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| **Reports of Officers** |
| **Source:** MLA **Date:** October 1, 1999  PROCEEDINGS  PRESIDENT McCORMACK: Please come in and take your seats and we'll get started.  I'll be calling on various Committee Chairs who have indicated that they wish to report on the activities of the Committee, or the Committee Vice Chair.  Ladies and gentlemen, I now call to order the second session of our Centennial meeting of the Maritime Law Association at the Hyatt Regency Hotel. I want to commend to all of you the Centennial issue of the MLA report which is in the back. I would ask that all of you take a copy of it. You will also be receiving a copy in the mail. This is due to the substantial efforts of my partners, Gordon Paulsen, Leroy Lambert and Matt Marion. Matt Marion is here. This is a labor that they've undertaken and Matt has been the one with the laboring oar on this and I want to publicly thank him for his activities.  You'll be getting in the future another usual MLA report with Committee reports and other items but this issue is basically Centennial related. We have one other item that goes back to last November for those of you who weren't able to attend at NYU for Lord Mustill's Nicholas J. Healy lecture. We're fortunate to have Lord Justice Mustill prepare his comments and send them to us. Everything else is essentially related to the Centennial celebration, particularly Judge Haight and his speech on May 3rd at St. Paul's Chapel in New York, the speeches at the opening of the Blue Ribband Exhibit at the Courthouse by Judge Griesa, Judge Haight and, of course, the Admiralty Judge from the United Kingdom, Mr. Justice David Steel, as well as the papers that were given at the Friday professionalism seminar presented by the Association of Admiralty Law Professors. I suggest that you take a look at some of those fine speeches.  If you weren't at the Thursday night activity at the courthouse, you really missed not only a very interesting exhibit, but the talks by Judge Haight and Justice Steel were just absolutely outstanding. Judge Haight, for those who are not from New York, was the grandson of Charles Haight, the founder of the Haight Gardner firm, and had been with Haight Gardner for many years until he became a judge in 1974. To the extent that we could consider someone in our Southern District of New York an admiralty judge, like the English Admiralty Judge David Steel, Terry Haight would fit that category. To have two such marvelous speakers and absolute fantastic gentlemen to come and join with us in New York for our Centennial was quite a coup.  When I was in London the following week at the Average Adjusters meeting I took up David Steel's invitation to visit his chambers. All I can tell you is that I think the law clerks in Terry Haight's office have bigger chambers and rooms than Justice Steel has. He's on top of a new building and was showing me the various robes he would wear depending on the time of year, et cetera. Justice Steel has no law clerk. He writes his own opinions and does his own research. You can now understand then why some of these judges have to be fantastic lawyers.  Justice Steel did us proud in coming to New York. He was delighted to come. You will see in the special edition of the Proceedings the report on the Friday special session of the Centennial meeting where both Terry Haight and David Steel had some very interesting comments directed toward each other. They met each other some years ago and are genuine friends. All I can say is read that special edition when it comes out. There will be reminisces from up to 30 people in our Association, some of who spoke that day, but, due to the time element, a good number of them did not. You will get a tremendous sense of the background of the MLA history and what it was like to practice some years ago with some very fascinating thoughts from our members.  I intend to send a copy of the Special Proceedings to all our foreign guests who attended the meeting in May, as well as all of the Presidents of the Maritime Law Associations that make up the CMI. This Centennial was a special event for us in New York, I want to make sure that we share some of those comments at the meeting and activities with our fellow practitioners of maritime law.  With that I now start with the official meeting.  I call upon our secretary, Liz Burrell, for her report.  MS. BURRELL: Good morning, Mr. President, members and guests.  First, as a matter of order, please do remember to sign in on one of the sheets that are at the table in the back of the room so that your attendance can be reflected in the record of this meeting.  Secondly, if you are going to be speaking today, please make sure to use the microphone in the front and also please hand a business card or some other record of your name to our reporter so that she can make sure that your name is in the Proceedings and I can get the transcript to you for any necessary corrections.  As President McCormack has already mentioned, there will a special edition of the Proceedings of our Spring Centennial meeting. That edition will be a commemorative booklet that will form a souvenir of our very memorable celebrations. In addition, there will be a separate booklet recording the business Proceedings of that meeting. You will be receiving those fairly soon in the mail.  