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| **Reports of Officers** |
| **Source:** MLA **Date:** May 3, 2002  **REPORTS OF OFFICERS**    PRESIDENT DORSEY: Good morning, ladies and gentlemen. I'm going to call the meeting to order. I did want everybody in here and to be a little quiet right at the beginning, because this is our first meeting in New York since the events of September 11th. I think it would be appropriate if we all stood and observed a moment of silence in memory of Renée Olsen, Glenn Winuk and all of our colleagues and friends who perished in that tragedy.  (Whereupon, a moment of silence was observed.)  PRESIDENT DORSEY: Thank you.  Sadly, I'm going to note at the beginning that ill health has prevented Past President Nick Healy from attending here today. It's the first meeting in my memory that he has ever missed. It may be the first meeting he has ever missed, period. He has been a member of this organization for sixty-four years. Just think about that, sixty-four years as a member. Ed Longcope has been a member for sixty-five years. Incredible. At any rate, I understand the prognosis is favorable on Nick, and he has our best wishes for a speedy recovery.  Similarly, I want to note that ill health has prevented Dave Owen and Gray Staring and John Sims from attending. We also wish them well.  I would like to introduce a couple of our distinguished visitors. I am probably not going to get all the distinguished visitors. Actually, everybody is distinguished here.  We have, as usual, a very large contingent from Canada, and I recognize Professor William Tetley. Where is Bill? Somewhere. Not hiding; no, never.  (Laughter.)  PRESIDENT DORSEY: Peter Cullen, who was in charge of the 50thAnniversary Celebration of the Canadian Maritime Law Association; and among his talents, he's also the designer of the CMLA tie that was presented to Ray and me yesterday. Of course, I couldn't wear that tie for this meeting, but I do have the CMLA pin that Peter designed.  David Marler, who is the Immediate Past Chair of the Canadian Average Adjustors Association, is representing that Association.  Jim Gould, who is the President of the Canadian Maritime Law Association and, like me, a short-timer in that respect, is sitting in the back.  These are all very distinguished people. Professor Tetley, of course, is one of the most prolific writers on the subject of maritime law that there is, it seems to me. If you have any doubts about that, I invite you to look at his flyer for a couple of his books that is out on the table. He never misses an opportunity. Bill, it's great to have you.  To all of these people, Professor Tetley, Peter Cullen, David Marler and Jim Gould, I want to give a special word of thanks to for the courtesy and hospitality they showed to me and Anne on our trips to Canada. They truly made us feel welcome, and I'm very, very grateful.  (Applause.)  PRESIDENT DORSEY: I also understand that Jan Theunis, the Vice President of the Belgian MLA is here with us. Welcome, Jan. It is good to have you here.  I'm not sure whether David Martowski is here. I won't call him a visitor, because, of course, he's been a long-time member and a former officer of this Association, but we usually recognize the President of the Society of Maritime Arbitrators and David now holds that position. I know he was ill yesterday and couldn't attend our luncheon after the Board meeting. I want to recognize him if he is here.  Captain Joe Ahern, the Chief of the Office of Maritime and International Law of the United States Coast Guard and his assistant, Lieutenant Carolyn Leonard-Cho, are here. Welcome to both of you. You are going to be hearing from Joe briefly. Actually, Joe, you are going to be one of my first speakers when we get into the Committee reports, just a short report on what is going on with one of the initiatives in the IMO Legal Committee.  Finally, I would recognize the presence of the Chairman of the United States Average Adjustors Association, the ubiquitous and indefatigable Howard McCormack.  (Applause.)  PRESIDENT DORSEY: Just another quick announcement. I don't know whether The MLA Report is out on the table yet, but included in that Report, and also out on the table, are some flyers for a book that is to be published later this year by the Cornell Maritime Press on the *Andrea Doria* case. That book was originally written in Swedish and has been translated and edited by Past President Gordon Paulsen. I wrote a little review of the book and I'll give you a preview of my review: It's terrific.  (Laughter.)  PRESIDENT DORSEY: It is a lot of fun to read. It is interesting and fun to read for a layman, but particularly for lawyers, because the lead lawyers were, on one side, Charles Haight, assisted by Gordon Paulsen; on the other side, Eugene Underwood, assisted by Ken Volk. Three of those men, of course, were Presidents of this Association, and Eugene Underwood was one of the giants of the Bar. Now, I do say in my review of the book that it does have a slight slant toward the Swedish Line side of the case.  (Laughter.)  PRESIDENT DORSEY: I invited Ken Volk in my review, to make a rebuttal. I don't think he feels he needs to do that. But it's a good book and when it comes out you will have to take a look at it. You will enjoy it.  We can now go on to the officers' reports. Madam Secretary Burrell.  