine criminal law other than to note that the Committee is carefully monitoring the developing case law and prosecutorial policies of the U.S. Department of Justice.

As you might imagine, at least half of our agenda concerned the *INTERTANKO* decision and its likely impact on the future development of state laws. Since the case was remanded, there have been two legislative attempts at the federal level to have it overturned in some fashion. The first bill died in conference. The second bill, we understand, is pending. It will certainly be a matter that we will monitor over time. The proposed legislation by Senator Gorton seeks to grant states the authority to regulate all vessels and, therefore, would abrogate the *INTER-*

TANKO decision. The State of Washington, we understand, has disagreed sharply with INTERTANKO's interpretation of the Supreme Court's decision. Thus, it appears that the Federal District Court or perhaps even the Court of Appeals for the Ninth Circuit will have to resolve the differences of interpretation and will play, I think, a significant role in offering future guidance to states regarding how they regulate the marine industry. We will receive a follow-up report on the aftermath of *INTERTANKO* in the fall.

In terms of regulatory developments, we have been monitoring the Coast Guard's Ballast Water Management Program, which is in full force and effect. The Coast Guard issued a NAVIC last year offering guidance about the non-mandatory aspects of the ballast water program, which is mandatory in the Great Lakes and not mandatory outside of the Great Lakes. The basic premise of the program is that to avoid the introduction of aquatic nuisances into U.S. waters, ballast water exchanges take place more than 200 miles offshore in water exceeding 2,000 meters in depth. States such as California are following suit with their own ballast water programs, so again that's a point that we are monitoring very closely.

The Committee received an interesting report about the expanded role of the EPA in regulating the marine industry. The EPA, we understand, is playing a more active role with respect to cruise vessels, monitoring the waste streams that are emitted by cruise vessels in the water and the air. Notably, the EPA is now applying the Ocean Dumping Act to commercial ships in some contexts. Given the enormity of the EPA, we think that they are potentially a very significant new regulatory force with respect to the shipping industry.

The Marine Ecology Committee has two ongoing special projects. The first concerns monitoring state laws and regulations. We have received semi-annual updates from a Subcommittee headed by Laurie Crick Sahatjian of Washington, summarizing current state laws and regulations and also proposed laws. We expect to provide this summary to the membership of the MLA this coming fall in what we think will be the first newsletter of the Marine Ecology Committee in a number of years.

At the Orlando meeting I was either bold or foolish enough to predict that we would have a web page up and running. We don't yet, and we understand that there are some issues that have to be resolved before any of the Committees will have the opportunity to present material on the web page. In the interim we have formed a group headed by Ann Michelle Higgins of Philadelphia and Jim Moseley, Jr. of Jacksonville to edit a

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newsletter on behalf of the Committee, so this coming fall you should expect to see the Committee's work in print in the MLA Report.

In closing my report, I would like to extend my personal thanks to Howard McCormack for his energetic support for the Marine Ecology Committee. Those of you who know Howard may realize that he is an inveterate newspaper article clipper. We have been the recipient of many of those clippings over the years. While it might be nice someday to open Lloyd's List and not see daylight through the front page, we have been very much the beneficiary of those clippings and the tremendous support he's offered.

Thank you very much.

MR. McCORMACK: Thank you very much, Matt. I also want to thank Matt and my other two partners, Gordon Paulsen and Leroy Lambert, who are the editor and associate editors of the MLA Report, a copy of which is at the door. I know in addition to Matt's duties as Chair of the Ecology Committee, he and Leroy and Gordon work very hard on these MLA reports.

I would encourage all of you who have some information, data or papers or information you think would like to be communicated to the Association as a whole, to communicate with any one of those individuals. I recall Matt's comments about my paper clipping, and indeed he is right. That is one factor of a 45 to 50-minute commute each way on the railroad, one gets to have a fair amount of time to read various things. There are a lot of publications out there, and far more than our office gets, but I try to keep the Committee Chairs highlighted and informed about things that may be of public knowledge in England and other places, as well as information that I may become aware of that I think may have an impact on the various members of the Committee. That's how information gets distributed.

My fellow officers have congratulated me and rushed out to sell their stock in Xerox and IBM on the basis that they will no longer be having that much paperwork involved and, therefore, the stock is likely to go down. But it has been interesting, and I will mark some remarks about that later. I thank Matt for his comments.

I will now call upon the outgoing Chair of the Marine Finance Committee, Charlie Brown.

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MR. BROWN: Our new Chair, Sandy Knapp from Philadelphia has a wonderful rapport with the U.S. Coast Guard, but she is going to need a little help to start.

Title 46 section 12106(e) is the exception to the Jones Act. It permits a dummy Delaware leasing company or bank to own a Jones Act vessel. This means a Japanese bank or a Dutch bank or a British bank or leasing company can fund a subsidiary which can own a Jones Act vessel. This was the purpose of this section. The Coast Guard added some new requirements, and one of the requirements is that each tier of the structure of the ownership of the leasing company must also be a documentary citizen. This means that there will be no more funds from Sumitomo. CIT would have a problem owning vessels, and leasing them to a Jones Act citizen.

The savings part for the Jones Act is that when this dummy Delaware company owns the vessel, it must bareboat charter the vessel to a Jones Act citizen. So really the Jones Act is not affected that much. We just get the money and the control is in an apple pie 75 percent good U.S. citizen for Coast Guard's purposes. The Coast Guard itself has asked us to go back and ask for some new rules. Procedures were made by Coast Guard without hearings or without notice. If we get rule making, we can tell them what's wrong with their requirements.

I would like to get a resolution from you to help Sandy out which would require the Coast Guard to modify their procedures to conform with the statute, or the alternative, we want new rules in a hurry. We have actual cases pending now.

At a meeting of the Coast Guard Subcommittee at this May meeting we passed by unanimous consent the resolution, and I will read it to you.

Resolved that the President of this Association or his designee inform the Coast Guard that in absence of the rules, the additional procedural requirements for Section 12106(e) of Title 46 U.S.C.A. promulgated by the Office of Maritime and International Law that make substantive changes to Section 12106(e) be modified to comply with Section 12106(e) or in the alternative, new rule making include Section 12106(e).

I would like to have a second to that.

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MR. McCORMACK: The resolution has been moved by the Chair of the Maritime Finance Committee. Is there a second to the resolution?

(Second.)

MR. McCORMACK: Any discussion?

All in favor?

(A chorus of ayes.)

MR. McCORMACK: Any opposition?

(No response.)

MR. McCORMACK: The resolution is carried. The Chair is directed to send a copy of that to our Secretary and it will appear in the report of the Proceedings. Continue, please, Charlie.

MR. BROWN: In the Subcommittee on Foreclosure and Insolvency, we came up with the new FAA Act which contains a section of Title 11, which modifies Section 1111, 120160 of the Bankruptcy Law applying to vessels. This section only affects ICC-type public vessels that were licensed formally by ICC, now by DOT. This amendment really doesn't affect all vessels. Very limited kind of thing. But it gives the lender the right to grab a vessel under certain circumstances even though there is an automatic stay in bankruptcy.

All aircraft have this exception. So we have a very limited section on vessels affected by this act. Only Phil Berns, John Edginton, Diedre Dillon and people like that can understand it. You can read about it in our minutes.

In yachting, the novel thing—Bob McIntosh came up with Theresa Bennett of Fort Lauderdale who caused to be issued on behalf of a New Hampshire Insurance Company out of Swiss Re, title insurance for vessels. You plunk down your \$500 to \$1,000, you get title insurance which would insure your title and also insure that there are no maritime liens. Coverage insures the owner up to \$5 million for pleasure vessels. Let's see how it goes.

This title insurance was done by copying a real estate title policy. You can imagine that we will have to work on that to get it in shape for the

maritime liens. Charley Donovan and his Maritime Lien Committee were working on a way to get rid of maritime claims that are filed with the Coast Guard. Assume you are a barge owner and you want to sell a barge. There is a maritime claim against this barge filed 20 years ago, and the company who filed the claim is bankrupt. You can't find that company, and you just can't get rid of this claim. If you want to sell the barge, or you are a yacht owner and you try to flag it foreign, and you can't get rid of the claims, the Coast Guard won't give you a deletion certificate.

We wanted to extinguish maritime claims after a certain period. We gave up on that. It has just got too many worms so we will try again. But we would like to proceed with the idea of getting rid of the maritime claims for pleasure vessels that the Coast Guard says must be extinguished before transfer foreign. We don't see why the Coast Guard has the power to block a yacht transfer because of a stale maritime claim.

Ned Summer from MARAD told us all about the new Title XI regs, the plain language regs for Title XI. I don't think you will ever come up with a plain language regulation for Title XI, but they are going to try. It would be wonderful if they do. We will try to help.

The rest of the report will be in your written matter.

MR. McCORMACK: Thank you very much, Charlie.

(Applause.)

MR. McCORMACK: I want to thank Charlie for the four years of dedicated service to the Association as Chair of this very important Committee. I must confess, since I don't do that type of work that I have to call upon my partners, who do, to make sure that I am indeed following what is going on. Charlie keeps us very well informed and very well advised. This new Chair will be Sandy Knapp from Philadelphia.

I now call upon Jean Knudsen, Marine Insurance.

MS. KNUDSEN: Good morning, ladies and gentlemen.

Our Committee held a very well attended and informative and lively discussion on Wednesday in our offices at 40 Wall Street. We discussed various ongoing projects and our two working groups which have been pursuing various issues concerning P&I, hull, energy and harbor insurance.

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Our paper on P&I annotations is shortly to be concluded and we hope to have it published in the MLA Report in the fall.

Our Hull and P&I Subcommittee has a new project to annotate the American Institute hull clauses. John Woods, who unfortunately couldn't join us this morning, will be heading up that group. Anyone who is interested in working with us on that project, please contact Joe Grasso.

Also, we wish to thank the Young Lawyers Group for their help in our all risks paper, as well as their upcoming help in working with us on the hull project.

During the year our Committee has prepared responses to the CMI's questionnaire on the York-Antwerp rules. We look forward to working with the CMI Committee on the issues that are going to be discussed at the CMI plenary in Singapore in February 2001.

My Vice Chair, Gene George, together with Josh Force and George Proios, have prepared an excellent newsletter, which is available at the front desk. I urge all of you to please take one.

Before I conclude my report, I would like to offer our congratulations to you, Howard, on an excellent presidency and your support.

MR. McCORMACK: Thank you very much, Jean.

(Applause.)

MR. McCORMACK: Some of you may know before I started in the practice of law, I labored in the field of marine insurance for four years, I have a very soft spot in my heart for the those who practice that kind of activity.

I was an average adjuster for a few years, and every now and then I do get the opportunity to work on GA cases. As I said, to anyone who really wants to know what GA adjustment is all about, you turn to the last two pages, see how much your client is asked to pay, if it sounds reasonable, forget reading the other 125 pages.

I now call upon the Chair of Maritime Arbitration Committee, Don Kennedy.

MR. KENNEDY: Thank you. We have had a very active year and we have prepared a formal report which will be submitted.

I would like to take this opportunity today to advise you of my involvement with the State Department and being a private sector advisor to the UNCITRAL Working Committee on Arbitration. Basically we were advising the State Department and helping them with a commercial outlook on some of the issues that were being presented to them.

There is one issue that may affect our practice, and that is the New York Convention on the Enforcement and Recognition of Foreign Arbitral Awards. In that Convention there is a provision that to have an enforceable agreement to arbitrate, it must be in writing. The difficulty arises in interpreting that provision internationally. Different courts interpret it differently, and they have a requirement that it has to be signed.

We have the same problem here in the States. We have a conflict between the Fifth Circuit, which has a liberal interpretation of the New York Convention, and the Second Circuit, which has a stricter interpretation of the New York Convention that requires a signed agreement. I think that's noteworthy, and it may impact your practice.

Thank you.

MR. McCORMACK: Thank you very much, Don. I would like to read a letter I just received from Jeff Kovar, who is the assistant legal advisor for private international law of the Department of State and was the head of the delegation on which Don served. It's addressed to me as President.

Dear Howard:

I would like to thank you and the MLA for facilitating Don Kennedy's participation on the U.S. delegation to the recent meeting of the UNCITRAL working group on Arbitration. The meeting was successful in charting out an ambitious course of work for the working group and Don made very important contributions to the delegation.

It is critical to the success of this venture that maritime issues being fully taken into account in our work. We hope very much that we can count on the continued support of the MLA.

This gives you an idea of the type of activities in which we are engaged and the sacrifices and time spent by members of our Association, and

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indeed the recognition given to the Association by our State Department and others. I want to thank Don for the work he has done on that.

We will now hear from Hal Watson, Chair of the Committee on Maritime Legislation.

MR. WATSON: Mr. President, ladies and gentlemen, the Maritime Legislation Committee met yesterday. The principal point of our discussion was the recent amendments to the Death of the High Seas Act. Paul Edelman of New York made a presentation on these amendments, which, while not a model of drafting clarity in certain respects, allow the recovery of non-pecuniary damages in accidents involving commercial aviation. The normal rules will not change with regard to traditional maritime accidents.

In a case involving commercial aviation, the rules have changed, but punitive damages will not be allowed. We continue to monitor legislative developments.

That concludes my report.

(Applause.)

MR. McCORMACK: We now have a report from the new Chair of our Navigation & Coast Guard Committee, Dennis Bryant.

MR. BRYANT: Thank you, President McCormack.

Our Committee met on Wednesday morning, and we spent most of our time identifying emerging issues. The first one was state regulation of commercial vessels in the post-*Locke* era. It's going to focus mostly on the environment, ballast water regulation and other emissions. The states can be expected in large measure not to repeat the course taken by the State of Washington, but to find new ways to be involved in commercial vessel traffic in their waters. It bears close watching. They will have free rein if they can properly denominate their regulation as environmental.

Speaking of which, to parrot the remarks of Matt Marion, the EPA has discovered ships, and we are going to see more and more efforts in that regard. They are engaged right now in a major ruling-making process with the Department of Defense to identify and regulate emissions from vessels of the Armed Forces of the United States. They can be expected to turn around and impose those standards on commercial vessels shortly after they agree to them for military vessels.

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Our Committee is going to make an effort to try to open channels of communication with federal agencies other than the Coast Guard. We have very good relations with the Coast Guard, but we have not worked very hard at opening channels of communication with other agencies in Washington that deal with our industry. We are going to try to open those channels.

Finally, we spent a lot of time, as a lot of Committees did this week, discussing environmental crimes. It's a significant issue, which bears heavily both on our clients and on us as maritime counsel. The Department of Justice is starting to carefully examine our role as counsel to the ship owner when they perceive a maritime crime has occurred.

Look carefully at the issue. You are probably going to want to make friends with a traditional criminal defense counsel and maybe start cross-marketing your activities.

Two final more personal items. First I would note that Captain Malcolm Williams is retiring this summer. Our Association has very close relations with the Coast Guard in large part through him. He will be missed. He will be replaced by Captain Joe Ahearn, who is coming to the Coast Guard headquarters from Miami. In addition, I will miss the leadership of Bob Parrish, who has chaired this Committee for the last two years, and I thank him for all his fine work.

Thank you. This concludes my report.

(Applause.)

MR. McCORMACK: Thank you very much.

A lot of things Dennis did not tell you is that one reason why our relations with the Coast Guard have been quite good and will continue to be good is that Dennis is also known as Captain Dennis Bryant, U.S. Coast Guard, retired. We are aided a great deal by that fact and we are delighted to have Dennis as the Chair of our Committee. And at this stage I certainly would like to thank Bob Parrish for his time and activity as Chair of that Committee. Bob will be coming up later to discuss something on 2001, but I have Bob's certificate, which I have given to all the outgoing Chairs in recognition of their time and service.

I would now call upon John Schaffer, the Maritime Personnel Committee.

[12218]

MR. SCHAFFER: Thank you, Howard, good morning everyone.

The Maritime Personnel Committee met yesterday afternoon. We had a lively discussion and I am pleased to say that we had 31 members and guests participate.

One of the items that we also discussed, as did the Legislation Committee, was the changes to the Death on the High Seas Act. Since they are so short, I thought I would put them in the record.

In the case of a commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect or default occurring on the high seas 12 nautical miles or closer to the shore of any State, this act shall not apply, and all rules applicable under Federal, State and other appropriate law shall apply.

If the death resulted from a commercial aviation accident occurring on the high seas beyond 12 nautical miles from the shore of any State, additional compensation for non-pecuniary damages is recoverable, and non-pecuniary damages means loss of care, comfort and companionship.

Punitive damages are not recoverable, and these amendments are retroactive to July of 1996.

In addition to monitoring changes to the Death on the High Seas Act, our Committee continues to keep an eye on developments in the area of punitive damages.