The Board met on August 25th in part through a telephone conference--a very successful "first" for this organization--and also twice this week here at the Hyatt. At those meetings we had reports from the treasurer and the membership secretary from whom you will hear later.  We also had reports from President McCormack on his activities on behalf of the Association since our Centennial meeting. These included his attendance as our representative at meetings of the British, Canadian and U.S. Average Adjustors Association, MICA and SEALI, as the moderator of the BIMCO Time Charter Seminar, and as a speaker at the Tulane Admiralty Law Institute and the Houston Marine Insurance Seminar, at which he delivered a paper discussing the Fourth Circuit's recent decision in the *Titanic* litigation entitled, *The Titanic Venture: Who Owns the Ocean Deep?*  President McCormack also reported on the success of our Centennial meeting in May, particularly the very favorable reactions from both our foreign guests and our members who came from all over the United States to make it such a success.  As usual, much of the Board's consideration at their meetings is devoted to the reports and activities of our various Committees and study groups. The study group on the ALI Restatement of Marine Insurance has been very active and has produced an excellent outline of a proposed Restatement of Marine Insurance. President McCormack transmitted this outline to the ALI, but the ALI decided not to take up this project, at least at the present time.  The Environmental Crimes Subcommittee, which is headed by board member Fred Kuffler, has gathered information about the Coast Guard's All District instruction on dealing with possible maritime environmental crimes. The Subcommittee is also looking into the possibility of meeting with the Environmental Crimes Subsection of the Department of Justice to see whether we can do something to improve the state of the law in this area.  The Marine Finance Committee has changed the language in some proposed amendments to the Fair Debt Collection Practices Act in order to accommodate other interests and thus make this amendment more likely to pass. The Board therefore passed a resolution this morning authorizing the Committee to modify the language of their original amendment as appropriate to enable this legislation to come into force. You will hear more on this subject from Bruce King, Vice Chair of the Marine Finance Committee, who will report later.  The Association continues to be more and more active in international events, as well, and have a greater voice in international groups. At the August 25 Board meeting President McCormack reported on the considerable efforts that have been devoted by the Association and many of its members to answering CMI questionnaires on the subject of marine insurance, general average and transportation of goods. The CMI Executive Council will be considering the issues and the responses on these questionnaires at its next meeting in London.  At the Board meeting this past Monday, Michael Marks Cohen, Chairman of the Association's Committee on the CMI, reported on the efforts that Committee is undertaking to prepare for the next plenary session of the CMI in February 2001 in Singapore. He also reported on the issues that are likely to be treated at that meeting, which include transport law, piracy, reinsurance, general average and repatriation of abandoned seafarers, as well as certain proposed conventions.  Chairman Cohen also reported on new projects that will be undertaken by the CMI Committee, such as the possibilities of denouncing conventions and of codification in domestic legislation of certain conventions to which the U.S. has not become a part, for example, the 1910 Collision Convention, with appropriate modifications to accommodate our domestic law on issues such as innocent cargo. He is being assisted in this latter project by Bob Zapf, Chair of the Practice and Procedure Committee, and Bob Parrish, Chair of the Committee on Navigation, Coast Guard and Government Regulation.  Finally, Mr. Cohen reported that certain nations that are substantially in arrears on their CMI dues have been given until November 11th to pay up or be expelled. We will watch with interest to see whether this will actually come to pass.  First Vice President Dorsey reported on the meeting of the IMO Legal Committee which has been going forward in London as we have been meeting here in Orlando. Our Immediate Past President, Jim Moseley, is attending as the advisor to the U.S. delegation and he has been sending us reports all week, which is indeed quite interesting because things have been changing very rapidly. For example, at our last meeting in May it appeared that the Protocol for 1974 Athens Convention on Passenger Claims was so near to completion and finalization that it might indeed be ready to go into a final draft at the current meeting of the IMO Legal Committee and thereafter presented at the next Diplomatic Conference. Many issues raised this week, however, seem to have put it off track. Some of the issues were surprising simply because of their timing, including questions about provisions for direct action, higher limits, jurisdictional provisions and personal accident insurance. These issues must be resolved before there can be further progress on that Protocol. On the other hand, the Bunker Pollution Convention, which is also on fast track, was in fact finalized and should be ready for presentation to a diplomatic conference next year.  