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| **Reports (Oral) of Standing Committees** |
| **Source:** MLA**Doc. No.:** 754**Date:** November 3, 2000Reports (Oral) of Standing Committees Fall 2000PRESIDENT DORSEY: I think now we turn to the Committee meetings and reports of the various Committees, and we'll lead off with a topic of some interest, and that's from Bob Connor and the Carriage of Goods; and next up will be Michael Sturley, who will talk about the work of the International Subcommittee of the CMI on Transport Law.So first, Bob.MR. CONNOR: Mr. President, members, good morning. I am lucky to go first. Everybody is still awake in the back of the room.Where are we on COGSA? Well, the good news and the bad news: The good news is it is still alive. The bad news is it is still without a bill number and languishing somewhat in Washington.This is an election year and there are other things on the people's minds in Washington with next Tuesday's election coming up. But it is not forgotten. As you also know, we worked hard on drafting a proposal a few years ago, but we must rely on the voices of those in the industry in order for Congress to take a serious interest.We had some good news this summer. Bob Motley from the American Shipper asked Senator Hutchinson about her thoughts on the proposed legislation, and she responded that she is still behind the bill. She believes that it is not perfect, but that the objections being raised can be worked out in much the way the Shipping Reform Act worked.The question is what happens next. What Washington needs is letters and communications from shipping interests saying we need this bill.At our Committee meeting on Wednesday morning, we discussed some recent events. One topic was the impact of the Sky Reefer decision, which is being applied not only to arbitration and litigation among carriers and NVO's, but also stevedores, terminal operators and, yes, in the last two months a judge in New Jersey sent Conrail to Korea to litigate an action-I might add a large $7,000 action. I should also add on that case, we contacted a lawyer in Korea just to say, okay, let's go ahead with this thing to teach someone a lesson, and we were actually told the Korean court under no circumstances was going to take jurisdiction of a dispute between Chicago and New Jersey by Conrail. So, needless to say, that is back before a New Jersey judge at the moment. This is an issue that is coming up, it is affecting all of our clients, and it is something we have to deal with.The second thing, at our meeting we also discussed the position of the CMI, and what is starting to happen and what has happened so far. I'll yield to Mike Sturley in a minute to tell you exactly where they are. I think the good part is that the CMI has turned up the heat, and they are starting to move much faster on what they are doing on an international basis. I think everybody agrees that one of the reasons for this is our Association's position on the new COGSA and it is giving something for the rest of the world to think about.There is a report available on the draft of the CMI position paper at the moment. Anybody who would like a copy of this, it is in the 21st Century in the computer world, if you contact me atwconnor@bejh.com or George Chandler at whatever his address is, we can e-mail it to you with an attachment. It is forty pages. If you want to do it the snail mail way, write me a letter, give me a phone call, and then I will copy and mail to you. It is very interesting.At this point I'll yield to Mike Sturley and he'll tell you exactly where they are going. Thank you, Mr. President.PRESIDENT DORSEY: Michael Sturley, and then next will be Michael Marks Cohen on the CMI.MR. STURLEY: Mr. President, fellow members, I'm happy to report that our COGSA proposal is definitely having an impact. I speak today as the rapporteur of the CMI's International Subcommittee on Issues of Transport Law.It is clear not only from the meetings of the International Subcommittee, but also from the meetings of the Working Group, the smaller body that serves as something of a steering committee for the International Subcommittee, that our COGSA proposal is definitely one of the prime motivations for international action in this field.Now, I understand that there are copies of the draft outline of an instrument that was discussed at the October meeting of the International Subcommittee available on the table. I should caution you that these drafts are somewhat like the sample CDs that AMC is distributing. They will expire very shortly. Anew version of the outline instrument will be finished by the end of next week. So if you want to ration your reading time, you may want to wait until the new version comes out and take a look at that.As I think most of you know, the CMI has been working on this project for almost three years now at the invitation of UNCITRAL, the U.N. Commission on International Trade Law. And the expectation is that the project will ultimately see its conclusion under UNCITRAL'S sponsorship, we hope with an international diplomatic conference to adopt a new instrument.I'm going to focus now on what we hope to accomplish in Singapore and what our tentative schedule is for after Singapore, just to update you on where we think we are heading. Of course, none of this is yet carved in stone.There will be three papers included in the CMI Yearbook that will be distributed before Singapore. The first of those will be the draft instrument, a current copy of which is out on the table, the new version of which will be available in a week or so. This draft instrument will not be discussed as such. It will be there in the background; it will be an annex to the things that are discussed. We do not want to go through the draft instrument section by section. This gets people bogged down in minor drafting points rather than focusing on the big issues. And with the limited time we have in Singapore, we want to focus on those big issues and get some guidance from the plenary conference on what the CMI thinks about the approaches that we are taking on those big issues.The other two papers will be an agenda paper that seeks to identify the big issues and focus attention on them, and then a separate issues paper addressing what we are calling the door-to-door issues-the extent to which any new instrument will govern beyond the traditional tackle-to-tackle period in the Hague-Visby Rules.Everything recognizes that we're going beyond the tackle-to-tackle period. The question is how far beyond are we going to go. That is going to be one of the hot topics in Singapore, and we are having a separate paper focusing on those issues.So in Singapore we will not discuss the outline instrument as such, but we will focus on issues such as how broad should the scope of coverage be, what sort of liability approach should we take, to what extent should performing carriers be subject to the regime. These details will be discussed in the Committee report that you will have available.Although the discussion in Singapore is going to focus on these hot topics, the National Maritime Law Associations will be encouraged to submit written comments on any and all issues raised by all three of these papers. Even though we won't have time to discuss every detail in Singapore, if this Association or any other Association wishes to express a position or make an objection to anything that is going on, that will be encouraged.The Singapore conference will not be asked to vote on the draft. Obviously, if we are not even discussing the draft as such, it won't come up for vote. We anticipate that the only formal vote will be on a resolution that will endorse continuing the work.So, Singapore is not the end of the process; it is a step along the way of a process that will be ongoing for several years to come.Now, our post-Singapore conference is still very tentative, but let me outline for you what the tentative schedule is at the moment. We anticipate that probably in May 2001 the International Subcommittee will reconvene to finalize a consultation paper. A revised draft instrument will be attached to this consultation paper as an annex and the consultation paper will be distributed to all of the National Maritime Law Associations in the CMI and to the various industry groups that have been participating in this process as part of the CMI round table. Through UNCITRAL, the consultation paper will be distributed in the six official UN languages to the governments represented in UNCITRAL.The purpose of the consultation paper is to seek reaction and commentary; to consult with all of these interested organizations and get their views on what we are doing, where we are going, and how we should be proceeding.We want to make sure that everybody has enough time to react to the consultation paper. One of our problems at the International Subcommittee meetings is that the papers have not been available very far in advance before the meetings. So we're going to give several months for this consultation paper to be considered and discussed. We anticipate that responses will probably be due in October 2001.The working group will then study the responses, and based on the responses draft a further revision of the instrument. That draft will then be discussed by the International Subcommittee sometime in early 2002, we anticipate. Unlike the typical International