We talked about tort reform as far as what states are putting damage caps on and other limits on punitive damages and tort liability.

We also discussed and reviewed a dozen significant opinions from around the United States involving the area of law of claimants and employers, as well as ship owners.

We always welcome suggestions from the Association for any new projects that we can get into, and are looking for more significant decisions that anyone may have, as well as for new members of the Committee.

Thank you very much. That concludes our report.

[12219]

(Applause.)

MR. McCORMACK: The Recreational Boating Committee, Don Greenman.

MR. GREENMAN: Thank you, Mr. President, members and guests.

Our Committee met yesterday. We received the usual good work from Frank DiGiulo in the form of *Boating Briefs*, which I hope everyone has picked up this morning. If you haven't, please do so. We also received a report that has been mentioned earlier by Charlie Brown about the availability of title insurance on recreational boats. This will be an interesting project to see how people deal with liens.

We heard that there has been a recent decision or a jury award of \$8.2 million against the operator and manufacturer of a jet ski. As far as we know, or has been reported, this is the first case that has resulted in liability of a jet ski manufacturer, and it appears to be based on the off-power steering problem that is well known in the industry. It is also reported the case is on appeal, so there may be more to hear from it.

Kurt Trombly brought a copy of the recently enacted New Hampshire statute that deals with licensing of boat operators. I am pleased to report that it is largely based on the MLA's Model Act and that Ken Volk was instrumental, or at least testified in favor of it, in the New Hampshire Legislature.

Finally, our proposal that I had mentioned at the fall meeting to amend the Inland Rules of the Road to harmonize the conflict that exists between the Sail Racing Rules and the Inland Rules produced a lively debate. It was so lively that the lateness of the hour caused us to table it. We may be back later on that subject, but we have no position to take on it at this time.

Thank you Mr. President, ladies and gentlemen.

(Applause.)

MR. McCORMACK: Thank you, Don. The next Committee report will be by Bob Zapf, the outgoing Chair of the Practice and Procedure Committee.

MR. ZAPF: Thank you, ladies and gentlemen.

I wish to give you a brief report on the activities of the Practice and Procedure Committee. As the President noted, one of the efforts of the MLA over the course of the years has been to try and get recognition from Federal agencies of our expertise in the maritime field. I am happy to report that the Advisory Committee to the Standing Committee on Civil Rules of the Judicial Conference has recognized the MLA as its primary source of assistance in addressing issues relating to the Admiralty Rules.

At the October '99 meeting of the Advisory Committee, a very nice statement commending the MLA's efforts in this area was made by the outgoing Chair, Judge Niemeyer, of the Fourth Circuit, who wrote the recent *TITANIC* opinion.

I also wish to recognize the efforts of our member Mark Kasanin, who is member of the Advisory Committee and has been appointed Chair of the New Admiralty Rules Subcommittee of that Advisory Committee to the Standing Committee on the Civil Rules. We are being recognized, and the Advisory Committee looks to us for assistance in addressing issues in connection with changes to the Admiralty Rules.

One of the things that we are trying to head off is a resurgence of the constitutional challenges to the *in rem* procedures. This is why we have had to bifurcate the resolution that was passed last year at this time concerning amendments to Rule B and Rule C. Rule B was a relatively simple fix.

The Rule C change deals with notice, what notice must be given when an *in rem* action is commenced, to whom must it be given and when it must be given. Originally the thought was to make a simple change in the rule to expressly refer to the fact that not only in ship mortgage foreclosure proceedings, but also whenever a maritime lien is asserted and a vessel is arrested, notice should be given in accordance with the notice provisions in the Statute 46 U.S.C. Section 31325(d).

However, we are now looking at the statute. That statute requires that notice be given to only three categories of persons. They are the master or person in charge of the vessel, those who have filed a notice of a claim of lien which has not been discharged, and a mortgagee. Noticeably absent from the categories are notice to the owner. It has been presumed that notice to the master or notice to the person in charge or seizure of the vessel itself was sufficient notice to the owner. However, in a First Circuit decision in the *McDougal* case, in a very peculiar situation, all of

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the rules were followed in respect of the notice that was given. Publication was made, notice as required by the statute was given, but, deliberately, notice was not given to the owner, although the yard knew where the owner was. On the basis of those facts, the Court found that there was a constitutional violation of due process as to the required notice.

We are going to try and look at these rules and the statute and fix this so that we don't get into the situation we had in the 1980's where a number of courts found that the admiralty procedures were constitutionally defective. We think additional and evolving concepts of due process may require that other steps be taken to provide notice. It's gotten to be a fairly complex and thorny issue as to who must be given notice, when and how. We will continue to address this under the new chairmanship of Jim Bartlett, who will be succeeding me as Chair of the Practice and Procedure Committee.

I also wanted to mention that the changes we have discussed in the past at a number of meetings have now been approved by the Supreme Court and sent to Congress. We expect them to go into effect on December 1st.

We will be looking at the Model Local Admiralty Rules and revising them accordingly.

A third area I think which will require additional focus by our Committee in the future is a new forfeiture act pending in Congress which we will have to review because the forfeiture procedures are based upon maritime procedures, and we want to make sure that everything fits together very well.

That concludes my report.

I did want to thank the officers and the Board for all the support they have given to me and to our Committee over the past five years. It's been a pleasure to serve as the Chair of such an active Committee. Thank you all for your assistance and support.

(Applause.)

MR. McCORMACK: Thank you Bob. Don't go away.

[12222]

The outgoing Chairs were given testimonials at the meeting of Committee Chairs, but Bob was unable to make the meeting, so I'll read Bob's testimonial. It says:

The Maritime Law Association of the United States, in recognition and appreciation of the services of Robert J. Zapf as Chair of the Committee on Practice and Procedure, presents this testimonial as a token of its gratitude.

Bob, thanks very much.

(Applause.)

MR. McCORMACK: James Shirley, Chair of the Salvage Committee, is next.

MR. SHIRLEY: Thank you Mr. President.

We had, as usual, a very active meeting on Wednesday morning. It was fully attended, and we had a full agenda; we didn't have enough time for the entire agenda. I just want to mention three of the highlights.

One, Bob Umbdenstock, who I was pleased to hear is now a non-lawyer member of our Association, gave a presentation on the Special Compensation P&I Clause, used in some salvage operations where Lloyd's Form has been executed. Bob is one of only two Americans who have been designated by the Council at Lloyd's as a Shipowner's Casualty Representative. Bob recently served as SCR on a salvage case in Canada, and he gave us a brief report on that experience.

I had not intended that the draft UNESCO Convention on the Preservation of Underwater Cultural Heritage would take very much time. We were going to get a brief update on it from our Vice Chair, and those who were interested could attend the session later that day of the special working group on that treaty. However, it seems always to come up. We ended up with a very lively discussion, and I was very pleased to have the President, the First Vice President and the Second Vice President of the MLA present to state the MLA's position with regard to that treaty. I think that helped to quell some of the impassioned arguments that we often get whenever that treaty comes up for discussion.

Finally, the issue of "abandonment" with respect to treasure and archeological salvage cases was discussed. We were looking forward to

that discussion because there are Fourth Circuit, Sixth Circuit and Ninth Circuit decisions on it. There are two parties who have lost two of those decisions, who think that the Supreme Court should be petitioned for *certiorari*. The parties who won believe the Supreme Court should not be petitioned for *certiorari*. We are taking no position on that issue in our Committee. I think there is an application before the officers of the MLA as to whether or not the MLA should file an *amicus* brief in favor or not of a petition for *certiorari*. But it was interesting at least to hear the two sides argue, one, why there is inconsistency amongst the Circuits that needs to be addressed by the Supreme Court, and the other arguing why there is no inconsistency amongst the Circuits.

That concludes my report. Thank you very much.

MR. McCORMACK: Thank you. Please don't go away, Jim.

(Applause.)

MR. McCORMACK: Jim is an outgoing director of the Maritime Law Association, and we have for you, James, a testimonial:

The Maritime Law Association of the United States in appreciation for the services of James T. Shirley as member of the Board of Directors presents this token of its gratitude.

I want to give you this to you, Jim, and thank you very much for your time and help.

(Applause.)

MR. McCORMACK: Until Pat Cooney comes up, I am going to ask the other outgoing directors if they care to come up, that is Dave Davies, Fred Kuffler and Denise Blocker. We have similar testimonials for these individuals. I can tell you it's been a pleasure to be here with all of them.

Denise, let me give he this to you, and thank very much for your help.

(Applause.)

MR. McCORMACK: Fred, thank you very much, Fred.

(Applause.)

MR. McCORMACK: This is for Dave. Thank you.

(Applause.)

MR. McCORMACK: These directors labor long and hard in the service of the organization and at times don't necessarily get the recognition they deserve. I am delighted, as one of my last acts as President of the Association, to hand out these certificates of appreciation for the service of these individuals.

Fred was and continues to be the Chair of the Study Group on Environmental Crimes. Denise is the incoming Vice Chair of our newly reconstituted CLE Committee. Dave has been very active on the CLE Committee in the past. Jim, as you see, is Chair of the Salvage Committee. They tend to wear more than one hat as a director, and for that we are very grateful. We thank them all.

I now call on Pat Cooney, our very successful protagonist in *INTERTANKO*.

MR. COONEY: Thank your, Mr. President, ladies and gentlemen.

Indeed, it was an interesting meeting that we had, having been involved in preparing the *amicus* brief both on the petition for *certiorari* and on the merits in the Supreme Court, and then to have a decision that was virtually as much as we could have hoped to get. I have to say right now that I was guided carefully by our President, Mr. McCormack, who was my editor-in-chief and was deeply involved in the preparation of both briefs. I also want to thank Professor Bederman, who contributed to the brief on the merits.

Needless to say, the meeting of the Uniformity Committee was devoted to *INTERTANKO*. We looked at the case from a broad perspective. I can say that we have gotten what is probably the most significant uniformity decision of the last 25, 30 years even though the decision did not mention the phrase "uniformity doctrine" once, and in fact, used the word "uniformity" only four or five times. We are all having to transfer over to the notion of a preemption analysis. I want to assure you that there is no movement afoot in our Committee to change the name of the Committee to the Maritime Preemption Committee.

Having said that, we were delighted, in one of those rare instances where you get a 9-0 decision from the U.S. Supreme Court that said

almost everything that you wanted them to say, a resounding reinforcement of what we all thought we knew with regard to uniformity in the maritime world.

The case is interesting because its focus is not on rules and decisions in the courts, but in regulation of the maritime industry. Quite clearly what we have seen is the Congress is preeminent in the area if it chooses to act. It gives sufficient scope to the United States Coast Guard and affirms that the Coast Guard has the power of preempting regulation by the States. Nonetheless, Congress can also not do as much as it wants to: It can fill the field or can grant regulatory power to the States, so we have much to look out for in the future.

I think that I have to end my comments on a note of caution. I think we have had a great victory, but there is still tremendous tension, not only between the States and the federal government with regard to the role of regulating vessels as it has to do with the environment, but within the federal government itself as to who is going to do what and how those powers are going to be delegated. We are really at the beginning. We start out, however, with an extremely strong decision. If we can get Congress to act, if the Coast Guard will issue regulations, the law is there to support the position of the preeminent role of the federal government in the regulation of maritime commerce. We will look to the future and see what happens.

The other thing that I can report to you is now having concentrated so much on this particular aspect of uniformity, our Committee intends to go back and start looking at the broader aspects of uniformity conflicts among the circuits. I hope this time next year to be reporting on some fairly more mundane issues, but we savor the day.

Thank you, Mr. President.

MR. McCORMACK: Thank you very much, Pat.

(Applause)

MR. McCORMACK: I want to publicly thank Pat as Chair of the Committee for the outstanding job that he did. Pat and I were working on the petition for *certiorari* at the same time as we were attending the SEALI meeting, passing notes back and forth to each other on drafts. After the petition was granted, we were working on the brief on the merits.

A big thrill of my life, and I hope for Pat and Bill Dorsey, as well, is when we got to attend the argument on December 7th before the Supreme Court. We wound up sitting in the very first row with an unimpeded view of the entire Supreme Court. I must say that's as close as I ever want to get, I think, to the questioning, but it was fascinating.

I also have to give credit to the attorney for the State of Washington. He had some very, very tough questions from the Court which didn't bother him. I was extremely impressed with his work. The attorney for INTERTANKO had about ten minutes. Then Dave Fredericks, a young man from the Solicitor General's office, did a superb job.

I remember Justice Breyer making some comment and analogy to the counsel for the State of Washington. He said, "If this is true, sir, then it's not very good for you, is it?" To this guy's credit, he said, "No, your Honor, it won't be very good for me if that's the way you find it."

As Pat said, this case now goes back probably to the District Court. We may well see it back up there again, but this is the first time in a long time all the *amicus* briefs that we had filed with the Supreme Court actually came to fruition. It was one of the many *amicus* briefs that was filed in the Supreme Court. For that we thank Pat and his work on the Uniformity Committee.

I now call upon the Chair of Young Lawyers Committee, Doug Muller.

MR. MULLER: Thank you, Mr. President.

I find myself repeating at every meeting at which I speak an explanation that our Young Lawyers Committee consists of lawyers generally who are age 38 and under, in a few instances lawyers who are slightly older than that, but new to the Association. Our mailing list as of last count was 170 lawyers, but the core group is much smaller. We are constantly looking for new members who want to get involved in the activities of the Association.

Our Spring Committee meeting was held yesterday. Like the Fisheries Committee, we were the beneficiary of a New York law firm who hosted us. Larry Kahn of Freehill, Hogan & Mahar was our host. We had interesting meeting. Our speaking was Andy Tsukamoto, a former Chair of our Committee. Andy has a unique perspective in that he was in private practice with the Haight Gardner firm for some years, and now is a client working in-house for Maersk Sealand. In true client form, the subject of his discussion or his speech was how the transportation industry is

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achieving efficiency and how he would like us as lawyers to also achieve efficiency with what we do for our clients.

A lively discussion that ensued, and thereafter we went into a discussion of the various projects that we are involved in. I won't go into detail about all of them, but suffice it to say we have about 12 projects in which we are actively involved assisting the standing Committees.

Larry Kahn was also very kind to set up a social event for the Young Lawyers last night. We had it in a restaurant in Little Italy, very nice event, very well attended.

The one thing that I always like to reiterate is that part of the focus of Andy's discussion was how to further your professional development. Our Committee is one way to do that. If you are a young lawyer who is interested in becoming involved, I encourage you to contact me or Josh Force, who is our secretary, or Larry Kahn, and we will figure out a way to get you involved. If you have young lawyers in your firm, I encourage you to do the same thing. This is an excellent way to further your professional development in the Association, and we could always use new, active members of our Committee.

In closing, I would like to thank President McCormack. Like past President Moseley, President McCormack has been very supportive of our Committee. He encourages us when we need encouraging, and we are very thankful for his help over his tenure as President.

That concludes my report.

(Applause.)

MR. McCORMACK: As I explained to Doug on a couple of occasions, and I am sure my successor will continue to do so, the Young Lawyers are the backbone of our organization as we move up in age and move on and do other things. This Association to continue has got to have the input and enthusiasm of the Young Lawyers. Doug has been a fantastic Chair of the Young Lawyers Committee. I am delighted to have been able to work with him on this. I know that he will continue to give the same enthusiasm and support to my successor.

At now, I call upon Bob Parrish to give a report on the 2001 Committee. Bob is also Chair of the 2003 Committee at a TBN Site. At this stage Bob is going to talk about a location he knows.

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MR. PARRISH: Thank you, Mr. President.

I rise only because Tony Whitman, the Chair of the 2001 meeting is involved in an environmental crime! He is actually on the good end of that stick, if there is one; he is trying to get a master out of jail right now. So he asked me to speak very briefly to tell you all what you probably already know. I hope this will be a little bit of hucksterism.

The 2001 meeting is in San Diego at the Del Coronado on an island off San Diego. I have not been there myself personally, but I remember vividly my partner Jim Moseley coming back with sand in his shoes from, I believe, the 1980 meeting. That was one of the most successful meetings I believe the Association has ever enjoyed. We hope to have a lot of visitors from abroad, as well as a tremendous turnout from this Association. I would invite you to put on your calendars the week of October 13th through 20th. Please mark that down, October 13th through 20, 2001. We will expect, Mr. Muller, that you will have all the young lawyers encourage the senior lawyers to let you go.

Thank you.

(Applause.)

MR. McCORMACK: Bob, before you go away, I have something for you.

Bob is the outgoing Chair of our Navigation & Coast Guard Committee, and I am giving Bob the same testimonial that we have given to all the outgoing Chairs. It's been a delight to work with you, Bob, over these years. Thank you.