First Vice President Dorsey also reported that there is a meeting this week of a joint working group of the IMO and the ILO to address the issue of repatriation of stranded seafarers. The Board also heard about the discussions our Association representatives have had with our government representatives in the Department of Justice, NOAA, the State Department and other agencies about the proposed Convention on Underwater Cultural Heritage. The purpose of our discussions is to try to explain the position of the Association that salvage law, which is part of the traditional maritime law, need not be abrogated in order to achieve the objectives of the Convention. Salvage law, together with the supervision of historic sites which the Courts have exercised in recent cases, can better accomplish the goal of preserving cultural heritage than the proposed Convention's current provisions, which might inadvertently impair the value of underwater cultural heritage. Further reports will be forthcoming.  Mr. Alan van Praag reported on his attendance at the Hague Convention on Private International Law and the drafting session on the Proposed Convention on Jurisdiction and Recognition and Enforcement of Judgments. Mr. van Praag attended as the Association's advisor to the U.S. delegation which was led by State Department members. The U.S. State Department had actually originated the idea of such a convention because, while foreign judgments are generally enforceable in the U.S., judgments of U.S. courts are often not enforced. The proposed Convention was designed to redress this. Unfortunately, however, because of differences in notions about jurisdiction, the current draft poses several problems for maritime practitioners. Our concerns are that judgments based on the seizure of property--one of the most traditional ways of proceeding here--would not be enforceable under the current draft, and other bases for jurisdiction--for example, doing business here--are also not recognized as adequate by this Convention. The maritime plaintiffs' bar is also concerned about the automatic enforcement of forum selection clauses. We therefore have some issues that need to be dealt with in order to preserve rights of our clients. The Board therefore resolved and authorized President McCormack and Mr. van Praag to try to work out solutions to these problems to be included in the proposed Convention.  Another area that the Board addressed at both meetings was developments on our COGSA proposal. I will not say much about this because you will be hearing more from Mr. De Orchis, the Chairman of that Committee, very shortly. In view of the changes that we have had in the Senate draftsmanship and also in view of the fact that certain industry groups have to be accommodated in order to make this legislation passable, the Board authorized the Committee and its Chair to try to work out solutions. Indeed, there had already been such resolution, but I will read you the resolution that was passed on Monday:  WHEREAS the Maritime Law Association of the United States ("MLA") drafted a Proposal for a new Carriage of Goods by Sea Act, which Proposal was reviewed by the membership of the MLA, and adopted by a clear majority vote at the General Meeting in New York in April, 1996, and  WHEREAS the MLA has been seeking to obtain the support of Congress to enact the Proposal, and  WHEREAS various industry groups have approached Congress in an effort to make modifications or adjustment to the Proposal so as to obtain the approval of their respective groups,  NOW, THEREFORE, BE IT RESOLVED, that pursuant to Section 701.2 of the By-Laws of this Association, that the President of the MLA be authorized to appoint a representative of the MLA to present the Association's views to Congress and where necessary to consent to modifications or adjustments suggested by other industry groups, so long as the spirit and intent of the Proposal adopted by the members at the General Meeting in April, 1996, is maintained as closely and as reasonably as possible.  The Board also voted to authorize an *amicus* brief in the *INTERTANKO* case. That brief is going to be drafted by the Chairman of the Uniformity Committee, Pat Cooney, who will report to you more fully this morning.  Finally, First Vice President Dorsey raised what might be called the "Bob Force challenge." Those of you who were at the Tulane Seminar last March may recall at that meeting Professor Force advised that there have been recently some very significant challenges in scholarly articles to a tenet which this Association holds very dear, which is that the U.S. courts have the power not only to adjudicate maritime cases through procedural jurisdiction, but also have the power to formulate substantive maritime law. Some recent articles have been very persuasive in making the opposite argument, and there is some concern that they may be taken as an accurate statement of the power of the U.S. courts.  Professor Force has suggested that we urge members to publish articles that support the position of the Association, *i.e.