MS. BURRELL: Good morning, Mr. President, members and guests. First of all, I would like to remind all of you to sign an attendance card in order to have your attendance reflected in the minutes of the meeting. Attendance cards are available outside. Please make sure that you sign and submit one. Speakers, please give your business card to the reporter.  Since our General Meeting last fall at the Hotel del Coronado, the officers met in January and there have been two Board meetings; one on March 9th in Orange Beach, Alabama, and another yesterday here in New York. At the Board meetings the Secretary, Treasurer and Membership Secretary all gave their reports, but I will leave two-thirds of that trio to speak for themselves a little later.  The Association has continued its participation in international matters of great significance to maritime law and commerce.  One of these, about which you will hear more later, is the UNCITRAL Draft Convention on Transport Law. The Department of State has become interested in the UNCITRAL Convention, and while I'll leave the substantive issues to the members of our working group who will be reporting later, I will note that all members of the Association's working group-specifically Past President Chester D. Hooper, Professor Michael Sturley of Austin, Vincent M. DeOrchis of New York and George F. Chandler of Houston-have provided such excellent guidance to the State Department on issues of transport law that these individuals have been made official members of the U.S. delegation to UNCITRAL on this matter.  The Board also heard about the CMI International Working Group on General Average from Immediate Past President Howard McCormack, who will report to you later this morning on this subject.  In light of the difficulties encountered by the Castor, the IMO Legal Committee, at its 83rd Session held in October 2001, was given a mandate by the IMO Secretariat, working in collaboration with the CMI, to undertake a study of the legal issues relating to places of refuge. The Maritime Safety Committee of the IMO recommended the development of a voluntary regime to ameliorate these problems. To assist in this process, the CMI, in consultation with the IMO Secretariat, developed a questionnaire to gather information about the domestic law of CMI member associations on the subject of places of refuge.  The Association's response to this questionnaire, which is available on the website, was drafted by Dennis Bryant, Chair of the Association's Committee on Navigation, Coast Guard and Government Regulation, together with Professor Sam Menefee, Chair of the Committee on International Law of the Sea, Matt Marion, Chair of the Committee on Marine Ecology, Bill Storz, Chair of the Committee on Salvage, and the ubiquitous Professor Dave Sharpe.  In addition to our participation in CMI projects, President Dorsey and First Vice President Ray Hayden attended the 84th session of the IMO Legal Committee, which took place in London last week.  After September 11th, the IMO passed a resolution calling on the Maritime Safety, Legal and Facilitation Committees to evaluate on a high priority basis whether any changes should be proposed to the 1988 Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA Convention) and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf. I will refer to both as the SUA Convention.  The Coast Guard, which constitutes the U.S. delegation to that CMI, submitted a paper suggesting that the range of violent acts that should be covered in the SUA convention should be expanded, and proposed amending the SUA convention to add new offenses and dealing with other matters that also relate to associated issues, including, for example, extradition and transfer of witnesses. I will leave a report on the greater substance of those discussions to Captain Ahern, who attended that and will be leading a correspondence group to suggest proposed amendments to the SUA convention. The correspondence group will report back at the October 2002 meeting of the Legal Committee, and because of the high priority of this project, it's hoped that amendments can be drafted within a year so that the Legal Committee can recommend to the assembly the convening of a diplomatic conference.  The IMO's Maritime Safety Committee sought the advice of the Legal Committee on how it might be possible to form a clearer picture of the actual ownership of vessels seeking port entry. The Legal Committee recommended that for security purposes, the Maritime Safety Committee concentrate instead on who actually controlled the vessel, by asking three relevant questions: (1) who appoints the crew; (2) who fixes the use of the ship; and (3) who signs charter parties on behalf of the owner.  The Draft Convention on Wreck Removal was also taken up at the 84th Legal Committee session, particularly financial responsibility requirements, insurance and direct actions, and the definition of "hazard" as being both a danger to the coastline or environment and a danger to navigation. There was considerable discussion of the relationship of the Wreck Convention and UNCLOS, an issue which will require close study.  