(Applause.)

MR. McCORMACK: I have some information about the dinner tonight. Dinner starts at 8:00 o'clock with the cocktail party at 6:45 at the Marriott Marquis. We have approximately 1,100 members and guests of our Association. We welcome all of you there. We look forward to seeing you there tonight.

At this time I would like to take the opportunity to give the Navy equal time with the Coast Guard. The Coast Guard has been getting all the accolades. As an ex-Navy man, let me go over a little of my past activities.

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We have with us from the Office of the Judge Advocate General of the Navy, the Admiralty Group, Commander Select Greg Cervi, Greg is here, and also Captain Rick Evans. Captain Evans is going to be very intimately involved in our Association since he is going over to work with Dave Hutchinson in what used to be the Admiralty & Shipping Section of the Department of Justice in about two weeks. He has been advised that they already have three or four cases waiting for him. I suspect that perhaps the *RMS TITANIC* case may be one of those waiting for you when you get there since that is very actively involved in Norfolk.

It's nice to see some of my JAG people here. I am a retired Navy JAG officer, and I can assure you that the JAG show on TV bears absolutely no resemblance to real life.

Now, at this stage I would like to have the floor open to Captain Malcolm Williams of the United States Coast Guard, and the head of the International Law Section. His colleague is with him, Lieutenant Dan Goettle. They have been great working with us. I would like to have Malcolm come up and say a few words.

CAPTAIN WILLIAMS: Thank you.

As Howard has mentioned, this will be my last meeting as a Coast Guard representative to the MLA, and I want to take this opportunity to thank the MLA for the outstanding support during the last four years while I have been working with you.

During the first two years, when Jim Moseley was the President, the relationship between the Coast Guard and the MLA was invigorated and strengthened. In the subsequent two years with Howard, that relationship was strengthened even more. We are looking forward to working with Bill Dorsey when he takes over. He is already participating with us at the IMO Legal Committee, and we know we will continue to have close relations, working on issues of mutual concern.

I would like to make a few remarks not only on behalf of myself, but also several officers that worked with me during the last four years. A couple of them are here today. Lieutenant Bruce Dalcher, who is in the back corner over there.

(Applause.)

CAPTAIN WILLIAMS: And Lieutenant Dan Goettle, sitting right there.

(Applause.)

CAPTAIN WILLIAMS: Lieutenant Commander Bill Rospars couldn't be here today. He has been actively engaged in other issues involving Vieques, that small island off of Puerto Rico.

On behalf of all of us in the Coast Guard, I would like to thank the MLA for the outstanding support that we have received. I would particularly like to focus on the two most recent years while Howard has been President. Since he is stepping down now on this occasion, and just review with you a few of the ways the MLA has helped us out during his tenure.

On the International front, Howard, as well as Jim Moseley and Bill Dorsey, have accompanied me as head of the U.S. delegation to the IMO Legal Committee, and provided advice on a whole host of issues that come up in that forum.

Also, at the Arrest Convention Diplomatic Conference, which took place during the past two years, Bob Zapf made invaluable contributions. When I was elected Chair of the Drafting Committee, our delegation consisted of only two people and we worked about 16-hour days for a couple of weeks. It's really important from the perspective of the Coast Guard to let you all know how much it means to us in the Coast Guard to get the input from the MLA members and the unique perspective they bring.

Many of these issues involve private law in areas which the Coast Guard doesn't deal with regularly, and we therefore rely heavily on the contributions that we receive from the MLA representatives both at the IMO Legal Committee and in other fora.

On the domestic front, of course, we very much appreciated the *amicus* brief filed in the *INTERTANKO* case. That was a very important case for us. I recently talked to the Commandant about that. He believes that the decision is one of the most important events to impact the Coast Guard's marine safety program in years, and will help shape our goals and objectives well into the future. It clarified, at least in the areas that were addressed in the case, the Coast Guard's role and allows us to go forward now with a clearer picture of where we are headed, which is very important to us.

Also, many times behind the scenes we have inundated Howard with all sorts of questions and requests for information, and he has always

been so gracious in calling us back quickly and facilitating the collection of information that we need in the Coast Guard to develop our positions, both internationally and domestically.

Now, we don't always agree or see as closely eye to eye as we did on the *INTERTANKO* area case. One area that leaps to mind in the last four years has been environmental crimes enforcement. There have been lively debates in a whole series of different Committees. It's amazing how many Committees that issue impacts. But I think that gets to another important thing I would like to say before I depart, and that is that even in an area like environmental crimes, where obviously there's a lot of concern, working with the MLA has really been very fruitful.

We took input we got from the various Committees, for instance, and used that input to issue further Coast Guard directives to our field units on how to deal appropriately, during responses to oil spills, when crew members request counsel or when counsel shows up representing ship owners or members of the crew. So it was not just a lively debate, but it was helpful, and it has had an impact. We will continue to take that input and try to do something positive with it.

Another thing that comes to mind is how much fun it is working with all of you in the Association and how gracious you have all been, not just professionally, but personally to all of us in the Coast Guard. Howard, in the midst of all of his busy activities with the Centennial, personally took the time to make sure that the Coast Guard people were aware of the events and were able to participate in those events. Jim, Howard and all of you, it's been very nice working with you. I will miss it. I'm sure Captain Joe Ahearn, my replacement, will enjoy the experience as much as I have.

But now, Howard, for all the accomplishments that I have just reviewed that occurred during the past two years, if you would step forward, I would like to make a presentation to you. I would like to read a citation to accompany the presentation of the Meritorious Public Service Award to Howard M. McCormack, Esquire.

The Commandant of the Coast Guard takes great pleasure in presenting the United States Coast Guard Meritorious Public Service Award to Howard M. McCormack for his contributions to the U.S. Coast Guard while serving as President of the Maritime Law Association of the United States (MLA) from 1998 to 2000. Under Mr.

McCormack's leadership, the MLA provided extensive resources and expertise in support of Coast Guard international and domestic initiatives. In the international realm, the MLA provided invaluable assistance to U.S. delegations to the International Maritime Organization (IMO) and to the Diplomatic Conference on the International Convention on Arrest of Ships convened jointly by the IMO and the United Nations Conference on Trade and Development. Mr. McCormack personally served as an advisor on U.S. delegations to the IMO, lending his extensive expertise to the Coast Guard's international efforts to improve marine safety, protect the marine environment, and ensure equitable compensation for victims of marine casualties. Domestically, Mr. McCormack ensured that the Coast Guard had continuing opportunities to exchange views in a broad range of MLA forums on a variety of issues of mutual concern, such as environmental crimes enforcement. The Coast Guard has benefited tremendously from the information and perspective gained during these open and candid discussions with the senior leadership and the many expert committees of the MLA. Mr. McCormack's professionalism and balanced approach established the basis for the continuing success of Coast Guard and MLA endeavors. His personal commitment to strengthening the productive relationship between the Coast Guard and MLA resulted in an exchange of ideas that created thoroughly informed, clearly defined domestic and international policy decisions of immeasurable benefit to the public.

Signed J.M. Loy, Admiral U.S. Coast Guard, Commandant.

MR. McCORMACK: Thank you very much.

(Applause.)

MR. McCORMACK: Thank you very much, Malcolm. It's been a great, great time working with you and the Coast Guard. The Coast Guard and Navy have not always gotten together all these years, but I must say that I will cherish this medal.

I didn't get too many medals when I was on active duty. My wife always wondered how I wound up with the European Occupation Medal

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in my six-month tour of duty in the Mediterranean after I spent a week in Monaco and two weeks in Cannes and a few other places. She was really somewhat dubious as to why I actually got the medal. I think anyone who just happened to be there got it.

After serving three years at sea on a destroyer, I can tell you I appreciate the professionalism and abilities of our Coast Guard colleagues.

After I left active duty in the Navy, I stayed there as a JAG officer. As I said, I now fully understand the active role of both the Navy and particularly the Coast Guard. Malcolm, I wish you well in retirement. It will be a pleasure to welcome your new replacement as head of the International Law Section. I hope and I will, in fact, do whatever I can to continue our work with the Coast Guard.

Many thanks, thank you.

(Applause.)

MR. McCORMACK: That, ladies and gentlemen, concludes the official reports for this session.

I now will call upon Mr. Moseley, the Chair of our Nominating Committee, for the report of the Nominating Committee.

MR. MOSELEY: Thank you, Mr. President.

Howard, if I may say, the Chair of the Nominating Committee is the Immediate Past President. That is a passage that one goes through from being the President of MLA into that Valhalla or pasture where all Past Presidents graze. There are two requirements to you, sir, as the youngest member of this group. One factor is that you must always preface any comment you make to any of us by the comment, "When I was President, comma." Secondly, at our meetings of the Past Presidents, for the first two years, you cannot say a word. The reason for that is the rest of us are talking all at the same time, and you are our designated listener.

Howard, you have been a wonderful President. You have that ability that all of us wish we had, to be in a voluntary organization and lead by example and by caring about people and caring about the mission. You have that ability to make us all better people, and we thank you.

[12234]

Our Nominating Committee met Wednesday and we believe that the nominees that we put forward will continue the success of our beloved Association, and I believe that you will be proud of each and every one. The nominees that are presently officers we have selected to move up one peg, and in many instances we have asked them to retain their current job as the incumbent.

We nominate for President William R. Dorsey of Baltimore.

For First Vice President we are honored to nominate Raymond P. Hayden of New York.

For the Secretary's position, we are pleased to nominate the incumbent, Lizabeth L. Burrell of New York.

As incumbent Treasurer, Patrick J. Bonner of New York.

And as Membership Secretary, Winston Rice of New Orleans.

It is with a great deal of pleasure that I announce to you that the nominee and a new member of the officers when elected by you is Thomas S. Rue of Mobile, whom we nominate for Second Vice President.

In addition to the officers, the Nominating Committee unanimously presents for your kind consideration as Board members James K. Carroll of New Orleans; Lisa Reeves of Philadelphia; Alan Van Praag of New York; and James Whitehead of Seattle.

Mr. President, with a great deal of respect for you and for this Association, I am pleased to indicate that the Nominating Committee unanimously has placed these names in nomination, sir.

MR. McCORMACK: Thank you very much, Mr. Moseley.

I now call upon Mr. Healy to make the motion in support of the nominations.

MR. HEALY: I move that the report be approved and that the Secretary be directed to cast one ballot in favor of all of the nominees.

MR. McCORMACK: Do I hear a second to Mr. Healy's motion?

(Second.)

[12235]

MR. McCORMACK: All in favor?

(A chorus of ayes.)

MR. McCORMACK: Any opposed?

(No response.)

MR. McCORMACK: The motion of Mr. Healy is carried and all the new officers and the Board of Directors are deemed elected.

Before I close my presidency and turn over the office to Bill Dorsey, I want to congratulate the new officers and Board members. The officers have been my colleagues for many, many years and I wish them all well. It's very a interesting and at times stressful activity.

Before I do turn it over to Bill, let me just say I would like to say a few words, if I may. I'm not gone yet. You are not rid of me yet because I continue to stay on the Board for two years, so I will still be around, but I will be down at the end of the platform, at the end of the seats the next time around.

I would like to thank some people who were instrumental in helping me get here. First of all is my wife Patricia. She has worked long and hard under some trying conditions, and I thank her very much for her help. I also want a thank my firm, Healy & Baillie, and my partners, who were extremely generous in their understanding and assistance with reference to the amount of time and effort it has taken. I particularly want to thank the managing partner of our firm, John Kimball, a former member of the Board of Directors and the present Chair of our UNESCO Study Group.

I also want to thank the partners I see here today, Nick Healy, John Ingram, Leroy Lambert and Gordon Paulsen. There may well be others who have come in whom I have not seen, but you all know what we went through over the past two years in this activity. I am everlastingly grateful to you and our fellow partners for your time, effort and understanding.

I am also very thankful for having had the outstanding assistance of my partners who are also former Presidents of this Association. Nicholas Healy is not only my partner, but my neighbor in Garden City. I am afraid is not going to get the presidentship back in Garden City for a while there, Nick. I also thank Gordon Paulsen. These gentlemen were fantastic role models. I am delighted that I had some small part in following their example as President.

I also want to thank my long suffering secretaries, Margie Rosen, Caroline McLoughlin and Kim Marchesano, all of whom at various times have put up with numerous deadlines, correspondence, and phone calls from different venues. They have always worked with enthusiasm. At times, they have also had the opportunity to meet some of the colorful characters in the Association whom I have mentioned and were commented on in our Centennial Proceedings.

As I said, I want to thank my fellow officers and Board members. They have been a great help. Their enthusiasm has been absolutely overwhelmingly.

I also prefer to be remembered for setting a record of on-time length of meetings, although this one went a little longer.

Bill Dorsey and I had a side bet and I missed my side bet by three minutes. I had assumed that I would finish the reports by 11:25, so I owe Bill a few drinks, I guess. This may be due, I suspect, to the fact that I'm a New Yorker. New Yorkers are kind of known for fast talking, but for those of you outside New York who may not fully appreciate it, not only do we talk fast, we walk fast. We have to do this in order to beat cabs crosstown. The perception is that if one walks reasonably fast, you can get crosstown much quicker than taking a cab. I don't want give New York taxi drivers any problems with that, so please continue to take a cab and take some reading material with you.

Those of you outside of New York may not fully appreciate what is known as the New York fast walk. You have to do that, as I said, to beat traffic crosstown. Bunky Healy was exposed to that in Auckland when we were out there prior to the CMI meeting in Sydney. Bunky decided to join me one day for what he thought was a leisurely stroll from the B&B at which we were staying to walk downtown, which was about two miles. Well, I started out on my usual fast pace and Bunky, to his credit, kept up. But when I suggested another stroll downtown the next day, he suggested that perhaps we could take a cab, or some other means of locomotion.

Bunky never ceases to be amazed at the pace of the activities in New York. I suspect now as I step down I may be getting a little more attuned to the southern style, I won't walk as fast. My speed on the tennis court has dropped slightly, but I will try to do what I can.

As I said when I took office as President two years ago, I recall a Yogi Berraism. I said then and repeat today, I want to thank you all for making

this day necessary. It's been a great run for two years. I now have achieved the rank of the most coveted title in the Association, Immediate Past President. And Mr. Dorsey, that is what you will be striving for in the next two years.

Mr. President, the podium is now yours. Good luck.

(Applause.)

MR. DORSEY: I don't think I have seen this room quite as full except perhaps for the COGSA debate, and the reason of course is a great tribute to Howard McCormack.

Mark Twain said that it takes about three weeks to prepare a good impromptu speech. I have been working on some remarks and some things to say about Howard, some very flattering things, some very nice things, all of them true, but I have been listening to remarks about Howard all morning, and I don't think I can improve upon what has been said about him.

I will say one thing about him, it's not my word, it's Michael Marks Cohen's word, and it is that Howard is indefatigable. I promise you there has been no one more devoted to this Association and no one could have pulled off the Centennial any better than Howard McCormack. Howard, we know that the pay for the President is so great that it is a reward in and of itself. But we do have a few tokens of appreciation, puny as they may be.

The first is the usual Certificate of Appreciation. There is an monk up in New Jersey who does all the handwriting. It says:

The Maritime Law Association of the United States presents this testimonial of appreciation to Howard M. McCormack in recognition of his distinguished service as President during the years 1998 to 2000.

The Association takes this means of recognizing his able and successful leadership, his constructive efforts and his outstanding contributions to the Maritime Law Association of the United States and to the field of maritime law.

It's dated May 5, 2000. Howard, congratulations.

[12238]

MR. McCORMACK: Thank you very much.

(Applause.)

MR. DORSEY: This is another token of our esteem which I present to you and will let you open now. You think I tied that up and wrapped that up myself? I had support.

MR. McCORMACK: I suspect Anne did it for you. We both have very long suffering and great wives in connection with this activity. I can tell you they are the real power behind the throne to the extent there is any power behind these thrones today. Isn't this beautiful?

MR. DORSEY: That's not the real meat in the coconut, that's just a piece of wood. The real present is a small replica of a silver admiralty oar upon which Howard's name is inscribed, as well as the dates of his years in office.

(Applause.)

MR. McCORMACK: This particular piece of wood says "Howard M. McCormack, President 1998 to 2000." A silver oar. I know how much time and effort it takes to get this thing made. That is indeed a fantastic honor that you have given me the symbol of our admiralty practice. Thank you very much.

MR. DORSEY: Howard, you deserve it.

Now, if you will permit me a few short remarks:

It's a singular honor to be named the President of this grand old organization. I think anyone who becomes President who looks back over the names of the Past Presidents does so with a tremendous sense of awe and trepidation to some extent, and I know that's true in my case. But you all have given me a wonderful set of officers and a Board, and Howard has given me some excellent Committee Chairs. I think they will do a good job of keeping me in line and preventing me from blotting the copy book too much.