*, that the Federal Courts indeed have the power to formulate as well as to apply maritime law, and consider publishing a collection of essays and writings on this topic. Indeed, Professor Force and Professor Gutoff have recently published excellent articles in which they express the view also espoused by this Association. I would urge you all to consider writing on this very important topic and to justify the position that is so fundamental to this Association.  In addition, anyone who is involved with or hears about a case involving the presentation of these issues for adjudication is asked to please get in touch with First Vice President Dorsey or any of the other Board members or officers so that we can determine whether or not it may be appropriate to intervene as *amicus* in such a case to present the Association's position.  If we do not take action and try to be persuasive about the point which we do hold central to our whole purpose, then we are really in danger of having maritime law become fragmented into a collection of differing state laws, impairing if not destroying the principle of uniformity which this Association is designed to uphold.  Mr. President, that concludes my report and I respectfully move for its adoption.  PRESIDENT McCORMACK: Do I hear a second?  (A chorus of seconds)  PRESIDENT McCORMACK: Any discussion?  (No response)]  PRESIDENT McCORMACK: All in favor say aye.  (A chorus of ayes)  PRESIDENT McCORMACK: Any opposition?  (No response)  PRESIDENT McCORMACK: The secretary's report is adopted. Thank you very much, Liz.  I now call upon our treasurer, Patrick Bonner, for his report.  MR. BONNER: Thank you, Mr. President.  Before I start, I ask if Phil Berns could check the door to make sure nobody smuggles in any tomatoes or anything like to throw at me before I finish.  The reason for that is, as I reported at our last meeting, our finances are down. The amount that we have in our treasury is down and this trend has continued over the last five months. We have about $160,000 to last us until we start collecting dues again in February and this is substantially lower than where we usually are in our dues cycle.  Now, there are a lot of reasons for this. I think the first main reason is the cost of printing and mailing. This is the largest number in our budget and this has gone up by 50 percent in the last two years.  The second highest cost is the cost of the Centennial. This cost us over $100,000 and it was a lot of different things. It was the cost of the event planner and the party at the courthouse. We had a cocktail party at the courthouse many of you attended. It was the cost of bringing Judge Steel over from London. It was the cost of the CMI cocktail party. It was the cost of the Boathouse. There were a lot of things that went into this Centennial.  The next item or factor that has cost money is COGSA. Vince De Orchis and others have made many trips down to Washington and we've spent a lot of money. This is our proposal. If it gets through, it will be fabulous, but it has cost money.  Another factor is that our group, the MLA, is being asked by the United States government more and more to attend international meetings on international conventions. We usually have one or two people at the IMO meetings. We had someone at the Arrest Convention and we also are heavily involved in the UNESCO Convention. Again, all of this costs money. There's international travel involved and it's something that we're getting more and more into.  We also had to update our database. We had a Y2K problem. We've taken care of that and Winston Rice has set up a webpage. Again, all of this costs money.  Now, in order to keep the Association active and continue with our activities, the officers recommended to the Board that the dues be increased. The Board of Directors approved this unanimously and the dues will be $125 for regular members and $100 for members who were admitted less than five years ago. I believe the dues increase will help the Association to maintain its preeminent role in maritime law and will help us to continue to fulfil our goals.  This concludes my report, Mr. President, and I move to adopt it.  PRESIDENT McCORMACK: Do I hear a second?  (Chorus of seconds)  PRESIDENT McCORMACK: Any discussion?  (No response)  PRESIDENT McCORMACK: All in favor say aye.  (Chorus of ayes)  PRESIDENT McCORMACK: Any opposition?  (No response)  PRESIDENT McCORMACK: Thank you. The report of the treasurer is adopted.  I now call upon our membership secretary, Winston Rice, for his report.  MR. RICE: Thank you, Mr. President.  I am indeed delighted to report that our website located at www.mlaus.org is up and running. Upon this site you'll find it displays our articles of incorporation, bylaws, statement of our history, but most importantly, the database of our membership as is currently reflected and has historically been reflected in our printed directory. This is searchable geographically, as well as by lawyer name and firm name. As we continue to receive and post information to our database, we will update it with a view toward allowing anyone searching the site to link to an E-mail format to individual members or to the webpages of our firms. Additionally, there is an area of the site devoted to useful links. We invite your suggestions for links of interest to our membership and to the marine community and at large to which access might be gained from our site.  