Another item on the agenda was the IOPC fund. A draft Protocol to the 1992 Fund Convention was approved, establishing a supplementary fund which would provide an optional third tier of compensation over and above those provided by the 1992 CLC Convention and the 1992 Fund Convention. The new fund will be funded by contributions from oil receivers in the state parties to the protocol. The Protocol has good chances of success at a diplomatic conference which might be convened early next year.  As for the HNS Convention, so far, only Russia and Angola have signed.  As noted earlier in connection with the CMI's role in this inquiry, the Legal Committee also discussed places of refuge and the CMI report on this subject, particularly the balancing of a state's duty to render assistance to vessels in distress with a state's right to protect its coastlines and control entry to its ports. Some states are concerned about the possibility of being liable for their actions if, for example, entry were refused and as a result of that refusal, another state's coastline was fouled. The Legal Committee expects to review any guidelines on this subject prepared by the Maritime Safety Committee.  The IMO also adopted a code of practice for investigating acts of piracy and armed robbery for ships at sea. Brazil submitted a proposed amendment so as to limit piracy to acts performed at sea, rather than in a port.  The Athens Convention, which was not on the Legal Committee's agenda, but is scheduled to go to a diplomatic conference in the fall of this year, was the subject of luncheon discussions chaired by the leader of the correspondence group and which was prompted by concern that the coverage of the limitation cap suggested in the protocol might not be commercially available. Concern began to surface in October of last year about whether or not the decision about the amount of limitation cap should be left in the hands of the diplomatic conference at which delegates might not have the sufficient commercial knowledge to know whether or not this kind of cover will be available. At the present time the figures that have been suggested as good limits seem to be about 350,000 SDR's for strict liability, and about 500,000 SDR's and overall limit to be covered by insurance.  Another item of interest in the international sphere is that in an attempt to salvage something from the stalled draft convention on reciprocal enforcement of money judgments, the Hague Convention is trying to find agreement on a forum selection clause convention. Jeffrey Kovar of the U.S. State Department has requested the Association's views on such a convention, and a group involved in this subject, including Board member Alan van Praag, CMI committee chair Michael Marks Cohen, and the Association's UNCITRAL working group, will make recommendations to the Board what formal response should be made.  The final item among the international issues is the UNESCO Convention on Underwater Cultural Heritage was passed and will probably at some point come into force. I believe that John Kimball, who is the Chair of the Association's Study Group on this subject, will be speaking to you about this later.  Moving on to the domestic matters, Past President Jim Moseley reported on his attendance at the ABA House of Delegates and what happened there, but he will report separately on the substance of those discussions, too, in a short while.  The Marine Financing Committee proposed writing to the Coast Guard concerning vessel documentation matters, and I am sure the chair, Sandy Knapp, will tell you more about this later.  As for the Maritime Criminal Law and Procedure committee, in response to a request to President Dorsey by a member of the staff of Senator Patrick Leahy, chair of the U.S. Senate Judiciary Committee, Thomas M. Russo, incoming Chair of the Association's Committee, traveled to Washington, D.C. to meet with Senator Leahy's staff to answer questions about the consequences and effects of including various proposed criminal provisions in the Port and Maritime Security Act currently under consideration by Congress.  The Practice and Procedure, chaired by James W. Bartlett, III, reported its concern about proposed revisions to Federal Rule of Civil Procedure 53 that would, *inter alia*, prohibit anyone who had been appointed a master from appearing before the judge who appointed him or her, and create other problems in connection with masters. Because of a tight deadline for comments, Mr. Bartlett sent a letter with the Committee's comments on February 15, 2002 to the Secretary of the Committee on Rules of Practice and Procedure of the Administrative Office of the United States Courts. The Board unanimously adopted the letter sent by Mr. Bartlett, and authorized President Dorsey to communicate the Association's endorsement of Mr. Bartlett's letter. You will hear more about the activities of that Committee, which has been very active in the last six months, a bit later.  Last June, President Dorsey, with the Board's approval, had submitted comments to Wayne Positan, Chair of the ABA Commission on Multijurisdictional Practice, urging the Commission to provide a safe harbor for maritime lawyers who cross state lines to provide advice and services to their clients. Last November, the Commission issued an interim report, in which it proposed a new model rule that adopts in part the recommendation of the Association concerning a safe harbor, but places that provision in a section dealing with temporary rather than long-term provision of services.  