Subcommittee meeting, which normally lasts a couple of days, we anticipate having about a week-long International Subcommittee meeting-in other words, something that at least in substance is much more like a CMI Plenary Session than a traditional International Subcommittee meeting. In fact, it will give us more time than in a Plenary Session because we won't take a break in the middle of the week to go out sightseeing. Thus, we'll have a solid week of work going through the draft in detail and preparing something that can then be submitted to the CMI Assembly at the 2002 Assembly meeting.The CMI Assembly, we hope, will then send this forward to UNCITRAL so that UNCITRAL can formally create a Working Group and begin the UNCITRAL process. UNCITRAL has made very clear that it does not want a finished instrument to rubber stamp at the end of our process; what UNCITRAL wants from the CMI is a draft that can form the basis for work in UNCITRAL.I might add that UNCITRAL has been participating in our process right from the beginning. For three years now, we have had UNCITRAL representatives at our meetings. Jernej Sekolec has been participating as a member of the Working Group. So UNCITRAL is very involved in what we are doing and they are very eager to begin working on this process and this program as soon as possible. Indeed, they would like to do it even faster than I've outlined. We hope that we can stick to the schedule that we have outlined.Once UNCITRAL begins its process, it is going to be at least a couple of more years, and quite possibly longer than that, depending on how much consensus there is and how quickly we're able to continue moving there. The CMI will continue to be part of that process even when UNCITRAL takes over. Just as UNCITRAL has worked closely with us in the CMI, the CMI will continue to work closely with UNCITRAL in the future work here. This is very much a cooperative effort.I think what I've outlined is an ambitious schedule. It is going to take a lot of work to stick to this schedule. But even with this ambitious schedule, you can see that we are at best talking about 2004/2005 before there can be a diplomatic conference, and obviously sometime after that before any work product coming out of that conference could be ratified and take effect.For those of you who wish to keep up-to-date, or get copies of the drafts, George Chandler is the contact person for distributing these. Contact George, give him your e-mail address, and as soon as the drafts come in he will distribute them to anybody who wants a copy. We anticipate that there will be quite a bit to be distributed, if not at the end of next week at least the following week.In short, there is a lot of stuff coming out of the Transport Law project. I encourage you who are interested in this to follow it. Contact George Chandler to make sure that you are on the list and kept up-to-date.Thank you very much.PRESIDENT DORSEY: Thank you, Michael.PRESIDENT DORSEY: Before Michael Marks starts on the CMI Committee report, I just might comment that I intend to nominate Professor Sturley, Larry Bowles, and Vincent DeOrchis as new titulary members of the CMI and the vote on that will come up at the CMI Singapore Conference.Next we will have Michael Marks Cohen, Chairman of the CMI Committee, and coming up after him Tony Whitman on the Coronado meeting. I want to take him out of turn to make sure that everybody here gets to hear what he has to say.(Applause.)MR. COHEN: Thank you, Mr. President.The CMI will meet in Singapore from Monday, February 12th to Friday the 16th. There are very inexpensive hotel rooms available for people attending, and I estimate that the airfare will be about a thousand bucks round trip if you want to go economy class. On the other hand, if you want to fleet up, if you have an American Express Platinum Card, you can get two business tickets round trip for about $6,000.The meetings will go Monday, Tuesday, maybe on Wednesday-it is not clear what the tours will be on Wednesday-Thursday, and there will be a Plenary on Friday and a banquet that evening, which will not be black tie.The delegation will arrange breakfast every morning that there are meetings to be held. These are Dutch treat affairs. You will be billed. The idea will be that we can get together and discuss what events we expect to encounter during the day.You have already heard from Michael Sturley about issues of transport law. There are three other issues that will be taken up in Singapore, one on marine insurance. We do not have any documents as yet, but whatever documents that will become available for discussion will be published in the Yearbook.Graydon Staring is the head of our delegation on marine insurance. Jean Knudsen of the Marine Insurance Committee has already had two meetings in preparation for Singapore, and a third one is planned in January. If you want to attend the meetings or if you want to get the materials on insurance, get in touch with Jean and she will send them to you.There will be several issues of marine insurance to be taken up. It is not clear what the outcome of the discussions will be. There has been a suggestion that the Norwegian professor who has been doing the comparative law work in reporting the answers to the questionnaires is going to propose what are called "solutions" to areas of marine insurance that have problems in them. But it is not clear what our Association or what the CMI is expected to do with these proposed solutions, that is whether or not they are supposed to be endorsed in one way or the other.Turning to another topic, general average, again, we don't have any discussion document. The head of the delegation is Howard Meyerson, former Chairman of the Average Adjustors Association. Jean's two meetings on marine insurance also cover general average, and again there will be a third meeting on that in January. The general average proposals originated in IUMI, the International Union of Marine Insurance. Some IUMI members have made a proposal to eliminate expenses for common benefit from general average. There is no support for that whatever in our Association.There are, however, two possible issues; one involving time bar-whether there should be a uniform time bar for general average claims in the Antwerp rules. Another possible issue is whether the CMI ought to look at eliminating the reallocation of salvage in general average.The very most that we could expect to come out of the Singapore conference about general average would be some support for forming a working group to look into these matters.The fourth topic is piracy. Frank Wiswall and Sam Menefee have been very active in that. George Gabel is the head of the delegation.There is now a draft model law which is being considered, especially to deal with piracy in territorial waters. It is expected that the CMI will approve the draft or something very close to it and then attempt to market it to governments in order to enact national legislation.There will be two seminars, one on the Comparison of Liability to Passengers in Air Travel and Cruise Ships, and a second on the Implementation of the 1976 Limitation of Liability Convention.For those of you who are trying to convince your firms that they should let you go to Singapore and maybe even support you there, everybody who goes is either going to be an official "delegate" appointed by the President, or, the title of everyone else, will be "alternate." If you are planning to go to Singapore, please let me know so that we can put you on the list and you can get all the information and notices in advance.Just one other quick word about a Committee project, and that is to recycle advance sheets and obsolete maritime law treatises to the law schools of universities abroad. This project is being greatly assisted by the Young Lawyers Committee representative, Mark Kremin of Burke & Parsons. There are seven law firms in our Association that are taking the advance sheets, which they would normally throw into the dumpster once they have the bound volumes, or the earlier editions of maritime law treatises that also would go into the dumpster once the new editions come along, and instead sending them to the maritime law libraries of universities abroad which have requested such materials. For example, Nourse & Bowles is sending their stuff to Chili; Freehill, Hogan & Mahar to China; Mike Snyder's office to Croatia; Phelps Dunbar to Croatia; Burlingham sends its excess books to Malta; Hill, Rifkins to South Africa; and the Calvesbert firm in San Juan is sending materials to Spain.Please don't throw these books away. The universities abroad simply do not have hard currency to buy American legal materials and they would very much like to get the cast-offs from us. I already have three other law schools abroad who have asked for donor law firms. If any of you can convince your firms to participate in this project, it would be greatly appreciated.Thank you, Mr. President.