Time isn't going to permit me to name all the names of the many, many people who over the years that I have had in this Association who have helped and encouraged me, but I do want to mention a few.

First, I can't tell you how much it has meant to me to have had the encouragement and support of the two men who I think epitomize this Association more than any other.

First is my former partner, my mentor, boss, and still friend, David Owen. And second is the oldest member of this Association, who is still as young in energy and spirit as any of us, Nick Healy. Thank you. Thank you. Thank you.

(Applause.)

MR. DORSEY: Second, as probably most of you know, I am actually retired from the everyday practice of law, and that makes the support that I get from JoAnne Zawitoski, Alex Giles, and the staff at my firm, Semmes, Bowen & Semmes, so much more gratifying. They have been tremendous over the last couple of years, and I couldn't do this without their help and support. And in this day when the billable hour is everything, I think that is truly gratifying.

And finally—well, not finally—but I want to add that I want to give special thanks, of course, to Anne, who will have to put up with even more than usual from me over the next two years, and has already picked up a few duties of her own. I know this is a big day for me because she's here with my daughter Rebecca, and I have to tell you that this is only the second time in my professional life that Anne has ever shown up when I was, quote, at work.

The first time was about 25 years ago when David Owen and I were trying the *Yorkmar* case, and Anne and my eldest son came down to watch me in action. They came in the room when I was middle of what I considered to be a scintillating cross-examination of a witness. But I noticed that Anne and my son left after about 30 minutes. She later told me that the reason she left was because she was bored. Today I suppose I have only succeeded in embarrassing her.

Finally, paraphrasing Herb Lord's remarks at last year's Centennial meeting, what fun it has been and is to be a member of the MLA and I look forward to the next two years, and I thank you all for that.

Just one announcement before I close the meeting. I will start to work right away with the new Board members and ask them to meet with me up here briefly after we adjourn.

[12240]

I now call on Mr. Healy to make the usual motion. I assume there is no other business to come before us today. I notice the room starting to tilt toward the exit.

MR. HEALY: Mr. President, Mr. Immediate Past President, I must start off with the words that Jim Moseley said, a Past President must always start off with, "When I was President."

Some of you who were at the meeting when Howard was elected may remember that I recalled that when I was President, my immediate predecessor was my good friend and neighbor, Bill Hecht from Garden City, and that when I was elected and he introduced me as the new President, he said that at least we had kept it in Garden City. Now that my other good friend and neighbor—and partner—Howard McCormack, has succeeded to the world's most coveted position, Immediate Past President, I can't say that we have kept it in Garden City, but I can say we have turned it over to a very fine new President. I congratulate him and congratulate Howard on achieving an even more pleasing title than President of the Association, Immediate Past President.

Ladies and gentlemen, I move we adjourn.

MR. DORSEY: Is there is a second?

(Second.)

MR. DORSEY: Hearing no opposition, I declare this meeting adjourned.

(Applause.)

(Time noted: 12:00 o'clock p.m.)

**FORMAL REPORT OF THE COMMITTEE ON
CARRIER SECURITY**

The Committee on Carrier Security met at 4 p.m. on Wednesday, May 3, 2000, at the offices of Seward & Kissel, One Battery Park Plaza, New York City. The meeting was attended by ten members and one guest, one of the best-attended meetings of our Committee in recent memory.

The Chairman reported on recent discussions with INS and Customs liaison contacts in Washington, and confirmed that the Committee continues to enjoy a good working relationship with these agencies. It was agreed that an open and on-going dialogue with key INS and Customs officials would be beneficial to the Committee's ongoing activities. To that end, the Chairman has extended an open invitation to these officials to attend future Committee meetings as their schedules may permit.

The Committee then heard formal presentations on the increasing problem with Asian stowaways, and the legal ramifications for shipowners of piracy and on-board theft. The first topic was covered by Patrick J. Bush of Thomas Miller (Americas), Inc. Mr. Bush reported on the recent increase in Asian stowaways, primarily from China, being brought to the United States and Canada by organized criminal syndicates, and the practical and legal problems this poses for shipowners and their P&I Clubs. His office is working closely with the International Group of P&I Clubs to develop a consolidated plan of action in Washington aimed at addressing this problem.

Mr. Bush's presentation was followed by a talk by Kenneth Gale Hawkes, Esq. of the Miami office of DeOrchis, Corsa & Hillenbrand, LLP. Mr. Hawkes, who is both an admiralty attorney and an independent maritime security consultant, discussed some of the "legal rocks and shoals" associated with various maritime security issues, primarily cargo theft, armed robbery and piracy.

Both of these presentations were well-received and prompted lively discussion. There followed a round-table discussion of current carrier security problems. The Chair closed the meeting by encouraging Committee members to report any new developments that might come to their attention related to carrier security, and to suggest topics and/or projects for the Committee's future action.

Respectfully submitted,

Gordon D. Schreck, Chair

[12242]

**FORMAL REPORT OF THE COMMITTEE ON
CLASSIFICATION SOCIETIES**

The Committee met on May 1, 2000, with eleven members and guests in attendance.

Referring to the report of the October 1999 meeting, at the time of the Committee's May 2000 meeting we were informed that the Gothenburg Group is essentially disbanded, since there have been a number of bilateral agreements reached between class societies and governments; there had been no further progress as to accommodation between IACS (International Association of Classification Societies) and the shipping interests. It was reported that a meeting had been scheduled in London for May 5, 2000, among IACS and seven industry bodies (International Chamber of Shipping, International Group of P&I Clubs, Baltic & International Marine Council, Oil Companies International Marine Forum, INTERTANKO, INTERCARGO, and International Union of Marine Insurance) to discuss class developments resulting from the December 1999 wreck of the tanker ERIKA off France and consequent pollution. The International Maritime Organization (IMO) was also to be present to discuss issues of regionalism arising in the European Union after the ERIKA incident. The Committee will report on any developments arising from that meeting.

To the Committee's knowledge, there have been no notable decisions involving classification societies since our last report.

Respectfully submitted,

Richard H. Brown, Jr., Chair

**FORMAL REPORT OF THE COMMITTEE ON
COMITÉ MARITIME INTERNATIONAL**

1. Structure of the CMI.

It might be helpful to review quickly how the CMI is organized and the way it goes about its work.

a. Administrative Organization.

The CMI is governed by its elected officers as well as eight members of an executive council and operated by an appointed secretary general assisted by an administrator, treasurer and publications officer. Patrick Griggs (England) is the current President. Our own Frank Wiswall is one of two Vice Presidents. The terms of the elected officers and councillors are staggered so that the 4-year terms of two or three of them expire annually, and none may serve more than two terms. The officers and councillors meet every few months; the assembly, in which each national maritime law association has a certain number of votes, meets less frequently.

Individuals are honored by the CMI by designation as Titulary Members, which gives them the right to attend meetings of the assembly. But they have no vote.

b. Substantive Organization.

Approximately every four years, the CMI meets in plenary conference, where each national maritime law association has one vote, in order to adopt proposals to harmonize the maritime laws of different countries. President Griggs has succinctly described the method adopted by the CMI:

Once an area of the law has been identified as being suitable for a harmonizing instrument, a small International Working Group (IWG) is appointed by the CMI to work on the project. This IWG produces a questionnaire which is circulated to all member associations seeking advice on the national law on the topic under examination. From the responses received the IWG will prepare a draft instrument and an International Sub-Committee (ISC) will then be set up and hold a series of meetings to which every national MLA is invited to send a representative. Ultimately, the work product of the ISC will be debated at a Plenary Conference.

In between plenaries the CMI frequently holds colloquia or seminars for public discussion of works in progress.

Until the 1960's, many of the approved texts of a CMI plenary would become the subjects of conventions adopted at diplomatic conferences called by the Government of Belgium. More recently the approved texts

of CMI plenaries have become “Rules” for incorporation into private contracts, or drafts which were reviewed and revised by U.N. agencies before being adopted as conventions at diplomatic conferences called by the UN.

2. Maritime Law Projects of Selected International Organizations.

a. IMO.

- i. Ship Passengers. Revision of the Athens Convention. The IMO Legal Committee failed to reach agreement about establishing a cap of about \$120 million for shipowners’ limitation of liability for all claims arising from a single incident, coupled with a fund to cover liabilities in excess of \$120 million. The Legal Committee also could not agree about whether to raise or lower the limit per passenger claim from the approximately \$235,000 figure established under the 1990 Protocol which is itself not yet in force. Finally, no consensus was reached about where to permit direct actions against the vessel’s liability underwriters.
- ii. Oil Pollution from Ship’s Bunkers. The IMO Legal Committee approved the draft of a new convention and IMO is expected to call a diplomatic conference to adopt the treaty by the end of 2001.
- iii. Restrictions on Anti-Fouling Hull Paint. IMO has announced it will call a diplomatic conference to adopt a treaty on this subject by the end of 2001.
- iv. Guidelines on Shipowners’ Responsibility in Respect of Maritime Claims. The IMO Legal Committee has approved the text and recommended the Guidelines for adoption by IMO.
- v. Wreck Removal. A consensus has not yet been reached about liability and enforcement issues, and there is considerable doubt whether it can be achieved, in connection with the proposed convention.
- vi. Abandoned Seafarers. A joint ILO/IMO working group discussed the subject but reached no consensus.

b. UNIDROIT Project. Security Interests in Mobile Equipment. It has not yet been decided whether the CMI—or our Association unilaterally

—will organize an effort to draft a protocol to cover containers and other items of marine equipment.

c. Hague Conference on Private International Law Project: Enforcement of Foreign Judgments. On the advice of our Association, the State Department urged and succeeded in persuading the Agency to exclude admiralty and maritime judgments from the scope of the proposed Convention, which will otherwise restrict the jurisdiction of national courts in such areas as attachment, long arm jurisdiction, and *forum non conveniens*. Alan van Praag was our Association's representative on the State Department delegation.

3. Other Committee Activities.

a. Recycling Obsolete and Excess Law Books. This is a project, assisted by Mark J. Kremin of New York from the Young Lawyers Committee, to recycle from the libraries of the law firms of MLA members all obsolete editions of maritime treatises, ship registers, law directories, and excess copies of law reviews, as well as the paperback advance sheets of F. Supp. 2d, F.3d, U.S., and AMC (when superseded by bound volumes), to the libraries of law schools abroad. Already two law firms are participating: Burlinghams sends its books to the library of the International Maritime Law Institute in Malta. Hill Rivkins sends its books to the Law Library of the University of Capetown. We have identified more than three dozen libraries of law schools abroad who would appreciate receiving from American maritime law firms books which would otherwise be discarded.

b. Foreign Internships. A Committee project, assisted by Barbara Ristow of Chicago from the Young Lawyers Committee, to coordinate placement of young American maritime lawyers for several months of internship in admiralty firms abroad, and vice versa.

c. Denunciation of Salvage Convention. In 1996, after the U.S. ratified the 1989 Salvage Convention (including its new provisions for salvage awards for prevention of oil pollution), and on the recommendation of the Salvage Committee, President Hooper sent a letter to the Coast Guard urging prompt denunciation of the 1910 Salvage Convention. Apparently, no action was taken by the Coast Guard or State Department. The MLA Salvage Committee is following up.

d. Enactment of Most of the Provisions of the 1910 Collision Convention into Federal Law. In an effort to overcome the reputation of the U.S. for aggressively participating in preparation of new maritime con-

ventions, and then ratifying very few of them, a detailed proposal was sent to the Coast Guard and Navigation Committee to do a joint project to draft a bill containing most of the provisions of the 1910 Collision Convention (excluding the innocent cargo rule).

e. Enactment of Most of the Provisions of the 1998 Arrest Convention into Federal Law. A detailed proposal was sent to the Practice and Procedure Committee to do a joint project to draft a bill containing most of the 1998 Arrest Convention (excluding restrictions on the existing scope of arrest and maritime attachment under Rules B and C).

4. Internal CMI Matters.

a. Nominees for New U.S. Titulary Members. Our Association proposed Association Secretary Lizabeth L. Burrell, Committee Vice Chair Christopher O. Davis and Life Member Warren M. Faris for CMI Titulary Membership.

b. Nominees for Nominating Committee, Officers and Executive Council. Prof. Zengre Zhu (China) was elected to the Nominating Committee. The terms of Councillors Ron Salter (Australia) and Panayotis Sotiropoulos (Greece) expire this year. Stuart Hetherington (Australia) and Grigorios Timagenis (Greece) have been nominated for the positions.

c. Expulsion of National Associations for Nonpayment of Dues. The Maritime Law Associations of Egypt, India and Sri Lanka were expelled for long-standing defaults in payment of dues. Russia has paid most of its back dues and promised to pay the balance. Costa Rica, Morocco and Senegal continue to have positive discussions with the CMI about clearing up their arrears.

d. CMI Website. When fully operational, the current Yearbook and newsletters will be freely available to the public.

Respectfully submitted,

Michael Marks Cohen, Chair

[12247]

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

The Committee continues to focus on drafting an MLA Web Site Policy, which will describe the contents and management of the MLA web site (www.mlaus.org). The current draft of the policy can be found at www.healy.com/articles/policy.htm.

Future projects include continuing to attempt to obtain speakers from Bolero and other similar projects, as well as a presentation by a staff member of the EDNY's electronic docket and filing system.

Members have volunteered to present reports in upcoming Committee meetings on domestic and international developments in electronic commerce in the shipping industry.

Respectfully submitted,

Glen T. Oxtan, Chair

**FORMAL REPORT OF THE COMMITTEE ON
LIMITATION OF LIABILITY**

The Limitation of Liability Committee met on Wednesday, May 3, 2000 at the offices of Kirlin, Campbell & Keating. There were 12 Committee members in attendance, and we had a lively meeting.

Daniel J. Goettle of the United States Coast Guard's Office of Maritime and International Law reported on IMO activities, including the Draft Bunkers Convention, Wreck Removal Convention, and the Athens Convention on Passenger Vessel Liability. We then discussed the current liability scheme for the Panama Canal since it was taken over by Panama at the end of last year. We have asked Attorney Robles of Panama to provide us with an update, and will report further at the fall MLA meeting.

We hope to have several members of the Committee in attendance at the Marine Casualties and the Limitation of Liability Act Maritime Law Symposium to be held in Newport, Rhode Island on August 10-12, 2000. Of course, all other interested members of the MLA are encouraged to attend.

Finally, we discussed recent cases concerning the Limitation of Liability Act, one of which is now on appeal to the United States Supreme Court. *See In re: Louis & Clark Marine, Inc.*, 2000 AMC 305 (8th Cir. 1999). In that case the 8th Circuit reversed the District Court's dismissal of the limitation action in order to allow a single claimant to pursue his action in state court, because no demand for a jury trial had been made in the state court action. The appellate court found that the Saving to Sutor's Clause did not provide plaintiff which a choice of forum, but only a choice of remedies. Our Committee will of course follow the proceedings in this case with interest and hopefully we will have something to report at the next meeting.

Respectfully submitted,

Mary Elisa Reeves, Chair

FORMAL REPORT OF THE COMMITTEE ON MARINE FINANCING

Charles D. Brown, Chairman, called the meeting of the Marine Finance Committee ("Committee") to order at 2:00 p.m. on May 3, 2000. Introductory remarks were made by the Chair who then proceeded to introduce our guests: Edmund T. Sommer, Esquire, U.S. Maritime Administration ("MARAD"); Peder Bogan, Vice President, Marine Money International; and Mr. Michael Northmore, J&H Marsh & McLennan. The agenda for the meeting is attached as Exhibit A together with an attendance list.

1. Chair Report.

Mr. Brown generally discussed the Jones Act exception found at 46 U.S.C. § 12106 and mentioned various websites. Mr. Brown encouraged Committee Members to visit the MARAD and U.S. Coast Guard websites (i.e. "www.uscg.mil" and "www.dot.gov"). Mr. Brown also mentioned the Unidroit Convention on Moveables and Container Liens and the efforts of Charles Donovan, Esquire, in drafting a Protocol for containers and other marine equipment. The UNIDROIT Convention shows us the way for central registration of title and liens on a first to file basis that may eventually do away with hidden maritime liens in the future. Mr. Brown advocated electronic communication among the members and mentioned various efforts by flag states to modernize their marine statutes.

2. Discussion Topics.

a. Maritime Administration.