Michael Marks Cohen pointed out that the proposed model rule did not provide adequate protection to maritime practitioners who might be called upon to advise clients in other states on a long-term basis. The Committee therefore drafted a further letter, recommending an appropriate revision to the model rule, which was approved by the Board and signed by President Dorsey. It appears, however, that the Commission will maintain the safe harbor provision as its stands.  At the March Board meeting, President Dorsey commended the Special Committee on Planning and Arrangements for the Fall 2001 General Meeting for making the meeting such a success despite the exceptional circumstances. President Dorsey also commented on the resolution shown by the over three hundred members and guests who attended that meeting only a month after the terrorist attacks, some coming from across the world to show their support.  The Board also amended Association By-Law 210 to move the Fall meetings in years ending in even numbers to the first Friday in November.  The Association was requested to enter an *amicus* appearance in three cases, and agreed to enter in one, *Sprietsma v. Mercury Marine*. In *Sprietsma*, the United States Supreme Court had already granted *certiorari* to consider whether or not state law claims for failure to install propeller guards on recreational boats are preempted by the Coast Guard's decision not to mandate such equipment in the Federal Boat Safety Act. In fact, this is the Court's second grant of *certiorari* on this issue, having earlier heard argument in *Lewis v. Brunswick Corp.*, which then settled. Josh Force, chair of the Young Lawyers Committee, has been selected to write the Association's brief, and reported to the Board about the status of the matter. The Association's brief is due on May 20th.  President Dorsey reported on his participation as an oral argument judge in the Judge John Brown Moot Court Competition, and the awarding of the Association's Best Brief award. Two teams-the University of Richmond and the University of Texas-tied for this award.  Finally, congratulations were offered to Board member James K. Carroll on his election to the vice chairmanship of the ABA's Torts and Insurance Practice Section.  Mr. President, that concludes my report and I respectfully move its adoption.  PRESIDENT DORSEY: Is there a second?  (A chorus of seconds.)  PRESIDENT DORSEY: Any discussion?  (No response.)  PRESIDENT DORSEY: All in favor say aye.  (A chorus of ayes.)  PRESIDENT DORSEY: Opposed?  (No response.)  PRESIDENT DORSEY: Then the motion is carried and the report is adopted. Another tour de force. Can you imagine, we had our meeting yesterday morning and all these matters were discussed and Liz comes up with a report like that in the space of less than a day. She has been a wonderful Secretary. I couldn't have done anything without her. She makes me look good in print. Makes us all look good in print, as a matter of fact. So, Liz, thank you very much.  I forgot to mention when I was talking about the book edited by Gordon Paulsen that he and Janet just celebrated this week their 50th wedding anniversary. So, congratulations.  (Applause.)  PRESIDENT DORSEY: Now we will hear from Pat Bonner.  MR. BONNER: Currently we have $294,000 in the treasury. This is a little bit better than last year. That's primarily due to the profit we made on the Del Coronado meeting. I would like to thank JoAnne Zawitoski and Tony Whitman and everyone else on that Committee for this result.    A big item in our budget is the international travel, and currently we're funding travel on four major projects in four different assemblies. The first one is the IMO Legal Committee. Usually the President or Vice President attends these meetings, which are held every six months or so, and they act as advisors to the United States delegation. The second one is the UNCITRAL. We have three delegates on the UNCITRAL working group on Transport Law. The third project is the UNESCO Convention on Underwater Cultural Heritage. The rapporteur is a member of the MLA. The fourth one is the CMI Working Group on General Average. We also have a representative on that. These are all valuable projects and the MLA is paying the travel costs for these members and a *per diem* stipend which partly covers the hotels and food.  The biggest items in our budget are the printing costs and postage; and you all should have received the 228-page Marine P&I Annotations in the mail for free. I will tell you as Treasurer I was really of two minds about giving something away for free, but it is a benefit of your MLA membership. Many firms and members have asked for additional copies which we are giving to them at cost, $10 each. I don't think you are going to get another marine law textbook for less than $10. If you want any additional copies, please see Jean Knudsen or myself after the meeting.  In an effort to reduce our printing costs, you all received a postcard with the latest MLA Report, asking if you wanted to opt out of receiving the reports by mail and instead receive them by e-mail. So far we have had about 250 people who have elected to opt out, which is environmentally friendly and saves us money besides. If you are interested in opting out, you will receive a notice on the e-mail when each new document is available and you can print it off the MLA web page. If you would like to do that, send an e-mail to me or the MLA administrator, Robin Becker, or see me, and I'll add you to that list.  