(Applause.)PRESIDENT DORSEY: Thank you, Michael. Just two comments on Michael's report.Michael is working very hard to make sure that the delegation that does go to Singapore is the best prepared and best organized delegation that we have ever sent to a CMI conference. Because I know Michael's diligence, I am confident he will be successful in that regard. He is already well ahead of the game. I can't tell you how much I appreciate that, because I haven't been to that many CMI conferences, and so I'm relying on him quite heavily to assist me in that regard, and he has done so admirably. I appreciate it, Michael, very much.The second thing I want to emphasize is what Michael suggested about sending your name in. If you are going to Singapore, please let him know that you are going. Do not assume that because you have registered with the conference that we will be able to get a list of registrants from the conference. Indeed, do not assume that when you register, you will even get a confirmation from the conference, because I registered in August and asked for a confirmation, got none, sent an e-mail out asking for confirmation again and have gotten nothing back for that. I felt very badly about it, as did Patrick Griggs, the President of the CMI in London, as he indicated he hasn't gotten any confirmation on his reservation, either. So I didn't feel so bad about that.I think they're getting better, and I think some people have heard from them. But it emphasizes the fact that we want to know who is going so that we can give you the letter and so that we can have you participate in the work that is going to take place and to put you in one of the groups with which you want to work.Next is Ann Miller, Cruise Line, and then we will have Glen Oxton for the Electronic Communications Committee.MS. MILLER: I am happy to be able to talk to you very briefly, I promise, about the Athens Convention for Carriage of Passengers and their Luggage by Sea because it will be one of the first-although the Cruise Committee has done and does a lot of substantive things-and most visible efforts of our Committee to help President Dorsey and the Board of Directors.Most of the time when people ask me what Committee I am chair of, I say the Cruise Committee, and they think that I am a party planner with a maritime venue. So this project will allow me to talk substantively about what we are doing.We had yesterday a meeting that was much more sparsely attended than usual. Usually we have about fifty people there, but I think it was one of the most substantive and one of the best discussions we have had.We were given a presentation by Captain Ahern, who has been introduced by President Dorsey, and we also had Commander-and that is a promotion, I'm told-Bruce Dalcher there. The promotion to Commander was announced by Captain Ahern yesterday. They were both there and gave a report on the IMO.We had the participation of three of the P&I clubs: Dick Corwin, who is a regular attendee at our meetings from the Gard, and Karen Hildebrandt, who is now with the UK Club, and Pamela Milgrim, who is with Skuld. We are getting, in addition to the regular Committee members who are practicing lawyers, the involvement of the P&I clubs in our Committee, so that we can in the next year work very substantively to gather information and to give input to our representatives to the IMO Legal Committee.What has happened is this: In the last few years the IMO Legal Committee has been discussing protocols, changes, if you will, to the Athens Convention. When we first talked about this, it was actually Malcolm Williams who came to our Committee, and he gave a really good presentation. I asked him at the end of his talk about the chances of a protocol coming into effect and furthermore, what is the chance that the United States will ever sign on to one of these Conventions?Captain Williams was very discreet, but the message was clear: There wasn't very much chance of this going ahead at all and the U.S. would probably never sign on. Well, that has changed, significantly, I believe. President Dorsey, you can correct me if I'm wrong, but I believe we saw the biggest change in this most recent IMO Legal Committee meeting in October in London. That change has been mostly promulgated by the Japanese. The Japanese nation has been putting forward positions that I believe are now taking shape and becoming accepted. It looks as if the United States is even becoming very interested, because while there will be various issues addressed, while there will be some form of strict liability for which damages may be capped, perhaps, and while there may be a negligence standard for other types of incidents on cruise vessels without damage caps, perhaps, but with a reverse burden of proof, there may also be the possibility to have some unlimited liability, which has been a prerequisite for United States participation.Historically, with few exceptions, the United States has not been willing to sign on to Conventions which limit the possibility of U.S. citizens getting unlimited awards in appropriate cases.It looks as if there is a very significant chance that this Protocol will be the subject of a diplomatic convention about a year from now. It will not be addressed at the March meeting, the next meeting of the IMO Legal Committee. There are very critical issues which remain unresolved at this point. It is very unusual for there to be a diplomatic convention with so many critical issues yet unresolved, jurisdiction being one of them, limits being another, and statutes of limitations being a third, and there will be many others.We will be looking to you to give input. We will be looking for comments from the P&I clubs, as well as the cruise industry. This is going to be our first opportunity to work hopefully with the International Council of Cruise Lines in order to come up with positions that ought to be accepted, ought to enable a usable convention to be entered into, one which the U.S. will sign.PRESIDENT DORSEY: Thank you.(Applause.)PRESIDENT DORSEY: It raises the prospect of whether or not the United States may want to come on board on this. We're going to go check on this, but the other aspect was that the current proposal has been sanctioned-that may be too strong a word-but apparently at least agreed to by the P&I clubs and the International Chamber of Shipping. Indeed, they were pressing for an international solution, because what they are afraid of is that if there isn't an international solution quickly to the question of cruise passengers, that various nations, particularly in Europe, will go off on their own with their own regimes.Interestingly enough, just to show you how this compromise plan has developed, for years the Greek delegation has taken a consistent approach against the Japanese proposal and voted for retention of the current liability regime in the Athens Convention. Well, at this meeting of the IMO Legal Committee we did not hear one single word from the Greek delegation. They didn't say a thing. Of course, the reason they didn't say a thing is the recent Greek ferry disaster. So there has been a change in the attitude, and we want to see what our position is going to be, and Ann's Committee is going to take that over and advise the Board in that respect. And I'm looking forward to that advice.Glen Oxton, Electronic Communications, and then next Dr. Wiswall.MR. OXTON: Thank you, Mr. President.The Electronics Committee has essentially three items to report.First, yesterday we had an excellent presentation from the Eastern District of New York concerning their electronic court filing system. Those administrators have told us that the Federal Courts in 2003 will be using 100 percent electronic filing. So it is something we all need to know about. It looks to our Committee like a very good system. It is running very well in the Eastern District, where they run 25 percent of their cases now on electronic filing. The Committee will look into having a repeat presentation at one of the future meetings, which will be available to the general membership to see just how this works.The second item is that the Committee is working on the MLA document library for the website, which we hope to complete within the next two or three weeks. Initially the library will contain the MLA Report, the full text of the MLA Proceedings, and the President's Newsletter. It will have membership applications that you can download. As Tony Whitman mentioned, we will put up the information on the San Diego meeting with links to the golf courses and all the other events. And we hope to put up *amicus*briefs on the site. Basically we have the ability to put up any kind of document that is of use to the Association. I encourage the Committee chairs, rather than spending $500 in photocopying and mailing, to e-mail me the document and I will put it up on the web under the Committee reports and newsletters section. We have to keep in mind that this library is available to everyone in the world, so it must consist only of public documents. We are looking into the feasibility of adding past reports and past proceedings. That depends on file formatting and the cost and so on. We are still investigating that.When the library is completed or up and running, the Committee is very interested in investigating the possibility of putting up on the website discussion forums for each Committee. This would essentially be an area where each Committee chair would start a topic and people could make comments on that topic and those would all be listed. You could click on it and read it. There could be a check-off box. If you wish to receive these by e-mail, you check off a box and when someone posts a comment you will get it by e-mail. A lot of people find this floods their e-mail box, so if you don't want that, you wouldn't check the box.One of the issues in this type of arrangement is whether it should be open to the public or whether it should be private. The Committee's sense at the moment is that it is probably better if it were private, members only, to encourage a more full and free discussion. The only way to do that is to assign password user names, which is more involved than simply putting up a discussion forum. But we will look into that once the library is ready.That concludes my report, Mr. President.PRESIDENT DORSEY: Thank you, Glen.