Edmund T. Sommer, Esquire, of MARAD summarized for the committee "What is new" at MARAD. Mr. Sommer reported that new Title XI Ship Financing regulations would probably be published in the summer of 2000 and stated that they would be "plain language" regulations. He also reported that they are working hard to implement the American Fisheries Act to enforce the 75% U.S. citizen ownership requirements.

b. Peder Bogan gave a brief presentation on current trends in marine finance with an emphasis on the capital markets including tanker IPO's, tanker pools and the restructuring of high yield market for shipping.

c. Michael Northmore gave the Committee an update on marine insurance including the continuing downward trend in premiums, the increase in pollution limits up to \$2 billion, residual value insurance products and ship mortgage indemnity insurance.

d. Rule B.

Robert Zapf, Esquire, discussed the issues being faced by the Practice and Procedure Committee regarding Rule B and certain due process issues connected with adequate notices in *in rem* proceedings. After discussion and upon motion duly made and seconded, the Committee unanimously voted to recommend that Rule B be bifurcated to address these issues. (See Exhibit B)

e. American Fisheries Act.

Steven Johnson, Esquire, addressed the Committee concerning the drastic changes in law caused by the American Fisheries Act. Not only are equity interests in fishing vessels affected but ship mortgages are also affected since non-citizen mortgagees will have to hold the mortgage through a "Westhampton Trustee". He noted that existing mortgagees are not grandfathered but will need to change the structure of the existing transaction. Mr. Johnson also reported on certain international interests and treaties that may have a bearing on the implementation.

f. Electronic Commerce.

Glen Oxton, Esquire, chair of the Electronic Communication and Commerce Committee gave a very informative presentation on the MLA website and executing documents with digital signatures. The implications of electronic signatures are limitless but include, for example, elimination of Powers of Attorney, need for Central Ship Registry and the affect on legal opinions.

g. Marshall Islands.

Emery Harper, Esquire, reported on the progress of the new Marshall Island maritime statutes and, in particular, the mortgage tracking legislation.

3. Subcommittee Reports.

a. Coast Guard Documentation, U.S. Citizenship.

Thomas Whalen, Esquire, presented the report of the Coast Guard, U.S. Citizenship Subcommittee. Mr. Whalen reported that the Subcommittee considered, among other things, the U.S.C.G.'s requirements for affidavits for 46 U.S.C. § 12106 filings and the fact that the requirements are inconsistent with and exceed the statutory requirements. (See Exhibit C) After discussion and upon motion duly made and seconded, the following resolution was unanimously approved:

Resolved that the President of this Association or his designee inform Coast Guard that in the absence of rules, the additional procedural requirements for Section 12106(e) of Title 46 U.S.C.A. promulgated by the Office of Maritime and International Law that make substantive changes in Section 12106(e) be modified to comply with Section 12106(e) or in the alternative new rule making include Section 12106(e).

b. Maritime Liens & Mortgages.

Charles Donovan, Esquire, presented the report of the Maritime Liens & Mortgages Subcommittee. He reported on the Subcommittee's discussion regarding "stale" Notices of Claim of lien on record with the U.S.C.G. and relevant case law.

c. Taxation.

Derrick Betts, Esquire, presented the report of the Taxation Subcommittee. Mr. Betts reported that written comments are due for the new regulations pertaining to §883 of Internal Revenue Code. Mr. Betts reported that the regulations greatly affect the reporting requirements of foreign companies including a change in the “public company rule” and passive investments. The subcommittee will only comment on the retroactivity of the regulations.

d. Yacht Financing.

Robert McIntosh, Esquire, presented the report of the Yacht Financing Subcommittee. He reported that the Subcommittee considered the new V.I.S. regulations, a vessel title insurance product, Manufacturers Certificate of Origin and Builders Certificate and mandatory filing of discharges by mortgagees.

4. Joint and Ad Hoc Committee Reports.

a. Joint Subcommittee on Foreclosure and Insolvency.

Robert Fisher, Esquire, reported on the Subcommittee’s efforts in preparing draft language to amend the Fair Debt Collection Practices Act. The effort is designed to resolve the conflict between the Ship Mortgage Act and the Fair Debt Collection Practices Act regarding jurisdiction. Diedra Dillon reported at the subcommittee meeting concerning the new amendment to Title XI Bankruptcy Code Section 1110 relating to aircraft and vessels.

5. Old Business.

None discussed.

6. New Business.

Mr. Brown briefly noted (1) new proposed U.S.C.G. regulations would be published soon, (2) certain new legislative initiatives namely H.R. 1000, and (3) certain court decisions.

The Committee members expressed their gratitude and respect to Charles Brown as outgoing Chair of the Committee. There being no fur-

ther business, the meeting was adjourned by the Chair, Mr. Brown, at approximately 4:45 p.m.

Respectfully submitted,

Sandra L. Knapp, Chair

FORMAL REPORT OF THE COMMITTEE ON MARITIME ARBITRATION

Since October, 1999, the Committee has met five times to discuss issues relating to maritime arbitration and has been working on a variety of projects.

1. Newsletter No. 18. Jay Pare, Keith Heard and Bob Green have prepared the Arbitration Committee Newsletter which discusses recent arbitration cases. The Newsletter is included in the MLA Report, Document No. 749 dated May 5, 2000.
2. UNCITRAL: Working Group on Arbitration
 - a. The Chairman, Mr. Kennedy, was appointed as a Private Sector Advisor on the United States delegation to the United Nations Commission on International Trade Law (UNCITRAL) Working Group on Arbitration, Thirty-Second Session, held in Vienna, March 20–31, 2000. As a member of the U.S. Delegation, Mr. Kennedy met at the Department of State in Washington, D.C. on March 13, 2000 with a study group to assist the Department of State prepare the position of the United States for the inaugural session of the Working Group on Arbitration.
 - b. A memorandum was prepared for the head of the U.S. delegation, Mr. Jeffrey D. Kovar, Assistant Legal Advisor for Private International Law, Office of Legal Advisor, Department of State, explaining the split between *Sphere Drake Insurance v. Marine Towing*, 16 F.3d 666 (5th Cir. 1994), and *Kahn Lucas Lancaster v. Lark International*, 186 F.3d 210 (2d Cir. 1999), in interpreting in “in writing” requirement of Article II (2) of the New York Convention.
 - c. At the Vienna meeting (March 20–31, 2000), the UNCITRAL Working Group considered the possible preparation of an interna-

tional Model Law on Conciliation (mediation); whether new rules or guidelines should be developed addressing the enforceability of interim measures orders in international commercial arbitration; and problems some countries have experienced implementing the writing requirement in Article II (2) of the 1958 New York Convention on the Enforcement of Foreign Arbitration Awards. Mr. Kennedy attended the UNCITRAL Working Group on Arbitration session in Vienna from March 27–29, 2000 for the discussion and deliberation relating to interim measures of relief and the in writing requirement of Article II (2).

d. The next meeting of the UNCITRAL Working Group on Arbitration is scheduled for the last two weeks of November, 2000 in Vienna. One of the topics will be consolidated arbitration and the head of the U.S. delegation has requested that we prepare a background memo on the relevant issues which has been done.

e. The documents of the UNCITRAL Working Group on Arbitration are posted on their web site: http://www.uncitral.org/english/sessions/wg_arb.

3. Pending Projects.

a. Proposed revisions to the Federal Arbitration Act. A working group has been formed to propose amendment to the Federal Arbitration Act (FAA) that impact the maritime industry.

b. Preparing a policy paper on Manifest Disregard of the Law.

c. Promotion of Maritime Arbitration. The Committee continues to inquire whether there are sectors of the maritime industry where arbitration would be useful in resolving disputes. Previously, the Committee invited industry representatives from container lessors and currently we expect to invite marine insurance representatives as well as other industry representatives, to address the Committee.

d. Proposing ways to provide for mediation in disputes subject to maritime arbitration.

e. The Revised Uniform Arbitration Act. The Committee contacted the Drafting Committee for the Revised Uniform Arbitration Act and obtained a copy of The Revised Uniform Arbitration Act, Tentative Draft No. 8 dated March 31, 2000. Michael Marks Cohen submitted

written comments for the drafters to consider at their final drafting session in April, 2000.

f. The Society of Maritime Arbitrators invited members of the Association to participate on the planning committee for The International Convention of Maritime Arbitrators (ICMA) to be held in New York on October 22–26, 2001. Messrs. William P. Byrne of Jacksonville, Raymond J. Burke, Jr. and Donald J. Kennedy of New York will work on the ICMA XIV planning committee.

4. MLA/SMA Liaison Committee.

a. The Liaison Committee is also helping to organize a program on mediation which will be held at the Association of Bar of the City of New York and President McCormack has provided MLA address labels to send out flyers concerning this program.

b. The Liaison Committee has been working with the Society of Maritime Arbitrators in drafting standard escrow agreement that would be used when funds are deposited with a law firm or the Society of Maritime Arbitrators as security for the arbitrators fees.

5. Merger with ADR Committee.

The ADR Committee at their May meeting voted to dissolve and merge with the Arbitration Committee. The issue of whether the function of the Arbitration Committee should include maritime mediation was discussed at the May meeting of the Arbitration Committee and will be formally presented at the next meeting on June 7, 2000. It will be proposed that the Arbitration Committee be renamed "Committee on Maritime Arbitration and Mediation" to reflect the new function of the Committee's work to include keeping the membership informed concerning current developments in maritime mediation both in the United States and abroad.

Respectfully submitted,

Donald J. Kennedy, Chair

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

The Committee met on Thursday, May 4, 2000 in New York, New York at the Spring meeting of the Association. John Schaffer chaired the conference. Thirty-one members and guests participated in a lively meeting on changes in statutes, current cases and other developments affecting the MLA, practice of Committee members and other personal injury practitioners.

1. Recent Developments In the Death On the High Seas Act.

Two parallel matters have continued since the explosion of the TWA 800 in the U.S. territorial sea, more than 1 league, 3 nautical miles, and less than 12 nautical miles off Long Island, New York in 1996. Since there were many high school children from Pennsylvania who were killed, there has been a legislative movement to enhance DOHSA damages. Under *Zicherman*, it was held that DOHSA allowed pecuniary damages only. Under *Dooley*, there was no recovery for pain and suffering. After much negotiation, the Congress passed, and the President, in April 2000, signed an amendment to DOHSA.

The amendments to 46 U.S.C. § 761/2 provide the following:

- a. In the case of commercial aviation accident, whenever the death of a person shall be caused by wrongful act, neglect, or default occurring on the high seas twelve (12) nautical miles or closer to the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, this Act shall not apply and the rules applicable under Federal, State, and other appropriate law will apply.
- b. If the death resulted from a commercial aviation accident occurring on the high seas beyond twelve (12) nautical miles from the shore of any State, or the District of Columbia, or the Territories or dependencies of the United States, additional compensation for nonpecuniary damages for wrongful death of a decedent is recoverable. Punitive damages are not recoverable. In the subsection, the term "nonpecuniary damages" means damages for loss of care, comfort, and companionship.
- c. Effective date—The amendments made by subsections (a) and (b) shall apply to any death occurring after July 16, 1996.

On 29 March 2000, just before the President signed the amendment, the Second Circuit decided *Re: Air Crash Off Long Island, New York*, the TWA 800 Case. It affirmed the district court in holding that, since the Proclamation in 1988 by President Reagan of a territorial sea of 12 miles, DOHSA would not apply within the 12 miles as it is no longer the “high seas.” The defendants have sought to review the decision, primarily on the basis of the new statute, its use of “high seas” as possibly referring to an area within twelve miles and the fact that the new Act is retroactive. There is good law that a civil statute can be retroactive, especially if it is meant to correct a perceived wrong. Civil law is different from criminal law, since the Supreme Court held on 1 May 2000 that criminal penalties could not be retroactive.

We, thus, have a never-never land as to what law is to apply between 3 and 12 miles (except for Texas and Florida, which extend further). Plaintiffs urge that *Moragne/Gaudet* apply, as well as adjoining state law, whichever is better. Phil Berns reported that two of his cases, one in California (where there is no claim for pre-death pain and suffering) and one in Alaska, did give plaintiffs the benefit of higher damages in suits against the United States. *Brateli v. U.S.*, 1996 AMC 1980 (D. Alaska 1996).

Judge Fallon, a well regarded judge in New Orleans, decided *Kelly v. Bass Enterprises Production Co.*, 17 F. Supp. 2d 591 (E.D. La. 1998). It dealt with death and injury for those in a pleasure boat in Louisiana waters. He applied Louisiana law and, for personal injuries, applied the General Maritime Law and Louisiana law. He indicated that *Yamaba* left the GML open for deaths in state waters. These arguments will also be made for deaths within the territorial sea. In the *Swissair* Case, Canadian law makes local provincial law apply to deaths in their 12 mile territorial sea.

2. Tort Reform.

John Schaffer reported on an article in the *ABA Journal*, October 1999, reporting that 24 states had struck down some aspect of tort reform, such as damage caps, statutes of limitations and punitive damages. Twenty-one states upheld tort reform legislation. Four states had struck down all attempts at court reform.

3. *Lubrano v. Waterman Steamship Co.*, 175 F.3d 274 (2d Cir. 1999).

The Court held that, absent a written indemnity agreement, the rule of *Ryan v. Pan Atlantic*, allowing indemnity on the basis of workmanlike warranties, is no longer enforceable. *Certiorari* was denied on 12 October 1999.

4. Punitive Damages.

a. In the *CSX* case, the *New York Times* reported in November that the trial court had reduced a \$2.5 billion punitive damage verdict to \$850 million in a case involving a 1987 tank-car fire in New Orleans. The \$2.5 billion verdict had been set aside by the Supreme Court of Louisiana and sent back to the lower court. CSX was one of nine companies named in a lawsuit representing 8,000 plaintiffs, who said they had suffered personal injuries from the fire. About 8,000 nearby residents were evacuated for 36 hours.

b. *CSX Transp. Inc. v. Palank*, 1999 WL 641885 (Fl. App. 4th Dist.). It was held that the evidence supported a \$50 million award of punitive damages in a death claim involving a derailment. The derailment was caused by a defective switch that a proper inspection would have revealed. Also, there might be actual notice by the railroad. A federal audit had revealed deficiencies in the railroad's staffing and inspection practices and there had been a downsizing of maintenance employees, at a saving of approximately \$2.4 billion. Finally, the railroad had filed false safety inspection reports, stating that proper inspections were performed.

c. In San Francisco, there was a jury verdict against two cigarette companies for \$20 million.

d. Note the DOHSA statute precluding recovery of punitive damages beyond the 12 miles in commercial aircraft cases.

e. In the *New York Law Journal* of 4 May 2000, it was reported that a federal judge had allowed punitive damages where there was no award of compensatory damages in a Title VII employment discrimination case. *Cush-Crawford v. Adchem Corp.*, 98-Cv-676 (E.D.N.Y.). The award was \$100,000 for sexual harassment. This is in line with the Seventh Circuit, *Timm v. Steel Plating Inc.*, 137 F.3d 1008 (1998). *Contra* is the First Circuit, *Kerr-Selgas v. American Airlines, Inc.*, 69 F.3d 1205 (1995).

5. *Fontenot v. Dual Drilling Co.*, 179 F.3d 969 (5th Cir. 1999).

A case brought pursuant to § 933(a) of the Longshore and Harbor Workers Compensation Act. The Court held that the District Court's failure to direct the jury to quantify plaintiff's employer's fault, pursuant to Louisiana tort law, was reversible error. The Court found that Louisiana law,

which requires the fact finder to apportion fault among all tortfeasors, including an employer who is immune from suit, was not inconsistent with the provisions of the LHWCA, 33 U.S.C. 901-950. Louisiana law was applicable under the OSCLA, as it was an accident on a fixed platform.

6. England v. Reinauer Transportation Companies, L.P., (1st Cir. 1999).

This is a § 905(b) case in which the First Circuit held that the plain language of *Scindia Steam Navigation Co. v. De Los Santos*, 451 U.S. 156 (1981) clearly suggests that custom alone is sufficient to create a duty owed by a vessel to a longshoreman. The Court then went on to find that the evidence presented was ample to allow the jury to find that Reinauer retained operational control over the mooring lines, which caused the longshoreman's injury and, thus, had an active control duty to inspect and adjust them.

7. Reyes v. Delta Dallas Alpha, 199 F.3d 626, 2000 AMC 726 (2d Cir.1999).

The Court held, as the employer did not establish as a matter of law that the plaintiff's acceptance of state compensation payments constitutes a waiver of his federal maritime remedies, the district court should not have granted summary judgment to defendant on the plaintiff's Jones Act claim. There had been no award and, thus, was in line with Supreme Court cases, e.g., *Gizoni*, in 1991, dealing with Longshore Act compensation.