That concludes my report, Mr. President, and I move its adoption.  PRESIDENT DORSEY: Is there a second?  (A second.)  PRESIDENT DORSEY: All in favor say aye.  (A chorus of ayes.).  PRESIDENT DORSEY: Opposed?  (No response.)  PRESIDENT DORSEY: The motion is carried and the report is adopted. Patrick, thank you very much. With all the foreign travel we've had, we have had really a lot of pressure put on us from the financial standpoint. Fortunately, because of Marshall Keating's long tenure, we had a substantial kitty to rely on. Now the job and the task is to build up that kitty once again, and with Pat Bonner's help we're making a very good start. I get a memo once a month from Pat telling me what we have done so far, what the requests are for future travel. He has been a terrific Treasurer and a worthy successor of Marshall Keating.  Thank you very much, Pat.  MR. BONNER: You're welcome.  PRESIDENT DORSEY: There are plenty of seats right up here in the front, if you would like to take a seat. I promise not to call on you. Now we'll hear from the Membership Secretary, Winston Rice.  MR. RICE: Thank you, Mr. President.  I begin by regretting to advise you that since the last general meeting of the Association I have learned of the death of the following among our membership: Jim Campbell of New Jersey; Brunswick Deutsch of New Orleans; Dave Gilchrist of New York; John Hanninen of Ohio; Neil Hobson of New Orleans; Eamonn McGeady of Baltimore; Judge Nauman Scott of Louisiana; Judge Albert Stephens of California; Dewey Villareal of Tampa; Douglas Wynn of Greenville, Mississippi; John Young of Virginia; and former longtime member David Kerr of Tampa.  Mr. President, I ask that we observe a moment of silence in the honor of the passing of these members.  (A moment of silence was observed.)  MR. RICE: Thank you.  As of yesterday morning, or sundown the day before yesterday, more specifically, the membership of this Association was comprised of 3,215 total across our several categories of membership.  At its meeting yesterday, the Board of Directors, acting on the recommendation of the Committee on Proctor Admissions, approved the election of the following seven members to proctor membership in the Association: Lawrence Arcell of New Orleans, F. Nash Bilisoly of Norfolk, Jeffrey Carra of Long Beach, Mark Ercolin of Fort Lauderdale, John Kawczynski of New Jersey, Paul Lees of Gloucester, and Louise Livingston of San Francisco.  In addition, the Board, also acting on my recommendation, elected 12 new associate members, these being in addition to the 26 new associate members approved by the Board of Directors at its meeting in Orange Beach on March 9th of this year.  Also yesterday, the Board of Directors, acting on the recommendation of the Membership Secretary and another group, approved the election of the following three non-lawyer members: John Ring of New York, David Hornish of New York, and Shawn Crawley of Long Grove, Illinois.  With these actions by the Board of Directors, and taking into account the attrition in our numbers by virtue of deaths, resignations, et cetera, we find ourselves this morning with a net gain of 22 members over that number which existed a couple of days ago. As of this moment in time, Mr. President, the number of our members is 3,237.  I would also advise in closing my report that the preparation of the printed form of our membership directory is well under way and should be awaiting only the corrections, additions and deletions made necessary by the elections which occur at and contemporaneously with this meeting; so that my successor in office, whoever that might be, should have no excuse for any delay in distribution of the directory any later than sometime in July, this summer.  I thank you, Mr. President. This constitutes my report and I move its adoption.  PRESIDENT DORSEY: Is there a second?  (A chorus of seconds.)  PRESIDENT DORSEY: All in favor?  (A chorus of ayes.).  PRESIDENT DORSEY: Opposed?  (No response.)  PRESIDENT DORSEY: The motion is carried and the report is adopted.  This completes, as you all know, Winston's four years as Membership Secretary. He has been more than just a Membership Secretary; he's been a terrific advisor among the officers and a great source of assistance to me. He has done a wonderful job on the Directory. As you know, he's revised the history of the Association that appears now in the Directory.  As you just heard, it looks like he's going to set, with the assistance of his successor, of course, an all-time record in getting the Directory into your hands following this meeting. So, Winston, the monks on Staten Island have been at work and we have to show our appreciation we have a testimonial to present to you (handing).  The Maritime Law Association of the United States presents this Testimonial of Appreciation to Winston Edward Rice in recognition of his distinguished service as Membership Secretary during the years 1998-2002.  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.    /s/ Lizabeth L. Burrell /s/ William R. Dorsey, III  Secretary President    (Applause.)  MR. RICE: Thank you. |