(Applause.)PRESIDENT DORSEY: We are feeling our way in this, but we have got the right man on the job to help us in the project. Next is International Law of the Sea, Sam Menefee, and after that Lisa Reeves on Limitation of Liability.PROF. MENEFEE: Thank you, Mr. President.The Committee on the International Law of the Sea met at the Whitman Gallery OF the South Street Seaport Museum. First up for discussion was the status of the 1982 Convention, and actions taken at the Meeting of States Parties. At that meeting, suggestions were made for the formation of three voluntary trust funds. The first would deal with submission of cases to the International Tribunal for the Law of the Sea; the second two relate to the Commission on the Limits of the Continental Shelf. One of these would aid developing country participation at meetings, while the second would provide assistance and training for lesser developed states to prepare submissions to that Commission.The International Tribunal discussed regulations, with there being some objection to the concept of weighted voting. The Tribunal, which moved to new quarters near Hamburg in July, has considered five cases thus far arising out of the 1982 Convention.The International Sea Bed Authority signed an agreement with Jamaica concerning its headquarters and has finalized a draft mining code which was adopted by consensus in July.There have been two interesting recent controversies dealing with international law of the sea. The first involves the Caspian Sea, with Russia and Iran claiming that it is not covered under the 1982 Convention and Kazakhstan and Azerbaijan claiming that it***is*** governed by the Convention. The other problem has not resulted in official government action yet, but there has been pressure in Tonga to claim hundreds of new marine organisms that have been discovered by a joint French and Australian expedition to the Tonga Trench as national property.We had a report from Bob Blumberg of the State Department concerning the current status of the Draft UNESCO Underwater Cultural Heritage Convention, and we also considered the problem of piracy. According to statistics provided by the I.C.C. International Maritime Bureau, there have been 161 attacks in the first six months of this year. That is a rise of almost fifty from a similar period last year. Almost two-thirds of these attacks occur in four areas of the world: Bangladesh, India, Indonesia, and the Sinapore Strait area.We have also handed out copies of a Draft Model of International Law prepared by the Joint International Working Group for Uniformity of the Law of Piracy and Maritime Violence, and there was some discussion on this. The Draft has also recently been provided to the CMI Committee. There are a few copies left over and anybody who wants a copy can get one from me on a first come, first served basis.That concludes my report, Mr. President.PRESIDENT DORSEY: Thank you, Sam.(Applause.)PRESIDENT DORSEY: Lisa Reeves next, and after Lisa we will have Matt Marion on Marine Ecology.MS. REEVES: Good morning, everyone. I wanted to report to you today that later this month the Supreme Court will hear oral argument in a case called *Lewis versus Lewis and Clark Marine*. That case involves both the Limitation of Liability Act and Rule F, and it's the Rule F section that our Committee is most concerned about.The issue is whether a District Court should retain jurisdiction in a single claimant adequate fund case where the claimant in the State Court action did not ask for a jury trial, which is a rather unusual circumstance. The District Court lifted the stay so that the claimant could proceed in State Court once the claimant had filed the appropriate stipulations.The Eighth Circuit reversed, finding that the "saving to suitors" clause grants claimants a choice of remedies and not a choice of forum. In addition, the Eighth Circuit discussed the ship owner's right to seek exoneration, a right which appears in Rule F, but is not mentioned at all in the Limitation of Liability Act.In its petition for *certiorari*, the claimant has argued that by creating a cause of action for exoneration, Rule F improperly exceeds the scope of rule making authority conferred by the Rules Enabling Act. I promise I won't read you too much of this, but I think it's important: The Eighth Circuit had said that the idea of exoneration is more than just a procedural adjunct to limitation, and that such a characterization is reinforced by the dictates of Supplemental Admiralty and Maritime Claim Rule F. Beyond that, it went on to say that in the *Lewis and Clark* case, the complaint specifically sought exoneration from or, in the alternative, limitation of liability, and that Lewis and Clark's right to seek exoneration is properly within the exclusive admiralty jurisdiction of the Federal Admiralty Court.The court went on in just a footnote to say that although the Supplemental Rules can obviously not enlarge rights conferred on ship owners by the Limitation Act, that they enhance the understanding of the substantive rights involved in limitation proceedings, including the right to exoneration and limitation. So, obviously the claimant had raised this issue before the Eighth Circuit.The concern is why the Supreme Court took this case. It could decide the case simply on "saving to suitors" clause, but we don't think it's a very sexy issue. We don't think that it's likely this situation will happen often because most single claimant situations are often personal injury claims, and the claimants almost always ask for a jury trial. I guess things are a little different in St. Louis, which is where this took place.We think they may be looking at Rule F, and given Justice Scalia's strict constructionism, there is some concern there.For those interested, the District Court's opinion can be found at 31 F. Supp. 2d 1164, and that's the Eastern District of Missouri 1998. The Eighth Circuit's opinion is at 196 F.3rd 900, and that came down in 1999.Oral argument will be held before the Supreme Court on November 29th at 10:00 a.m., and I or someone from the Limitation Committee will be present and will report on what our impressions were at the May meeting, assuming, which I think is safe, that the decision hasn't come down by then.Thank you very much.(Applause.)PRESIDENT DORSEY: Thank you, Lisa. Matt Marion, Marine Ecology.MR. MARION: Good morning. The Marine Ecology Committee met Wednesday afternoon. We received reports from Committee members concerning pending civil and criminal proceedings arising out of oil spills, as well as regulatory developments at both the State and Federal level. I'll touch on a couple of those reports this morning.In the aftermath of *INTERTANKO*, I think we've seen a more cooperative approach from the States, at least with respect to those areas clearly covered by the *INTERTANKO* decision. The State of Washington has withdrawn its BAP regulations. Several other states have eliminated or delayed implementation of regulations which appear to conflict with *INTERTANKO*. We take those decisions as a favorable sign in the short term that States are reading *INTERTANKO* and taking its prohibitions seriously.The corollary of that restraint, however, is that States are taking the *INTERTANKO* decision's prescriptions seriously as well. That is, States are becoming more active in those areas where*INTERTANKO* has not foreclosed state regulation. Those areas include nontank vessel response plan requirements, ballast water regulations, and restrictions on the operational discharges from cruise ships. Thus, the work of the Committee in monitoring the State laws and regulations is not done.In the North Cape oil spill in Rhode Island, the responsible party recently entered into a consent decree settling the natural resource damage claims brought by Federal and State trustees. Under the decree the responsible party will pay $16 million, of which about $8 million is earmarked for lobster and wildlife restoration.In one noteworthy Circuit Court decision, a Ninth Circuit panel in*UNOCAL v. United States* upheld a jury's $4.6 million award in favor of a pipeline owner after the pipeline ruptured during a ground excavation. The spill totaled about 45,000 gallons of crude oil, of which a small amount entered state waters. In what may be good news for responsible parties, UNOCAL had prevailed at the trial level under its sole cause third-party defense. The Ninth Circuit upheld this aspect of the decision; however, it rejected UNOCAL's demand for attorneys' fees and for declaratory judgment from the trial court that it was no longer a responsible party and should not be listed as a waste generator on the hazardous waste manifests.One likely consequence of the Ninth Circuit's decision is that even innocent responsible parties must clean up spills and independently seek cost recovery from third parties in court or from the oil spill liability trust fund.On the subject of criminal proceedings, the Committee received a report from Fred Kuffler, chair of the Environmental Crimes Subcommittee. I understand that Fred will be giving a report this morning, so I'll defer to him on that subject.We also received a report concerning an indictment this past week of the master of the Neptune Dorado. The vessel did not actually spill oil, but the master was charged with knowingly concealing from the Coast Guard a seepage of oil into the vessel's ballast tanks, and with falsely reporting that certain noted deficiencies had been corrected. Each charge carries a potential five-year jail term, and there have been suggestions that the indictments will not stop there.In a development since our Committee meeting two days ago, indictments were unsealed against the master and chief engineer of a vessel called the Freja Jutlandic and against two shoreside supervisors, including the vessel's designated person under its ISM certificate, for criminal discharge, false reporting, and so on.Needless to say, the criminalization of marine incidents remains as a matter of enormous concern to the Committee, and we'll continue to monitor that trend.That concludes my report. Thank you.PRESIDENT DORSEY: Thank you, Matt.