8. LeBlanc v. Cleveland, 198 F.3d 353 (2d Cir. 1999).

The Court dismissed the plaintiff's claims for lack of subject matter jurisdiction, based on its conclusion that the portion of the Hudson River, in which the accident giving rise to appellants' claims took place, was not a navigable waterway for purposes of establishing federal admiralty jurisdiction. The decision was affirmed on appeal. Several falls and dams separated the upper Hudson from the truly navigable areas of the River. As a result, the owner's limitation action was nullified.

Another issue is whether suit in a limitation action provides independent admiralty jurisdiction, even where the body of water, which might once have been navigable interstate, is now dammed up and currently not navigable. Congress has the right to legislate on dammed, non-navigable rivers previously navigable only under the commerce clause, leading to regulation of power plants, etc. A minority view was expressed in *In re Bernstein*, 81 F. Supp. 2d 176 (D.C. Ma.1999), referring to an old case of *Richardson v. Harmon*, 222 U.S. 96 (1911), where a limitation

action would give admiralty jurisdiction in any case involving a master and crew, whether a maritime or non-maritime tort.

9. *Sologub v. City of NY*, 202 F.3d 175, 2000 AMC 742 (2d Cir. 2000).

Plaintiff, a qualified deckhand on the Staten Island Ferry Terminals, appeals summary judgment in favor of defendant, City of New York, the district court having determined that the plaintiff was not a seaman within the meaning of the Jones Act when he was injured in the course of his employment. Sologub had been assigned as a terminal based deckhand. He did not work at sea; therefore, the district court held he could not be classified as a seaman. This court held that no reasonable jury could find that Sologub was anything but a land based worker during his assignment to terminal duties and, thus, not covered by the Jones Act.

10. *U.S. v. Locke (INTERTANKO)*.

In early March, the U.S. Supreme Court decided an issue which has laid to rest a major problem facing tanker owners and operators. The Court, by a unanimous vote, decided that the State of Washington and, therefore, every state, cannot impose tanker safety standards that exceed the federal standards set by OPA 90, the Oil Pollution Act. This ruling was in the suit brought by the Independent Tanker Owners Association (INTERTANKO). Tanker owners were haunted by the diverse requirements of coastal states that are demanded in addition to the federal standards. The Supreme Court left open room for the states to have some input, since the OPA legislation allows it, but the Court construction will reduce the conflicting and confusing regional regulations. The Court's ruling is also expected to increase pressure for additional safety requirements by the federal government

What was at issue in the *INTERTANKO* case was the fact that Washington State set up an agency and ordered regulations to obtain the "best available protection" from oil spills in state waters. Rules were promulgated requiring crew training rules; English language proficiency; a requirement that a tanker have two licensed officers on the bridge, a helmsman and a lookout; and a requirement that tankers report various accidents, regardless of where they occurred.

Justice Kennedy wrote in his decision that federal law and regulation was paramount in matters involving design, construction, maintenance, operation, qualifications of a crew and manning requirements. States could make rules for peculiar problems of local waters, but only so long as they do not conflict with federal rules and federal jurisdiction.

However, the Europeans are now looking to strengthen their protection from oil tankers, particularly older tankers. Since the sinking of the tanker, ERICA, off the French coast last December, with a widespread coastal damage, new regulations will be forthcoming.

Since states can regulate maritime commerce where state regulations do not conflict with the federal regulations, two cases are now open to question more seriously than ever. Two cases have allowed a strict liability statute, the New York State Labor Law, to apply to ladder or height related accidents involving shoreside maritime workers injured on a ship. *Cammon v. City of New York*, 700 N.Y.S. 2d 110 (1st Dept. App. Div. 1999), held that the strict liability provisions (the scaffold law) would apply to a construction worker on a floating raft, where he was injured by a timber which swung and injured him. In *Gravatt v. City of New York*, 53 F. Supp. 2d 388 (S.D.N.Y. 1999), plaintiff was injured on a barge while moving piles of lumber with timber tongs. When the lumber was lifted by a crane, lumber slipped out and injured him. Several provisions of the Labor Law were held applicable, including strict liability. The City contract required its contractors to comply with the Labor Law and insure against it. Other maritime strict liability laws were referred to and *Yamaha* was also referred to as providing some leeway to state law in maritime cases. An appeal has been argued recently.

Contra, criticizing application of the Labor Law to maritime cases is *Sutherland v. City of N.Y.*, 699 N.Y.S. 2d 426 (2d Dept. App. Div. 1999).

11. *Garris v. Norfolk Shipbuilding*, 2000 AMC 1084 (4th Cir. 2000).

At issue was whether *Moragne*, which allowed a death recovery in state waters for unseaworthiness, would also allow recovery for negligence. The court held that *Moragne*, allowing wrongful death recovery in the General Maritime Law, also covered death caused by negligence. Decedent was a shoreside maritime employee injured by another contractor's employee.

12. *Kummel v. Bombardier Corp.*, Fifth Circuit, March 2000.

With a conclusion akin to the decision above in *Bass v. Enterprises Production*, plaintiffs brought an admiralty claim for injuries sustained while using a personal water craft on state navigable waters. The court relied entirely on Louisiana state law to dismiss a products liability case. Has *Yamaha* been extended?

13. *Sealand v. Sellan*, 1999 U.S. Dist. LEXIS 15112 (S.D. Fla. July 1999).

Seaman agreed verbally never to sail again as a condition of settlement. The agreement was upheld when he did sail again and tried to sue the shipowner for another subsequent injury on a Sealand ship. Oral agreements are allowed in maritime cases. *Kossick v. United Fruit Co.*, 365 U.S. 731 (1961).

14. *Frederick v. Kirby Tankships*, No. 98-2734 (11th Cir. March 2000).

The court upheld the maintenance rate set in a union agreement. The case is *contra* the Third Circuit *Barnes* Case and several cases from the Southern District of New York.

15. *Gerald Lorimer v. Great Lakes Dredge*, 1999 LHC 1884, 4/19/2000.

An administrative judge held that a crew member of a local dredge in Los Angeles waters was covered by the Longshoremen's Compensation Act, since he did not face the perils of the sea as required in *Papai*. Review is being sought. This brings into doubt all brown water, Jones Act claims. Presumably, the decision rests on the fact that there was poor Jones Act liability.

16. Loss of Consortium.

There was some discussion of the right to claim consortium in a passenger injury case. There was a *Friedman* Case in the Southern District of New York which denied it. Unbeknownst to the judge and the lawyers, the Second Circuit had an "unpublished" opinion in *Wartman v. Commodore Cruise Line Ltd.*, 1996 WL 47964 (Feb. 6, 1996), that allowed a recovery. On reargument in *Friedman*, the consortium claim was denied on the facts.

We are always looking for additional and interesting projects, relevant decisions and are also continuously seeking potential new members.

Respectfully submitted,

John P. Schaffer, Chair

**FORMAL REPORT OF THE COMMITTEE ON NAVIGATION,
COAST GUARD AND GOVERNMENT REGULATION**

A meeting of the US Maritime Law Association's Committee on Navigation, Coast Guard and Government Regulations was held at the law offices of Freehill Hogan & Mahar, 80 Pine Street, New York, NY at 9:00 AM on May 3, 2000. A list of attendees is attached to the original of this report as Exhibit A.

The meeting was opened by Committee Chairman Robert Parrish of Jacksonville. The first order of business was the introduction of the new Committee Chairman, Dennis Bryant of Washington; the Vice Chair, Tony Whitman of Baltimore; and the Committee Secretary, Jeffery Moller of Philadelphia. Mr. Bryant conducted the balance of the meeting. A copy of the agenda of the meeting is attached to the original of this report as Exhibit B.

The first order of business was the extension of appropriate congratulations and thanks to Mr. Parrish for his two years of enthusiastic and effective leadership. It was noted that President McCormick would be presenting Mr. Parrish with a certificate from the MLA in recognition of his outstanding level of service. Mr. Bryant welcomed distinguished guests from the Coast Guard, Captain Malcolm J. Williams, Jr. and Lieutenant Daniel J. Goettle. Both Mr. Parrish and Mr. Bryant mentioned that Captain Williams would be retiring from the Coast Guard, effective June 30, 2000 and each extended the thanks of the committee for Captain Williams' willingness to participate in all levels of committee activity during the course of his service as Chief of the Coast Guard's Maritime and International Law Division.

Captain Williams spoke at length upon the first item on the agenda, the ramifications of the Supreme Court's decision in *United States v. Locke*. The Supreme Court has remanded the case to the Ninth Circuit for further proceedings. Issues pertaining to the breadth of interpretation of the Supreme Court's decision remain. The Coast Guard is of the belief that equipment regulation as pertaining to barges issued by the state would also be affected by the decision. Although the State of Washington would tend to disagree with this interpretation, the Supreme Court's reliance upon "conflict" preemption in addition to "field" preemption would tend to argue for a broader interpretation of the case. Attempts have been made to overrule the *Locke* decision by legislation, but those attempts have been defeated and there is nothing currently in the legislative "hopper" on the topic. [Note: Bills have since been introduced in

both the Senate and the House of Representatives to overrule the *Locke* decision via legislation. The Committee will monitor these bills.]

Discussions took place with regard to the effect of the *Locke* decision on state ballast water control regulations. Captain Williams indicated that *Locke* would have limited effect because the federal ballast water control statute specifically allows state regulations and differs considerably from the provision of OPA 90 and the considerations of *Locke*. Larry Kiern of Washington reminded the members that OPA 90 does contain specific authority to allow the state to impose financial and liability schemes and that *Locke* did not touch that issue. Chairman Bryant also stated that the states have broad authority under OPA 90 to define or answer the question "how clean is clean". It was pointed out that the *Locke* decision casts some doubt on state ballast water regulations, such as in California, that attempt to mandate certain actions on vessels while located in foreign waters.

Mention was made of the fact that EPA recently slapped significant penalties upon several cruise lines operating in Alaska for violation of air pollution statutes relative to stack emissions. Apparently, the Alaska Department of Environmental Compliance had not been enforcing the air pollution regs in this regard due to budget constraints, so the federal EPA stepped in. This is just one area in which the EPA has been increasingly involved regarding regulation of the maritime industry. EPA also is very concerned about ballast water regulations. It was noted that there are no facilities for handling dirty ballast water in any port state other than Alaska and the EPA is getting increasingly concerned in this regard.

The issue of ballast water control is becoming increasingly important. Existing law is designed to reduce the risk of introduction of non-indigenous organisms (zebra mussel, *et al.*). A federal rule exists requiring vessels bound for the Great Lakes to make a complete exchange of ballast water at sea before entering the St. Lawrence Seaway. The ballast water issue has been taken up by the state of Michigan and, internationally, by the IMO. According to Captain Williams, the IMO working group has constructed a two-tiered regulation system. It was noted that not only ballast water but sediments and the hull itself can carry non-indigenous species.

Hull coating regulations continue to be a topic of discussion within the Coast Guard. The problem with antifouling marine hull coatings is that they purposely contain a toxin to keep barnacles, etc. from adhering to the sides of ships. The paradox was noted that when the prohibition of antifouling paint and the ballast water control regs are compared, more non-indigenous organisms adhere to the hulls of ships and are transferred

to the foreign port than are transferred via ballast water. The hull coating issue is also being worked on by the IMO according to Captain Williams. Both the coating and the ballast water issues are being considered by the U.S. Society of Naval Architects and Marine Engineers.

Ocean dumping laws in the United States involve an inherent conflict, according to Captain Williams. MARPOL, as adopted by the U.S. Congress, allows under certain conditions the offshore dumping of operational waste generated in port. The federal Ocean Dumping Act, though, specifically requires the disposal in port of any waste generated in port. The Ocean Dumping Act requires a permit for dumping any port-generated waste at sea. The Coast Guard and EPA are working upon a "notice of policy" in order to iron out the conflict. The likely result, according to Captain Williams, will be that all waste generated in port must be disposed ashore prior to sailing. The practical problems involved with the ocean dumping law conflict were raised in two existing arbitrations. The charter party typically assigns port costs to the charterer, but the charterer often asks the owner to dispose of waste materials at sea. However, the owner's refusal to dump dunnage or tank washings at sea, for fear of violating the requirements of the Ocean Dumping Act, can cause the charterer to incur significant expense for in-port disposal.

The next item on the agenda was the issue of environmental crimes. Bob Parrish began the discussion by citing a recent case in Baltimore, apparently being handled by Tony Whitman, in which the federal authorities arrested and handcuffed a Greek master as a result of an internal leak within a vessel which resulted in no spillage of oil. In defense of the Coast Guard and FBI positions, Captain Williams indicated that the Master had apparently lied to enforcement authorities and had failed to note certain oil transfers in the oil record book. According to the existing Commandant's Instruction regarding the enforcement of environmental crimes, any lying or falsification of records raises the concern of federal enforcement officials to a significant extent.

One significant difficulty in this area is counseling clients with regard to cooperation with investigating authorities. Maritime practitioners are advised to promptly elicit the assistance of criminal defense lawyers to assist in the investigation of any environmental problems, whether actual or threatened. It is good to consider that several layers of criminal defense representation may be required since the interest of the corporation, executives within the corporation, and affected personnel may all be significantly different. A further note of caution was sounded by Mr. Parrish. The Department of Justice has sometimes sought to indict counsel to

criminal defendants as co-conspirators, particularly where falsification of records or testimony is suspected. The attorney-client privilege has been literally trampled by this development, in which lawyers have been indicted by grand juries, their notes of conversations subpoenaed, and their testimony required. Apparently, this tactic began with the Bush administration's war on drugs and has been expanded ever since. Chairman Bryant pointed out a recent article in the ABA Journal with regard to the Valu-Jet case in which the vice-president of the maintenance company was indicted. Reference was made to what is known in the DOJ as the "Eric Holder" memo which lays out the DOJ's policy with regard to demanding the attorney's notes of interviews with witnesses. Past Chairman Patrick Bonner of New York relayed that the Department of Justice has been holding closed conferences in various cities in which encouragement is given to U.S. Attorneys to give further consideration to criminal actions in environmental matters.

Mention was made of the PORTS initiative and the electronic charting proposal on the drawing board at NOAA. PORTS provides, in the few locations where it is presently installed, real-time tide, current, and related data via the Internet. Apparently, lack of funding has stalled both initiatives.

The issue of "critical habitats" for threatened and endangered species has become an important issue in the marine environment. The Endangered Species Act and its implementing regulations provide that it is a violation to "harm" or degrade a habitat which is critical to the survival of any threatened or endangered species. Therefore, any spilling of oil which has any effect on a critical habitat, such as Johnson's Seagrass in coastal Florida, is a violation of the Act even if no proof is presented that any member of a threatened species was actually or directly harmed.

Mention was made of the regulation of the liner industry in the post-OSRA era. Chairman Bryant pointed out that the FMC has recently approved penalties under OSRA against certain ship lines for having failed to submit true and accurate copies of their agreements. Since the anti-trust immunity allowed by the Shipping Act of 1984 is under frequent attack by cargo interests and ocean transportation intermediaries, the regulations which do exist will be strictly enforced by the FMC.

At the close of the regular agenda, Captain Williams identified his replacement as Captain Joe Ahern, currently the district legal officer in Miami. Captain Williams will be retiring on June 30th and Captain Ahern will take his position in August.

The meeting was thereafter opened up to the discussion of other issues. Larry Kiern took the opportunity to discuss recent legislative developments. He mentioned that the current version of the Coast Guard authorization bill contains two or three interesting provisions. The first and potentially most important, is the increase of the maximum penalty for negligent operation from \$1,000 to \$25,000 per incident. This would give the Federal Boat Safety Act (FBSA) a lot more juice than it currently has. It is noted that the Coast Guard frequently relies upon the FBSA's negligent operation provisions in bringing enforcement actions against non-licensed mariners. It has also been used against operators of foreign ships in U.S. waters. The current authorization bill also includes a provision to extend jurisdiction of the Bridge-to-Bridge Radiotelephone Act to 12 miles. It also contains a provision which would increase the Coast Guard's borrowing authority from the Oil Spill Liability Trust Fund from the current level to \$100 million per year. This may have the effect of making the Coast Guard less hesitant to expend funds in its efforts to prevent or clean up oil spills. This could in turn impact the pocketbook of the spiller or responsible party who is ultimately required to replenish the Fund.

Chairman Bryant mentioned that the Coast Guard is proposing to define limited liability companies for coastwise citizenship requirements in a different way than they currently do. Currently, the 75/25 U.S. citizenship definition applicable to corporations is applied to most LLC's. The Coast Guard, however, is intending to treat LLC's as partnerships, which would have the effect of requiring all members of the LLC to be U.S. citizens.

Captain Williams handed out an outline, a copy of which is attached to the original of this report as Exhibit C, which lays out the current agenda of the IMO legal committee. Among the topics on the agenda are the Draft Bunkers Convention, reconsideration of the Athens Convention, wreck removal and a joint project between the IMO and the ILO pertaining to crew abandonment problems.