We are very hopeful that the establishment and maintenance in proper form of this website will assist us greatly in bringing under control our printing and mailing expenses from this point forward. Any suggestions you may have about the content and construction of the website would be appreciated. We exhort you, and I use that with a capital E, exhort you to complete and return to Robin Becker at PC Solutions in Buffalo the form or update of your membership information which was sent to each of you as an enclosure with the President's most recent newsletter. We've got the information up for everyone to see and we want it to be the correct information. The way we get that done is having it posted to the database and then uploading to the website.  We really believe this is a great step forward for us and we look forward to its use in better serving you, the members, and in making your identity and availability more easily known to your established clients and potential clients.  I'm pleased to note, as will be reflected in my report that follows, that we have seen an upswing in the number of associate lawyer members who have applied for and indeed achieved what I'll call, for lack of a better term, upgrading of their membership status from associate to proctor. Anyone who attends mandatory CLE and does so with a view towards learning more and more about the maritime practice will find that after the requisite number of years, they have easily satisfied the requirements to move from associate to proctor member. I urge you to make application for such if you haven't already. It is not a daunting process. It does require a half hour or so of filling out the form and getting together the necessary history and information.  Along membership lines, I also request that you continue to prompt, urge or otherwise secure the attention of interested members of the judiciary in becoming judicial members of our Association. We have not had as many of these come aboard in the last year or so as we would like. I think that we have been well served by having judicial members and that the judicial members themselves have been well served by being a part of our Association.  Toward this end, I make a plea to you to reach out to your colleagues both in your own and in other firms, as well as to your adversaries with whom you might be practicing in the maritime field and urge them to apply for associate membership in the Association.  The dues are not great; the benefits are. We believe that the more interested and qualified people we have come aboard the easier it will be for us to accomplish some of the great goals that your Board of Directors and officers have identified and established for the Association.  Mr. President, I'm pleased to report that the Board of Directors has approved the proposal for a new ex-officio member, Doug Larsen, counsel to the Military Sealift Command in Washington D.C.  The Board has also approved the proposal of the Honorable Carolyn Dineen King of Houston, a judge of the United States Court of Appeals for the Fifth Circuit, to become a new judicial member. Earlier this week the Board approved the proposal of the following individuals to become nonlawyer members in this Association: Frank Belinske, OSG Ship Management of New York; Michelle O'Donovan, International Marine Underwriters of New York; Elizabeth Smith, Reliance National Insurance of New York; and Ronald Smith, Disney Cruise Line here in Orlando.  The Proctor Admissions Committee has met and recommended the following seven associate lawyer members be advanced to proctor status: Scott Bluestein of Charleston, Mike Gardner of Virginia Beach, George Jones of Long Beach, Katie Matison of Seattle, Chris McGrath of Houston, Mike McLeod of Fort Lauderdale and Jeffrey Putnam of Houston.  Additionally, Mr. President, I'm delighted to report that since our meeting in New York in May we have received and the Board has approved the applications of 33 new associate members. I'll refrain from reading out their names, which will be in the report of the Proceedings.  Obviously there is a widespread interest in the Association and my goal as an officer and Board member is that we maintain the head of steam which we've built and move forward.  Mr. President, I regret to report that since our meeting in New York in May we have learned of the death of the following members: Walter Maloney of Convent Station, New Jersey, and Harry Gavalas of New York.  Additionally, I regret to advise the death on July 10, 1999, of Ann Lucas of Philadelphia, wife of our member Henry Lucas, and an outstanding participant in not only our New York meetings but these resort meetings. Ann was well-known to many of you as an all-around great sport, participating and sometimes winning in both golf and tennis tournaments at these away meetings, and certainly a bon vivant, mother and extraordinarily ardent support of the MLA. Annie, we'll miss you, Hon.  With these changes our membership status is now as follows: Honorary members, four; Ex-Officio members 13; Judicial members, 157; Academic members, 60; Proctor members, 1,706; Associate members, 1,406; Nonlawyer members, 272; for a total membership of 3,618.  This ends my report and I move its adoption.  PRESIDENT McCORMACK: Do I hear a second?  (Chorus of seconds)  PRESIDENT McCORMACK: Any discussion?  (No response)  PRESIDENT McCORMACK: All in favor say aye.  (Chorus of ayes)  PRESIDENT McCORMACK: Any opposed?  (No response)  PRESIDENT McCORMACK: The report of the membership secretary is adopted. Thank you very much. |