(Applause.)PRESIDENT DORSEY: The subject of criminalization of pollution matters is going to be on the agenda for the Tulane conference in March.MS. KNAPP: Good morning, everybody. I would like to take just a few moments to inform you of many the different kinds of activities the Marine Finance Committee has engaged in. Since May, the following has occurred:Our Tax Subcommittee has commented on and is keeping an eye on proposed regulations under Section 883, the Internal Revenue Code, regarding exemptions from taxation of international shipping companies.Our U.S. Citizenship and U.S. Coast Guard Subcommittee sent a comment letter to the Coast Guard regarding an affidavit they are requiring under the Foreign Leasing Section of 46 U.S.C. at 12106(e), which relates to foreign leasing companies owning vessels engaged in the coastwise trade, provided they meet certain requirements.We also followed a legislative proposal to amend the same Section 12106(e), and we also followed another legislative proposal to permit a notice of claim of lien be filed against any vessel. As you know, right now a notice of claim of lien cannot be filed unless there is a ship mortgage of record with the Coast Guard.Although we couldn't take any official positions on any of these proposals, we followed them closely with a great deal of effort by some of our members; and we want to continue to monitor them and perhaps work with other MLA Committees, especially on the notice of claim of lien provision. There are many emotions with respect to that, and we want to keep following it.At our meeting we authorized a study group to be formed to keep track of some Coast Guard regulations that are coming out this winter, and they will be published before our May meeting, so we need to address them pronto.We closely monitored some fishery regulations having to do with ownership structures and U.S. citizenship requirements; these, as you know, arising out of the American Fisheries Act.Charley Donovan of San Francisco and his small team will continue to monitor UNIDROIT and how it affects liens worldwide.We're following an Ohio Federal case which may affect self-help procedures for vessels, which is on appeal at the moment.We heard at our meeting, interestingly, about vessel title insurance. This is akin to your title insurance on your residence and is now available for vessels and aircraft and other equipment.We had two attorneys from the Maritime Administration attend our meetings and also an attorney from the U.S. Coast Guard.We are looking to establish an informal group of bankruptcy attorneys with maritime bankruptcy experience.We encourage you, if you know of anyone that is not active in the Marine Finance Committee now, please contact Jon Arnason here in New York City if you know someone who is interested or if you personally are.We are also going to follow some changes that are afoot in the Liberian Maritime Laws and Corporate Laws. There is a new Jamaican Registry which we are following. So you can see there are many varied substantive issues with which we're involved.This is my rookie year as Chair. I'm very interested in the flow of information among Committee members. I definitely want to work with Glen on setting up a discussion forum or a chat room for our members so that information can be spread easily.Thank you, Mr. President.PRESIDENT DORSEY: Thank you, Sandy.(Applause.)PRESIDENT DORSEY: Sandy, just one point of clarification: I understand that the notice of lien claim section you are talking about was not submitted as an MLA proposal, but was a proposal by some members of the MLA who have a position on this matter.MS. KNAPP: That's right. The proposal was submitted towards the end of the session and it did not pass, but there were some members of the MLA seeking to have it passed. And we are told that it is inevitable that it is going to happen, and we need to just monitor it.PRESIDENT DORSEY: Thank you very much. Jean Knudsen, and following Jean Knudsen, Don Kennedy on Maritime Arbitration and Mediation.MS. KNUDSEN: Thank you, Mr. President. Good morning, ladies and gentlemen.To supplement Michael Marks Cohen's comment about the CMI, I would just like to remark that Gray Staring has been appointed to represent our marine insurance issues. Trine-Lise Wilhemsen, the Norwegian law professor who has written an excellent presentation is in the process of updating it and we expect to get it before the end of this month. If anyone is interested in receiving a copy of the report, please let me know and let me have your business card and I'll mail you one as soon as I get the latest one in.Our Committee met and we distributed our semiannual newsletter. I want to thank Gene George, Josh Force and George Freehill for preparing this letter.Our Committee has reviewed the various projects which we are currently working on, and I'm delighted to announce that the P&I Annotations have been completed. They are currently being sent to the editors for review, and we hope for publication in the spring. It is an excellent work product, and I know it will be of great use to our members, and we look forward to having it published.I want to thank all those individuals who contributed to the P&I Annotations, and in particular to Simon Harder for gathering the information and bringing it to a conclusion.Also, we have two relatively new projects.Rick Stone of our GA Committee had started a working group to issue a letter of guarantee form for standardization in the industry. And if anyone is interested in working in that group with Rick, please give him a call or let me know and I'll put you in contact with him.Also, John Woods, vice chair of our Hull Subcommittee, is starting his working group on reviewing the hull clauses, and several people are interested in participating, but if anyone else would like to join, please let John and I know.Marion McDaniels mentioned at our meeting that the Houston Marine Insurance Seminar group finally have their website up, and all the speeches from the various seminars are now available. The address is www.houstonmarineseminar.com, and it's all one word. So, at least now we can access the excellent speeches that are on the website.I would like to mention before concluding that with the CMI issues of general average and marine insurance, we really don't know exactly what is going to happen in Singapore. And we have been meeting, as Michael mentioned, and we will have another meeting in January, as information is given to us as to the subjects. We hope that there won't be any surprises and we'll do our best to prepare so our delegates I know will do an excellent job.Thank you very much. Thank you, Mr. President.(Applause.)PRESIDENT DORSEY: Thank you. Donald Kennedy for Maritime Arbitration and Mediation, and after that Charlie Donovan for Maritime Criminal Law and Procedure.MR. KENNEDY: Thank you, Mr. President.As you may have noticed, the name of the Committee has changed to include mediation. This week at our meeting Bobby Glenn and Jay Paré organized a mediation program, and we had with us as speakers Paul O'Brien from Stolt-Nielsen, and Andy Tsukamoto from Maersk Sea-Land. They shared with us their experiences with arbitration, mediation and resolving maritime disputes. And I want to thank them all for their excellent program.The major work of the Committee this past six months has been preparing amendments to the Federal Arbitration Act. The amendments and the rationale for the amendments are included in the MLA Report. They will also be included in the record of this proceeding today.Basically there are four amendments that we're proposing. They relate to consolidated arbitration, appointment of a second arbitrator, subpoena powers of arbitrators, and correction of mistakes or errors in arbitration awards.We have submitted the proposed amendments to the AAA, the American Arbitration Association. They have certain issues about the Federal Arbitration Act. They are different from our issues. And we'll, quote, get a reaction from them. When we get their reaction, which I think will take a month or two, we will kind of go back and huddle and see what we want to do about it. And if we decide to go forward with it, presumably in May we would come to the Association for resolution.Thank you.PRESIDENT DORSEY: Thank you.