Also discussed at the meeting were the current proposals in the New York state legislature of requiring ship docking masters to obtain state pilot licenses. The issue was raised at the request of Bucky McAllister of New York, senior counsel to McAllister Towing, which opposes the proposal. The concerns of tug companies and foreign shipping companies, who would be most affected by the statute, is that the shipping company will lose the opportunity to make a selection of a docking master based on merit. According to Mr. McAllister, if the docking master function is

regulated by state law, they will be forced to utilize either the state harbor pilot or the state docking pilot which first “speaks” the vessel.

The docking master is essentially a creature of only certain ports on the east coast, specifically Baltimore, New York, Philadelphia and Savannah. In most other ports in the country, the docking is done either by the ship’s captain or by the state licensed harbor pilot who had piloted the vessel to that point. Traditionally, in the noted east coast ports, particularly since World War II, state pilots have stepped aside in favor of the docking master who has a federal, but not a state license, who assumes the conn of the ship for docking purposes. In many ports, the docking master conducts intraport movements from anchor to dock or from dock to dock. The docking function on ships was not being conducted under the authority of the federal pilot license so the Coast Guard did not have enforcement authority and was not being conducted pursuant to state license because the state did not have enforcement authority over the federal license.

This topic was further discussed at the meeting of the Pilotage Subcommittee which took place after the break-up of the main meeting. Mr. McAllister has not sought specific assistance or interpretation from the main committee but merely wanted to raise the issue for the members of the Association, and by extension, their shipowning clientele.

Respectfully submitted,

Dennis L. Bryant, Chair

FORMAL REPORT OF THE COMMITTEE ON SALVAGE

We had 26 persons in attendance, including the President, First Vice President, and Second Vice President of the Maritime Law Association.

1. SCOPIC—Shipowner’s Casualty Representative.

Our very active session began with a presentation by Robert Umbdenstock on the SCOPIC (Special Compensation P&I Clause) addendum to Lloyd’s Standard Form of Salvage Agreement. Bob has recently served as a Shipowner’s Casualty Representative (SCR) pursuant to the SCOPIC clause. He is one of only two U.S. nationals designated by the

Council of Lloyd's to serve in that capacity, out of a total of some 30 SCR's (predominantly from the U.K.). Bob explained the purpose and use of SCOPIC, the benefits of SCOPIC, the increased reliance on P&I Club input during salvage operations, and the increasing role of the P&I Clubs in salvage situations as a result of fundamental changes in the nature of salvage resulting from environmental concerns. We learned on Friday that Bob has been admitted as a non-lawyer member of the M.L.A., and I expect our new President will appoint him to become a regular member of our Committee. Welcome aboard, Bob.

2. LOF 2000.

We next discussed the Lloyd's Standard Form of Salvage Agreement (LOF 2000). This project has been delayed as a result of the passing of Geoffrey Brice, Q.C., in November 1999. Each time in recent months that a "final draft" has been put in circulation amongst those who must approve it, the draft has come up for further amendment. We relayed the latest advice from International Salvage Union headquarters to the effect that its ultimate approval is "imminent." The LOF 2000 will be in a simplified BIMCO style format, *i.e.*, a one-page "fill-in-the-blocks" document, backed up by several pages addressing security and procedural matters.

3. BLACKWALL Rules Update.

We discussed again *The BLACKWALL* Rules update by reference to the paper prepared by Mark Davis of Norfolk some two years ago. The conclusion reached at that time was that Article 13 of the 1989 Salvage Convention already incorporates applicable criteria from U.S. case law with respect to conventional salvage situations. There are, however, exceptions for archaeological salvage and perhaps liability salvage which could be addressed. Mark Davis reported at our May 3, 2000 meeting that he has received few comments on the paper, and none of the comments appeared to affect the substance of his report. One suggested the affirmative criteria as set forth in Article 13 might also be set forth in the negative, *i.e.*, to diminish an award where such criteria was not applicable—but that would seem already implied. Since the 1989 Convention is the law of this land, there would appear no immediate need to take further measures unless it would be to address the treasure/archeological salvage and liability salvage issues. However, the purpose(s) of the Marine Board's recommendation may still—and perhaps should—be accomplished through legislation (see discussion under next item).

4. 1989 Salvage Convention.

Following up on a suggestion from outside our Committee, we have decided we may wish to draft implementing legislation for the 1989 Salvage Convention, even though such legislation may not be required. Professor David Sharpe pointed out that currently there is no U.S. statute on the books setting forth the terms of the 1989 Salvage Convention. Legislation would correct that deficiency, and at the same time take care of the concerns that gave rise to the need for updating *The BLACKWALL* Rules. The legislation may also be useful in connection with the long sought denunciation of the 1910 Salvage Convention and repeal of the Salvage Act of 1912, which incorporates the 1910 Salvage Convention. Denunciation of the 1910 Salvage Convention and repeal of the 1912 Salvage Act is essential to avoid risk of confusion in certain cases where the 1989 Salvage Convention would otherwise without doubt apply. Professor David Sharpe has agreed to chair a special subcommittee of the Salvage Committee in initiating efforts toward preparation of the proposed legislation. He will be assisted by Peter Hess, Mark Davis, and Professor David Bederman.

5. U.S. Open Form Salvage Contract.

The modified version of the U.S. Open Form Salvage Contract was passed out to the members with comments regarding reasons for the changes, primarily removing references to yacht or pleasure craft salvage, though the contract so far has been used primarily if not exclusively for yacht salvage.

6. RMS TITANIC.

The matter of the RMS TITANIC came up for discussion once more, primarily this time with respect to proposed U.S. legislation which has the appearance of being the "stalking horse" for the UNESCO draft treaty on the Preservation of Underwater Cultural Heritage provisions. Mark Davis spoke at length, objecting to this draft legislation as an abrogation of salvage law, departure from uniformity, lack of constitutionality, and for other reasons. He noted that no commercial interests were involved in preparing this draft legislation. It was noted that this makes it appear the U.S. government is already laying the foundation for adoption of the UNESCO draft treaty, effectively rendering marine salvage illegal in some circumstances. Mr. Dorsey noted that whatever happens with UNESCO, we still must be concerned with what our own government may do.

7. UNESCO Draft Treaty.

Committee Vice Chairman Bill Storz gave a brief update on the status of the UNESCO draft treaty, noting that the U.S. has taken by far the most reasonable position by involving John Kimball, who heads the MLA study group on this draft treaty, and others with some commercial interests. He noted that the British delegation is beginning to hear from its maritime bar, so it may be that things are beginning to swing in favor of a better understood convention. This may result in changes to the draft convention that will put it in accord with current law, and supplant its current disregard for commercial interests. John McMahon of Charlotte took strong issue with the way the MLA is dealing with the UNESCO draft treaty, suggesting that we may have caused an unfavorable reaction from those involved with the draft treaty. President McCormack addressed this point, noting that the Maritime Law Association's position on the draft treaty has been published, has been made a part of the record, has been approved by the Officers and Directors of the Association, and no negative reports on the M.L.A.'s position have been forthcoming from the membership.

8. "Abandonment" of Wrecks.

We addressed the *Central America* and the *Islander* cases, primarily with respect to the issue of "abandonment" for purposes of determining whether the salvor has a lien against the property rescued or whether he is owner. The Maritime Law Association has been asked to file an amicus brief with the Supreme Court in favor of a petition for certiorari on the issue of abandonment, and has been approached by others saying there is no conflict amongst the Circuits and no reason for the Supreme Court to hear this issue. Disagreements were expressed on these two positions, and very specific questions were asked by Bill Dorsey with regard to each case, suggesting reasons why certiorari perhaps should not be requested. The issue of whether the M.L.A. should become involved rests with the Officers and the Board of Directors of the MLA, and no recommendation is forthcoming from the Salvage Committee. We nonetheless listened to the arguments on both sides.

We adjourned somewhat late, without covering our full agenda. Some of the discussions held during the course of the meeting continued thereafter for a period.

Respectfully submitted,

James T. Shirley, Jr., Chair

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**MINUTE OF THE BOARD OF DIRECTORS MEETINGS
OF THE MARITIME LAW ASSOCIATION OF THE UNITED STATES**

Held by telephonic conference call and at the offices of
Hill Rivkins & Hayden, New York,
on
March 3, 2000

The meeting was called to order by President Howard M. McCormack at noon. In addition to President McCormack, the following officers were present in person or telephonically:

Raymond P. Hayden, Second Vice President
Lizabeth L. Burrell, Secretary
Patrick J. Bonner, Treasurer
Winston Edward Rice, Membership Secretary
James F. Moseley, Immediate Past President

The following Board members were present in person or telephonically:

James W. Bartlett, III	Bruce A. King
Geoffrey F. Birkhead	Jean E. Knudsen
Denise S. Blocker	George J. Koelzer
David G. Davies	Alfred J. Kuffler
Vincent M. DeOrchis	Robert B. Parrish
John B. Gooch, Jr.	James T. Shirley

SECRETARY'S REPORT

Secretary Lizabeth L. Burrell of New York reported on the publication and distribution of two volumes of Proceedings for the Spring 1999 Centennial meeting and the Proceedings for the 1999 Fall Meeting in Orlando. The announcements and materials for the May 2000 General Meeting, including the committee meeting schedule and CLE program, will be mailed to the membership shortly, and all arrangements have been made for the upcoming meeting.

Upon motion duly made and seconded, the minutes of the October 11 and 15, 1999 meetings of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the August and October 1999 Board meetings were published in the Proceedings of the Fall 1999 Centennial General Meeting.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on October 31, 1999, and reported on the cash on hand and investments as of October 31, 1999, both of which reflected extraordinary expenditures during 1999 for the Centennial celebrations, the development and implementation of a website, correction of a Y2K problem with our database, and travel expenses incurred in connection with our participation as advisors on international conventions and in connection with the Association's COGSA proposal.

In an effort to reduce costs, Mr. Bonner noted that members who are in arrears on their dues payments will be dropped from the membership.

Treasurer Bonner reported that since the period covered by his report, we have received dues payments. Nonetheless, we must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, including the upcoming CMI meeting in Singapore.

Treasurer Bonner noted that the Association has consistently lost money on the Fall dinner dances in New York and urged members to support this event with their attendance. President McCormack will seek members' views on how to increase participation in the Fall dinners.

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

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

MEMBERSHIP SECRETARY'S REPORT

Membership Secretary Rice presented twenty-four applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

Membership Secretary Rice also reported, with regret, the death of the following members:

Tallman Bissell
Harry A. Gavalas of New York

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Charles S. Gleason of Melbourne Beach
Charles G. Herbermann, Jr. of Raleigh
Frank J. Marston of Tallahassee
Donald F. Mooney of New York
James F. Spahn of Holiday
Max Taylor of Cos Cob

After the Orlando meeting in October 1999, the Association had 3,531 members. As of March 3, 2000, after the changes approved by the Board at its meeting, the total membership was 3,547.

The Membership Secretary also reported on the status of the website and invited the Board to recommend links and other improvements to the existing elements of the site, which currently includes a listing of the Committees, the Articles of Association, the "Purposes, Organization and Activities" that currently appears in the directory, the By-Laws, a calendar of events of interest to maritime practitioners, and database access, which can be searched geographically or alphabetically.

A hard copy paper directory will be published in early summer.

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

The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.

PRESIDENT'S REPORT

President McCormack reported that positions on the Comité Maritime International's Executive Council will be filled at a meeting in London in May 2000.

President McCormack will attend as the Association's representative at the April 27, 2000 meeting of the Executive Committee of the Canadian Maritime Law Association and at a meeting of the Federal Judges of Canada on April 28, 2000.

President McCormack reported that the officers are considering the impact of the Orlando meeting on our planning for future resort meetings, including guaranteeing a lower number of attendees in our contracts with hotels. Many favorable reports have been received about the

Orlando meeting, indicating that a meeting with fewer attendees can still be very successful. Consideration is also being given to changing the resort number from odd to even years.

President McCormack also reported that a President's Newsletter will be published in March to bring the members up to date with current Association activities.

COMMITTEE AND STUDY GROUP REPORTS

Study Group on ALI Restatement of Marine Insurance

On motion duly made and seconded, the Board approved the mission statement conveyed by the Study Group's Chair, Edward V. Cattell, Jr., of Philadelphia, in his February 23, 2000 letter.

Environmental Crimes Subcommittee

Subcommittee Chair Alfred J. Kuffler reviewed with the Board the history of the Association's involvement in the meeting of the Subcommittees on Coast Guard and Maritime Transportation of the U.S. House of Representatives' Committee on Transportation and Infrastructure concerning Coast Guard Policies and Procedures for the Criminal Enforcement of Environmental Laws. In President McCormack's letter to the House Subcommittees, he suggested how some of the problems concerning the dual role of the Coast Guard in spill incidents might be dealt with, including, for example, the extension of a qualified privilege for vessel personnel communicating with the Coast Guard during containment and clean-up efforts. More recently, Mr. Kuffler has attempted to open up a dialogue with the Environmental Crimes Unit at the Department of Justice and other government agencies in order to explore these issues.

In order to make these discussions and any further action by the Association more fruitful, Mr. Kuffler asked that members who know of criminal prosecutions arising from marine spills to write to him so that the Association can accumulate data to illustrate the very real risk of chilling cooperation during the aftermath of a spill, thus perhaps magnifying its effects.

INTERNATIONAL ACTIVITIES

Comité Maritime International

President McCormack forwarded to the Board a report by Frank L. Wiswall, Jr., of Castine, Vice President of the CMI, on the CMI Executive

Council meeting of November 1999, as well the formulation of the agenda for the CMI plenary session that will take place in Singapore on February 12 through 17, 2001. One of the topics will be the consideration of the results of the new CMI questionnaire on general average, which is being answered by Jean E. Knudsen of New York, Chair of the Association's Committee on Marine Insurance and General Average.

President McCormack reported on plans being undertaken for the CMI plenary by Michael Marks Cohen of New York, Chair of the Association's Committee on the CMI. Association members planning to attend that meeting will be given preparatory work, and the Committee will have meetings outside those which coincide with Association meetings in order to lay the groundwork for a well-organized delegation to the Singapore meeting. The issues likely to be treated at that meeting, which include transport law, piracy, marine insurance, general average and repatriation of abandoned seafarers, as well as certain proposed conventions.

Mr. DeOrchis reported on the January 2000 meeting of the CMI International Study Group on Issues of Transport Law, which he attended together with the Association's other delegates, Past President Chester D. Hooper, and George F. Chandler, III, former Committee Chair. Professor Michael Sturley is the group's Rapporteur. The purpose of the meeting was to consider methods of bringing about greater uniformity in international transport by harmonizing and filling gaps in existing international regimes for transport. While the group was unable to reach a consensus about the scope of needed work, they did agree that multimodal transport was an appropriate subject for the group's attention.

UNCITRAL

President McCormack reported on the meeting of the UNCITRAL working group on arbitration, which will meet in Vienna in March 2000 to examine the 1958 New York Convention on Recognition and Enforcement of Arbitral Awards. The Association will send a delegate to the working group.

In July 2000, UNCITRAL will be having a two-week meeting, setting aside a day for a colloquium on issues of transport law for the CMI which Mr. DeOrchis and Mr. Cohen will attend in order provide a commercial viewpoint.

International Maritime Organization

President McCormack reported that the IMO Legal Committee will

meet at the end of March 2000 in London. First Vice President William R. Dorsey will attend both Legal Committee meeting and the U.S. Coast Guard's Shipping Coordinating Committee in mid-March at which issues to be raised at the London meeting will be discussed. The likely focus of the London meeting will be the proposed Convention on Bunker Pollution, the draft Protocol to the 1974 Athens Convention on Passenger Claims and the proposed Convention on Wreck Removal.

UNESCO Convention on Underwater Cultural Heritage

President McCormack reported that the UNESCO meeting is scheduled to take place in Paris in July 2000. The Association may be able to send an advisor to the U.S. delegation from the State Department.

PROPOSED LEGISLATION ON CARRIAGE OF GOODS

Vincent M. DeOrchis, Chair of the Committee on Carriage of Goods, reported that in late February, he and Past President Chester D. Hooper met with representatives of industry groups interested in the Association's COGSA proposal, as well as Senator Hutchinson's full staff. This meeting was viewed as a very positive step because it is the first called by the Senate staff. Carl Benzel, a democratic staff member of the Senate Committee on Transportation, has been helpful, particularly since he has a background in maritime law, and is seeking a cosponsor for the bill. Some consideration is being given to introducing the bill in both the House and the Senate simultaneously.