(Applause.)PRESIDENT DORSEY: Don is also on the U.S. Delegation of the UNCITRAL working group on arbitration and is a very valuable member of that group. According to the State Department, he's doing a terrific job. Thank you, Don, for your activity in that respect, as well.Charley Donovan for Maritime Criminal Law and Procedure, and next Harold Watson for Maritime Legislation.MR. DONOVAN: Thank you, Mr. President.We had a very varied meeting, and I would like to thank Joe Ahern, Bruce Dalcher and Chris Argenti from the Coast Guard for having made the meeting considerably more lively and educational. I won't go through everything that our Committee covered in its meeting; however, there are two items that I would like to call to the attention of the general membership.In May of 1999 our Committee drafted a criminal law checklist for maritime lawyers responding to maritime accidents. From Fred Kuffler's Subcommittee on Environmental Crimes we have gotten some suggestions for revisions to that checklist, all of which we think are improvements; and so we will put out a Version 2 of the checklist and it will be available on the website. The first version has been considerably used by P&I Club's lawyers and others responding to these sorts of incidents. If you are not familiar with it, check the MLA website and you will be able to find it there.The second item that I wanted to call to the attention of the general membership is a document that has become known as The Holder Memorandum. The Holder Memorandum was issued by Deputy Attorney General Eric Holder of the Justice Department, and it provides in seven or eight pages guidelines that the Justice Department should consider in deciding whether to charge a corporation with a crime; that is not an individual, but charging a business, a corporate entity with a crime. And one of the considerations that Deputy Attorney General Holder expressed was the cooperation of the corporation in the investigatory process of the Justice Department itself, including possible waiver of the attorney-client privilege by the corporation and waiver of the attorney work product privilege.The American Corporate Counsel Association has reacted with consternation to the suggestion. And at the President's request, our Committee has considered it, as well. We believe this is a very dangerous element to include in the decision on whether to prosecute or not, and that this Association should go on record as opposing this as being one of the factors that the government might consider. But, of course, no one in our Committee wanted to write the letter to the Justice Department.(Laughter.)MR. DONOVAN: But happily-PRESIDENT DORSEY: Leave that to me, I suppose.MR. DONOVAN: But happily Helen Benzie has volunteered to write it so that President Dorsey can send it to the Justice Department. We'll be preparing that and getting it up to him shortly.That concludes my report.Thank you.PRESIDENT DORSEY: Thank you.(Applause.)PRESIDENT DORSEY: Harold Watson, and next John Schaffer on Maritime Personnel.MR. WATSON: Thank you, Mr. President and fellow members.The Maritime Legislation Committee met yesterday and we the discussed the various pieces of legislation and various legislative proposals that we have been monitoring on behalf of the Association. Since most of these have been discussed or will be discussed by other Committee chairs, I won't go into detail on all those.Among the things we discussed were the notice of claim of lien legislation, the OPA 90 amendments, and potential amendments to the Death on the High Seas Act that would allow passengers on nonrecreational vessels to make a claim for nonpunitive damages.I would like to say that one of the primary functions of our Committee is to monitor and serve as a clearinghouse for information on legislative proposals dealing with maritime affairs. We do subscribe to a publication and disseminate that information to the substantive Committees. I would ask that if any of you know of legislative matters that you would contact us and make this more of a two-way street so that we can be of more service to the Association.Thank you very much.PRESIDENT DORSEY: Thank you, Hal.(Applause.)PRESIDENT DORSEY: John Schaffer, and next after John will be Dennis Bryant.MR. SCHAFFER: Good morning, everyone.The Maritime Personnel Committee met yesterday afternoon, and I'm pleased to report that we had twenty-five members and guests participate in a lively conference.We discussed the Coast Guard Authorization Act of 2000. Rumor has it that the bill, if enacted this year, may contain a provision amending the Death on the High Seas Act to change the portion regarding marine deaths to resemble that for aviation deaths occurring more than one marine league from shore. In other words, recovery for loss of care, comfort and companionship would be allowed for deaths of passengers on vessels other than a recreational vessel.We understand that the Senate has passed such a bill. We also understand that it is unlikely that amendments along this line will be enacted this year.In addition to monitoring the potential changes to the Death on the High Seas Act, we continue to keep our eye on developments in the area of the law of punitive damages. We also discussed tort reform.The Personnel Committee also talked over and reviewed several recent decisions from all around the USA involving issues facing vessel owners, employers and clients.We welcome suggestions from the Association for new and interesting projects. We are always looking for additional members and significant decisions.Thank you very much. That concludes my report.PRESIDENT DORSEY: Thank you.(Applause.)PRESIDENT DORSEY: Captain Bryant for the Navigation Coast Guard and Government Regulations Committee and Jim Bartlett for Practice and Procedure Committee will be next.MR. BRYANT: Thank you, Mr. President.We had a well-attended meeting on Wednesday afternoon. And I want to thank Captain Ahern and Commander Dalcher for participating in our discussions. We look forward to continuing to work closely with Captain Ahern in the future, as we did with Captain Williams previously.I also have spoken to Tom Panebianco, the General Counsel for the Federal Maritime Commission, and he indicates a willingness to participate in the work of our Committee and the MLA in the future.I'm trying not to repeat a lot of the things that have been said before, particularly by the Marine Ecology Committee and the Maritime Criminal Law and Procedure Committee. Suffice it to say that criminal law is increasingly important in the maritime industry and the EPA is a growing force.I would commend to your reading the recent Cruise Ship White Paper issued by the EPA. It lays out a series of Federal laws that the EPA enforces and how they perceive the cruise industry in particular. The industry may not be fully in compliance with that. It ends with kind of a note that other vessels in the marine industry may also not be in compliance with the same provisions, but doesn't explore it any further than that. I would note also that Carnival Cruise Lines was recently served with a subpoena that smacks of follow-on to the RCCO case or cases, as it may be.The filing of reports with the government by the marine industry is receiving increasing scrutiny by the Federal agencies. In the two cases that were discussed previously, the ship in Baltimore and the ship in San Francisco, charges against both of those vessels revolve around filing inaccurate reports with the Coast Guard. It is a criminal offense to knowingly file a false report with the Coast Guard or any other Federal agency, and the Coast Guard is taking it very seriously. Pay attention. Tell your clients to pay attention.Ballast water. The government just issued its first annual report on the Ballast Water Management Program, and it states that in the first year that the statute was in effect, participation by the marine industry was 20.8 percent. The significance of that is that the statute says that it is a voluntary program for the first three years. If there is not substantial participation in the voluntary program by industry, the program becomes mandatory with all of those wonderful features such as vigorous Coast Guard endorsement. So, encourage your clients to participate in the voluntary program, otherwise they will be participating in the mandatory program.We will continue to try to expand our involvement with other Federal agencies.One final item to pay attention to: The FMC is looking into a recent development on the lower Mississippi River involving the use of exclusive tug contracts. A number of the granaries in particular along the lower Mississippi River have said when you bring one of your ships into our dock, you must use the tug company that we have made prior arrangements with. Surprisingly, the rates for using those tugs have gone up over what they used to be when you could negotiate on your own.It is unclear whether the FMC has jurisdiction over this matter. They realize that and will look into it. But it is a problem area and has expanded apparently to the Columbia River in Washington and Oregon.And also recently we have heard that at least one granary on the lower Mississippi River is saying you must use our shipping agent, you cannot use your own shipping agent for your loading of cargo at our facility. It is a growing problem. The FMC is looking into it. We need to pay attention to it.That concludes my report. Thank you.PRESIDENT DORSEY: Thank you, Dennis.