Mr. DeOrchis also met with Professor Tetley, who has been very critical of the Association's proposal. After discussion, Professor Tetley indicated that the modifications to the original proposal had made it more acceptable. Mr. DeOrchis will also attend the CMLA Executive Committee meeting in April to discuss the proposal.

President McCormack praised Mr. DeOrchis' article in *Fairplay* explaining the proposal. President McCormack sent copies of the article to the presidents of the CMI's constituent maritime law associations, and many have commented that it gave them a very helpful insight into the workings and effects of our proposal. President McCormack also praised Mr. DeOrchis' extraordinary efforts in connection with the COGSA proposal.

Immediate Past President James F. Moseley suggested that articles and other materials explaining the proposal be collected and made available to those interested in the subject.

AMICUS BRIEFS

President McCormack reported on the December 7, 1999 argument in the Supreme Court in of *INTERTANKO v. Locke*, in which the Association had submitted in an *amicus* brief.

* * *

There being no further business to come before the Board, the meeting was adjourned at 1:45 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary

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

Held at the
Association of the Bar of the City of New York, New York, New York
on
May 4, 2000

The meeting was called to order by President Howard M. McCormack at 9:30 a.m. In addition to President McCormack, the following officers were present:

William R. Dorsey, III, First Vice President
Raymond P. Hayden, Second Vice President
Lizabeth L. Burrell, Secretary
Patrick J. Bonner, Treasurer
James F. Moseley, Immediate Past President

The following Board members were present:

Jean E. Knudsen	James W. Bartlett, III
Geoffrey F. Birkhead	George J. Koelzer
Denise S. Blocker	Alfred J. Kuffler
David G. Davies	Robert B. Parrish
Vincent M. DeOrchis	James T. Shirley
John B. Gooch, Jr.	

SECRETARY'S REPORT

Secretary Elizabeth L. Burrell of New York reported on the publication and distribution of the Proceedings for the Fall 1999 meeting in Orlando.

Upon motion duly made and seconded, the minutes of the March 3, 2000 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the March and May 2000 Board meetings will be published in the Proceedings of the Spring 2000 General Meeting.

TREASURER'S REPORT

Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on January 31, 2000, and reported on the cash on hand and investments as of January 31, 2000, both of which reflected extraordinary expenditures during 1999 for the Centennial celebrations, including special printing expenses, the development and implementation of a website, correction of a Y2K problem with our database, and travel expenses incurred in connection with our participation as advisors on international conventions and in connection with the new COGSA proposal.

Treasurer Bonner also noted that there is a lag in dues payments, and that members who remain in arrears have been dropped from the membership. We must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, including the upcoming CMI meeting in Singapore.

In order to avoid losses on Association events, President McCormack will seek members' views on how to increase participation in the Fall dinners and meetings.

Upon motion duly made and seconded, two banking resolutions were unanimously passed by the Board to allow the Association to shift its accounts to Citibank and HSBC Bank.

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

MEMBERSHIP SECRETARY'S REPORT

In the absence of Membership Secretary Winston E. Rice, Secretary Burrell presented his report. Twenty-three applicants were recommended

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for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.

Three applicants were recommended for Non-Lawyer membership. Those recommendations are:

Robert P. Umbdenstock of Southport, Connecticut
James N. Craig of New York
W. Bruce Law of Norfolk

Upon motion duly made and seconded, the three Non-Lawyer applicants were unanimously elected to Non-Lawyer membership.

The Proctor Admissions Committee recommended that eight Associate Lawyer members be advanced to Proctor status. They are:

G. Ray Bratton	Allen E. Graham
B. Otis Felder	Joseph G. Grasso
Geoffrey Losee	Matt Marion
Frederick Lovejoy	Janet Marshall

Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the eight Associate Lawyer members were granted Proctor status.

Secretary Burrell also reported, with regret, the death of the following members:

Richard A. Hagen of Edgarton
Bernard Rolnick of New York

After March 3, 2000 Board meeting, the Association had 3,424 members. As of May 4, 2000, after the changes approved by the Board at its meeting, the total membership was 3,447.

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

The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.

PRESIDENT'S REPORT

President McCormack reported that there will be a meeting of the Canadian Maritime Law Association in Halifax in July, which will coincide with a visit of tall ships to that harbor.

In the March 2000 President's Newsletter, President McCormack distributed a questionnaire to inquire about the members' reactions to the Association's resort meetings and to try to determine whether or not other formats or programs would increase participation. All members are urged to respond.

COMMITTEE AND STUDY GROUP REPORTS

Carriage of Goods

Board member Vincent M. DeOrchis, outgoing Chair of the Committee on Carriage of Goods, reported on the status of the new COGSA proposal and on the CMI's study group on international transport law.

Mr. DeOrchis reported that although the new COGSA proposal has not yet been introduced, Senator Hutchinson's support is unwavering. During a meeting on February 24, 2000, Senator Hutchinson sought the views of industry representatives, who approved the proposal, although the Stevedore and Terminal Operators Association expressed concern about heavy-lift cargoes, which would not be subject to the proposal's package limitation. Mr. DeOrchis explained, however, that such cargoes would ordinarily be carried under contracts of affreightment and charter parties, both of which would not be covered by the new COGSA proposal in any event, and that under the current legislation, there was always uncertainty about what may or may not be covered by the package limitation. Since that meeting, Mr. DeOrchis met with port authority representatives to explain the proposal further, and raised the point that under the ever more popular service agreements, stevedores and terminal operators are exposed to greater liability under our present laws because carriers—and thus the stevedores and terminal operators through Himalaya clauses—have given up many defenses. In contrast, under the new COGSA proposal, stevedores and terminal operators would be protected even if the carrier had given up defenses in a service contract.

A recent letter sent by CENSA (an organization representing foreign ship owners) claimed that there is a perceived conflict between the COGSA proposal and the Ocean Shipping Reform Act (OSRA), but NIT League, who was one of the principal sponsors of the OSRA, does not

agree with CENSA's position. Past President Chester D. Hooper has written to CENSA to explain the lack of conflict.

At this point, the real thrust to enact the proposal must come from industry.

Practice and Procedure

Board member Dave Davies reported on deliberations of that Committee's Federal Rules Subcommittee. The Committee had earlier recommended, and the Board had passed, a resolution urging changes to Supplemental Rules B and C. The proposed change to Rule B was to fix the time at which the determination of whether the defendant was "found" within the district is to be made. The proposed change to Rule C was to clarify the kind of notice that has to be given at the time of the arrest. The Rule B change was easily drafted and produced a Committee consensus. The proposed change to Rule C, however, demonstrated the difficulty of solving the notice problem. As a result, and in an effort to move the amendments forward, upon motion duly made and seconded, the Committee recommended and the Board resolved that the Committee could go forward separately with the amendments to Rule B and work further on drafting acceptable amendments to Rule C as to who must get notice of the arrest.

Study Group on the Marine Insurance Project

Board member Jean E. Knudsen, Chair of the Committee on Marine Insurance and General Average, reported on the status of the Marine Insurance Project and noted that President McCormack would be joining that Study Group. While the ALI is not inclined to go forward with this project at this time, the Study Group will produce a draft statement of marine insurance law.

Environmental Crimes Subcommittee

Board member and Subcommittee Chair Alfred J. Kuffler reported that the Subcommittee, in conjunction with the Association's Committee on Maritime Criminal Law and Procedure, was developing a set of guidelines for practitioners involved in spills.

Mr. Kuffler reported that the Subcommittee was also reviewing recurring issues of obstruction of justice and falsification of evidence to draft an outline of these issues as they affect the maritime bar. Mark Kasanin has offered to provide some material that might be used as a starting point.

The Subcommittee continues to study strict liability crimes, which are based on the public welfare exception to the requirement of criminal intent. Mr. Kuffler asked members to keep the Subcommittee advised of any cases involving this issue.

Mr. Kuffler referred to the history of the Association's involvement in the meeting of the Subcommittees on Coast Guard and Maritime Transportation of the U.S. House of Representatives' Committee on Transportation and Infrastructure concerning Coast Guard Policies and Procedures for the Criminal Enforcement of Environmental Laws. In President McCormack's letter to the House Subcommittees, he suggested how some of the problems concerning the dual role of the Coast Guard in spill incidents might be dealt with, including, for example, the extension of a qualified privilege for vessel personnel communicating with the Coast Guard during containment and clean-up efforts. The government has not officially responded to the Association's suggestion.

The Subcommittee intends to approach the Department of Justice to determine whether some common ground can be developed.

It has been reported that in plea bargaining situations, the Department of Justice has required witnesses to be "cooperative" as that term is interpreted in a memorandum by Eric Holder, Attorney General Janet Reno's assistant. In the context of the Holder memo, in order to be deemed cooperative so as to be in compliance with a plea bargain, the witness must waive privilege and his attorneys must turn over all files (including memoranda and material witness statements). On one occasion, the "cooperation" requirement was deemed to include a condition that attorneys testify before the grand jury about conversations they conducted with witnesses, although the Department of Justice later retreated from this position.

Board member George J. Koelzer suggested that the Association might work together with other bar associations that also have an interest in white collar crime to try to address these problems. This possibility will be explored.

INTERNATIONAL ACTIVITIES

Comité Maritime International

President McCormack reported that the Association would nominate Secretary Lizabeth L. Burrell, CMI Committee Vice Chair Christopher O.

Davis and Life Member Warren M. Faris for CMI Titulary Membership. President McCormack also reported that two Executive Council seats would be voted on at the Assembly meeting in London in May 2000. Stuart Hetherington (Australia) and Grigorios Timagenis (Greece) have been nominated for the open positions.

President McCormack also reported that in the Fall, the CMI will host a colloquium in Toledo, Spain, that will provide a preview of the issues to be treated at the plenary session in Singapore in February 2001.

Mr. DeOrchis reported on the January 2000 meeting of the CMI International Study Group on Issues of Transport Law, which he attended together with the Association's other delegates, Past President Chester D. Hooper, and George F. Chandler, III, former Committee Chair. Professor Michael Sturley is the group's Rapporteur. The purpose of the meeting was to consider methods of bringing about greater uniformity in international transport by harmonizing and filling gaps in existing international regimes for transport.

The CMI is expected to look at the Harter Act, the Pomerene Act and the new COGSA proposal in considering the bases for an international transport law regime, and to consider the elimination of the error in navigation and error in management defenses. Professor Sturley is drafting the liability terms and will send out a draft in advance of the CMI Study Group meeting in July. UNCITRAL has been encouraged by the progress of the Study Group.

In connection with Mr. DeOrchis' attendance as the Association's representative at the CMI International Study Group on Issues of Transport Law, the Board instructed Mr. DeOrchis that he was authorized to agree only to terms that were consonant with the provisions of the new COGSA proposal.

President McCormack reported that Michael Marks Cohen of New York, Chair of the Association's Committee on the CMI, will coordinate with other Committees and with Association members planning to attend that meeting to prepare for the plenary session in Singapore in February 2001. Those who intend to attend will be given preparatory work, and the Committee will have meetings outside those which coincide with Association meetings in order to lay the groundwork for a well-organized delegation to the Singapore meeting. The issues likely to be treated at that meeting include transport law, piracy, marine insurance, general average and repatriation of abandoned seafarers, as well as certain proposed conventions.

UNCITRAL

President McCormack reported that in July 2000, UNCITRAL will be having a two-week meeting, setting aside a day for a colloquium on issues of transport law for the CMI which Mr. DeOrchis and Michael Marks Cohen, Chair of the Association's Committee on the CMI, will attend in order provide a commercial viewpoint.

International Maritime Organization

First Vice President William R. Dorsey reported on his attendance at the IMO Legal Committee meeting in London in March. The Legal Committee completed work on the proposed Convention on Bunker Pollution, which applies to bunker spills by nontanker vessels. This proposed Convention imposes strict liability on the shipowner, the definition of which includes the registered owner, bareboat charterer and manager, all of whom share joint and several liability. Exceptions to liability are made for acts of God, intentional acts of a third party and negligence of governments. In addition, a liable party may prove that the pollution resulted solely from an act of a third party done with intent to cause damage. An owner may limit its liability under applicable national law or international regimes such as the 1976 Limitation of Liability for Maritime Claims Convention (LLMC). The proposed Convention requires the registered owner to maintain insurance that covers the liabilities imposed by the Convention in an amount up to the limitation fund that would be mandated under applicable national law, but not exceeding the fund that would be required under the LLMC. The proposed Convention also allows a direct action against the insurer, who can assert certain defenses available to the owner, other than bankruptcy or a winding up of the company's affairs. The insurer may also assert a defense that the pollution was caused by the willful conduct of the shipowner. The only outstanding matter was the tonnage of the ships to which the Convention would apply, and that will be decided at the Diplomatic Conference in Spring 2001.

Nothing substantial was achieved in connection with the draft Protocol to the 1974 Athens Convention on Passenger Claims. Questions remain about whether strict liability or negligence will be the operative liability principle, whether limitation will be allowed on a per capita or more global basis, whether the insurer can invoke concursus if there are many direct claims against the insurer, and other difficult issues on which there is a diversity of opinions. The disparity in views is so great that the work may be discontinued unless significant progress is made at the next Legal Committee meeting.

The proposed Convention on Wreck Removal did not receive attention at the Legal Committee meeting, other than a report from the Correspondence Group.

An *ad hoc* IMO/ILO working group is exploring the problems of providing for repatriation of stranded seamen and compensation for crewmember injuries.

UNESCO Convention on Underwater Cultural Heritage

First Vice President Dorsey reported on the UNESCO meeting scheduled to take place in Paris in July 2000. The Association has sent a statement, approved by the Board, to Robert Blumberg of the State Department, who heads the U.S. observer team to UNESCO. The Association expressed its concerns about the Convention as currently drafted, particularly about its effects on the Law of the Sea, extension of coastal state jurisdiction, lack of protection for property rights and insurers' rights and abrogation of the laws of salvage and finds. First Vice President Dorsey, together with John Kimball, head of the Association's Study Group on the UNESCO Convention, and Professor David Bederman, the Study Group's Vice Chair, also met with members of the State Department, NOAA and the Department of Justice, to exchange ideas and explore areas of common interest.

Unlike other delegations involved in the drafting process, the U.S. observer group has expressed concern during negotiations about the overly broad scope of the current draft's definition of "cultural heritage" and its total abnegation of any consideration of commercial interests.

While the State Department has not finally decided whether they will include an MLA representative on their team at the July 2000 drafting session in Paris, it appears likely that they will do so, and if so, John Kimball will serve in that capacity. If written comments are to be submitted on behalf of the Association, they will first be submitted to the Board.

The CMI may also become involved in the drafting process. The CMI has sent out a questionnaire and Eric Japiske is heading the CMI's study group on this subject. This topic is likely to be addressed at the next CMI Assembly meeting.

Potentially associated with the draft UNESCO Convention on Underwater Cultural Heritage are developments affecting RMS TITANIC Inc., which was awarded salvage rights to the TITANIC. In the 1980's, Congress had passed an act directing the State Department to enter into

negotiations with France, the United Kingdom and Canada to create a memorial to commemorate those lost in the disaster, but this Act lay fallow for many years. More recently, however, the State Department has been acting on that instruction and has been negotiating a treaty concerning the TITANIC and desired memorial with the nations designated in the Act. Because of the potential effect of such a treaty on the salvaging of artifacts from the TITANIC and the District Court's jurisdiction, RMS TITANIC Inc. has commenced a declaratory action in the United States District Court for the Eastern District of Virginia—the court that took jurisdiction over the vessel and awarded salvage rights.

While the TITANIC and any treaty affecting that vessel are a “one-off” situation because of the nature of the calamity and the existence of a congressional act, these subjects and the UNESCO Convention are related, particularly with respect to the concept of preservation *in situ*. The Association will continue to monitor developments in the treaty and the declaratory judgment action.

AMICUS BRIEFS

President McCormack reported on the Supreme Court's decision in *INTERTANKO v. Locke*, in which the Association had submitted an *amicus* brief. INTERTANKO expressed its thanks to the Association for its participation and President McCormack complimented the fine work of James P. Cooney, Chair of the Association's Committee on Uniformity of U.S. Maritime Law, on the Association's brief.

OTHER ASSOCIATION ACTIVITIES

First Vice President Dorsey read United States Court of Appeals Judge Niemeyer's comments from the draft Minutes of the Civil Rules Advisory Committee, who noted the extraordinary contribution of Mark Kasanin on the Admiralty Rules. First Vice President Dorsey also read a letter from Lieutenant Commander Bruce Dalcher thanking Secretary Burrell for her visit to Roger Williams University Law School to talk about the practice of admiralty and maritime law.

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There being no further business to come before the Board, the meeting was adjourned at 12:15 p.m.

Respectfully submitted,

/s/ Lizabeth L. Burrell
Secretary