(Applause.)PRESIDENT DORSEY: Thank you also for your daily e-mails that keep me posted on what is going on in Washington. Jim Bartlett next for Practice and Procedure, and then Jim Shirley for Salvage.MR. BARTLETT: Thank you, Mr. President.The Committee on Practice and Procedure met yesterday in a lively meeting at Cadwalader. Indeed, I don't know how a meeting in which Phil Berns participates can be anything but lively.Various topics were discussed, including the Amendments to Rules B, C and E, that will go into effect on December 1st. I ask you all to look at the rules before you cite them again because the language has been changed, the content has not, but the format has.We also discussed further changes that appear to be necessary to Rule C. The Committee is working on that project.We did discuss what Sandy Knapp and Harold Watson had mentioned, the changes to, or proposed changes to the Ship Mortgage Act relating to the notice of claim of lien provisions. We also discussed developments in the Local Admiralty Rules, and we discussed a case out of the Eighth Circuit.It seems, having heard Lisa Reeves talk about the Eighth Circuit case, that they are very active. This is called *Anastasoff*, and in this decision the Eighth Circuit held that its own rule against citing unpublished opinions was unconstitutional. This is now under review or a review has been requested, and our Committee is monitoring that.One matter I need to bring before the MLA membership for approval: At a prior meeting of the MLA, a resolution relating to Rule B to amend the rule to define when a defendant is, quote, not found in the district, the MLA approved a resolution by which the phrase "at the time of filing of the complaint" would be added to the new text. The Advisory Committee, Professor Cooper, the reporter to the Advisory Committee, has asked us for a position raising the question of should it also include when the affidavit, the required affidavit is filed.The Committee has studied this, and I am now in a position to say that the Committee recommends the adoption of the following resolution:RESOLVED that the Maritime Law Association of the United States supports an Amendment to Rule B to define the time for determination of whether the defendant is "not found within the district" to be at the time of the filing of the complaint and the affidavit.And I so move that resolution.PRESIDENT DORSEY: Is this the unanimous position of your Committee?MR. BARTLETT: It is not unanimous. There was one vote against.PRESIDENT DORSEY: Well, I think that under the Bylaws, we cannot bring this up at this time unless it is a unanimous position of your Committee. You have to wait until May. There is a procedure that you have to go through for resolution by this Association, if I'm not correct. We don't have our parliamentarian anymore. But I believe I'm correct, that unless it is a unanimous vote of your Committee, we cannot take the resolution up at this time.MR. BARTLETT: All right. I understood it otherwise, but fine. That concludes my report.PRESIDENT DORSEY: Well, we'll put that on hold, but perhaps there is a way to look at it. But I don't think we can do it by the Association as a whole until next May, Jim.MR. BARTLETT: Fine.PRESIDENT DORSEY: Sorry.MR. BARTLETT: Thank you.(Applause.)PRESIDENT DORSEY: And following Jim Shirley we have one, two, three, four more reports, just to let you know where we are.MR. SHIRLEY: Despite Phil Berns being unable to attend, we had a very lively session of the Salvage Committee on Wednesday morning. We discussed a number of topics, including the new Lloyd's Form 2000, and the Special Compensation P&I Clause that may be a part of that.We also discussed the salvor's concerns for liability in environmental matters and immunity for salvors. Also treasure salvage and archeological salvage, which lead into UNESCO. What I had thought would be one of the more mundane topics when we kicked it off turned out to be one of the more interesting.Last May we selected a working group under the leadership of Professor David Sharpe to look into the issue of renunciation or denunciation of the 1910 Salvage Convention, repeal or amendment of the 1912 Salvage Act, and the question of whether the 1989 Salvage Convention should be implemented legislatively, although it is already part of U.S. law through the treaty ratification process.Professor Sharpe did a terrific job and a very thorough job of probing and came with issues that I would never have thought impacted on this decision in his preliminary report. So we held a special session after the Salvage Committee meeting and went another two hours, two hours-and-a-half, just discussing that particular topic. It is deeper and broader than I thought, and I'm sure that Professor Sharpe can address that more succinctly and certainly more eloquently than I can, and I would like to ask him to do that, if it's okay, Mr. President.PRESIDENT DORSEY: It is certainly okay.MR. SHIRLEY: With Professor Sharpe's remarks, the report of the Salvage Committee will be concluded. I thank you.PRESIDENT DORSEY: Thank you.PROF. SHARPE: Mr. President, members and guests, I stand here this morning with the modest and humble title of Leader of the Working Group on the Salvage Conventions, and it is modest and humble because I made it all up myself.By means of appointment, volunteering and shanghaiing, the working group has been composed. I had hoped that we could complete our report for the Salvage Committee at this meeting. We did not. The report is now in its third draft. I will be opening up the fourth draft as soon as I get home to Baltimore to my computer. As an interim report I can simply say this:The issue that triggered the creation of the working group was a proposal that came from our good-housekeeping member, Michael Marks Cohen: to clear the decks of the 1910 Salvage Convention, which regulates us all. You might not have thought about that when you got up this morning, but it does.We are also regulated by the 1989 Salvage Convention. The United States is a state party to both Conventions. The message from the Coast Guard and the State Department that went to the Senate, asking for its advice and consent to the 1989 Convention, reassured it that there were no conflicting provisions between the 1910 and the 1989 Conventions. They are honorable men, and I take this to be true.The 1989 Convention does, of course, contain Articles 13 and 14 on pollution problems, which now seem to have been largely superseded by a return to private contract under the Scopic clause. But never mind all that.There is no really good reason I can think of not to denounce the 1910 Convention except the word "denounce," and that is troublesome. We don't have the right word for repealing a self-executing treaty. And so the only word we have is "denounce." For instance, IF Brazil still has the 1910 but not the 1989 Salvage Convention, if we denounce the 1910 Convention, we will not start shooting bullets at the Brazilians. "Denounce" simply means we will clear off an obsolete treaty that we don't really need any more. The sentiment of the working group is still skeptical but I think lukewarm in favor of denunciation.Two other issues have attached themselves to the working group: one issue is to make the Salvage Conventions more accessible to research. You may be surprised to know that if you turn to your copy of the United States Code, whatever version it may be, it does not contain either of the Salvage Conventions, because they are not enacted by the Congress of the United States. They went the Senate advise-and-consent route; therefore, under the policy of the codifiers, they are not printed in the statutes.One way to solve this is for Congress to enact the 1989 Salvage Convention.I think that the members of the working group are a little nervous about sending this instrument to the Congress, considering what it did to the Hague Rules (for a prominent example) and so I think this issue is dead.The last issue is to let the Navy have amendments to some of its statutes that govern the Navy's responsibility and liability either for salvage or being salved. There seems to be no criticism or dissension to letting the Navy take advantage of the provisions of Article 13 and 14 of the 1989 Salvage Convention.We expect to report to the Salvage Committee at the spring meeting next year, and I hope that my name and address are in the new directory.PRESIDENT DORSEY: They are.MR. SHARPE: Thank you very much because I have moved from Bethesda to Baltimore. I'm very happy to be there. So if you want to get in touch with me about this, if you would like a copy of the draft report, I would be delighted to furnish it to you. I would suggest, though, that I will circulate to interested parties the fourth forthcoming version of the draft for the working group. And if any of you have any ideas about this, I would be glad to hear from you. For instance, on a cab ride last night I learned a couple of things I needed very badly to know.Thank you very much, Mr. President.PRESIDENT DORSEY: Thank you, David.(Applause.)PRESIDENT DORSEY: We put David's name in the directory. He doesn't know how close it was -- we found out at the last minute that he wasn't included, but we caught it in time. When I went to bed that night, I lay down and went over things that happened in the day. I said, my God, do you think we left out Nick Healy's name, too?(Laughter.)PRESIDENT DORSEY: Professor Healy, you are in there, believe me. The first thing I did the next morning was double check.Pat Cooney for the Uniformity Committee and then Doug Muller for Young Lawyers.MR. COONEY: Mr. President, members, we met on Wednesday and discussed interesting topics related to uniformity.I would like to limit my remarks to the two cases that we received requests for *amicus* appearances on behalf of the Association and tell you a little bit about those cases and the action that was taken.The first case is *Stepansky v. Florida*. It involves a crime on a cruise ship, an attempted sexual assault, one passenger upon another in international waters. What makes it interesting is that Florida has passed a statute giving itself criminal jurisdiction on the high seas so long as the ship's voyage begins or ends essentially in Florida. There is a more technical formula than that, but they have given to themselves criminal jurisdiction.Given the publicity that we have seen on cruise ship criminal matters, it is understandable that Florida is concerned about this. Of course, it runs afoul of the Constitution and the provision granting to Congress the right to establish what is a felony on the high seas, the implication being that is a Federal matter and exclusively a Federal matter.We were requested to support a petition for *certiorari* from a decision of the Florida Supreme Court upholding the statute. There were a number of considerations, and the Board of Directors declined to support the petition for *certiorari*. In fact, the petition has been denied I think as of last week.Several considerations went into the decision of the Association not to appear as an *amicus* in support of issuance of the writ. One was the nature of the crime itself. You try to pick good cases and this was a particularly difficult case to go up on. And, secondly, the Federal prosecutors, the District Attorney's Office in, I gather, the Southern District of Florida, had declined to prosecute, and then further had declined to participate in the State proceedings upon invitation. A third factor was that many board members questioned the effectiveness of such an effort in view of the lack of participation in the case by government agencies with an interest in the issues raised by this case. It is my understanding that those considerations and perhaps others, that the Board of Directors declined to support an *amicus* brief in support of the*certiorari* petition.A second case involving a fairly narrow issue under the Longshore and Harbor Workers' Act did merit and gain support of the Association. The case is *Mobil Mining and Minerals v. Dixon*. It is a case out of the Fifth Circuit, unpublished, interestingly enough, upholding an ALJ decision that Section 3(a), a covered site includes the entire facility where the dock or maritime site is located. This decision is in direct conflict with a Fourth Circuit decision, which looks at the language of the statute and limits the area covered to the customary area devoted to maritime undertakings.I had the opportunity to collaborate with President Dorsey in putting together a very small *amicus* brief stating the position of the Association, which was simply that the Act needs to be uniformly applied across the country. That having been said, the Association has no position on the merits, but we urge the Court to take it. Interestingly enough, the Court in conference today is considering that petition; and so we should be hearing in the next week or so as to whether the petition will be granted. And obviously with the position we've taken on the merits, that will be our last appearance in this case. (Subsequently, it was learned that the Court declined to grant *certiorari*.)Rumor has it that *Calhoun* has surfaced again. We are anxiously looking forward to receiving the draft petition for *certiorari* if one is to be filed. We will be looking at that case again. Otherwise, the radar screen seems to be fairly calm.We are looking at the *Lewis and Clark* case that does present a disharmony-between-Circuits situation, but in that case there was no request for an *amicus* brief to support *certiorari* or on the merits.Mr. President, that concludes my remarks.PRESIDENT DORSEY: Thank you, Pat.(Applause.)PRESIDENT DORSEY: I do want to add some remarks in light of his comment about the *Calhoun* case.I heard Professor Force's speech last night, which was quite brilliant. Professor Force-I think I have this right-he suggested essentially a different approach to the defense of uniformity and the right of Federal judges to make and apply Admiralty Law as opposed to reliance on *Jensen*. He warned of the potential dangers of reliance on *Jensen* in light of attacks by certain academics on the nature and scope of the power of the Federal Courts to make and apply Maritime Law.Given the fact that State Law versus Federal Law questions continue to arise and applications continue to come to us to file*amicus* briefs on these subjects, I think it is essential that everyone who is concerned in making decisions with respect to these *amicus* briefs-and these are the various Committees, particularly the Uniformity Committee, certainly the Board of Directors-it is incumbent upon them to as soon as Professor Force's article is available and published, and maybe even earlier-I intend to get a copy earlier and send it around-to read and study that report and for us to consider the propositions that he makes as factors in determining what positions we are going to take in the future in *amicus* briefs on these difficult questions.Next we have Young Lawyers, and then following that I think Warren Marwedel wants to make a report on Proctor Admissions.MR. MULLER: Mr. President and members of the Association.On Monday of this week our Committee sent out its semi-annual newsletter aptly named "Theoretically Quarterly." The e-mail list for this newsletter was about 169 people. When you extract the officers of the Association and the Committee chairs, we have about 135 to 140 members of our Committee. Unfortunately, of this relatively large group, we only have twenty or so active members; that is, members who are assisting in projects of the standing Committees. It was the same twenty members who attended our Committee meeting yesterday at Freehill Hogan & Mahar. It was those same twenty or so members who attended our social event following the Healy lecture yesterday.My request to you is to assist us in getting more young lawyers actively involved in our Committee. The good news is that our numbers are steadily growing, but we could use your help in encouraging young lawyers who are either not involved in the Young Lawyers Committee, or who are members, but not actively involved, to get involved.We have several projects ongoing right now that are very interesting. Pat Cooney of the Uniformity Committee has a bibliography project, as well as possibly getting assistance on*amicus* briefs submitted by the Association. There is a project under the sponsorship of President Dorsey that may involve the assistance of as many as eight to ten young lawyers. Lisa Reeves of the Limitation of Liability Committee mentioned to me that they need help with their newsletter. These are all projects in which young lawyers can become involved.As Tony Whitman mentioned, the CLE presentation out in San Diego next fall may involve young lawyers. All of these things have publishing opportunities with them, some of them have speaking opportunities. All of them have recognition of some form, and the time commitment is minimal.I urge you to get your young lawyers involved in some way. We can use the help. We definitely need the staffing. It is very easy to get them involved. I'm accessible by phone or by e-mail. They can contact our Committee secretary, Josh Force of New Orleans, or they can contact several other people. We have at least two active members here in New York, Katherine Newman of Nourse & Bowles, and Larry Kahn of Freehill, Hogan & Mahar, who are more than happy to help out in terms of assisting young lawyers in getting involved in projects.I encourage you to get them involved. We are always available to assist them in making the transition.Mr. President, that concludes my report.PRESIDENT DORSEY: Thank you, Doug.(Applause.)PRESIDENT DORSEY: Next is Warren Marwedel for the Proctor Admissions Committee, and then we will follow that with what I believe will be the last report, Graydon Staring for AMC.MR. MARWEDEL: Thank you, Mr. President, ladies and gentlemen.The Proctor Committee is the one that reviews the proctor applications. This week we had a meeting and it has been decided that we will review the requirements for proctorship. We may have recommendations, we may not. But we hope to have a report to the President and the Board before the May meeting.We would like to encourage you, though, to get the younger members in your firms to become active, to get the requirements to become proctors. That is the way you move up in the organization. If you want to be a chair of a Committee or a vice chair, you have to be a proctor member.So, we really encourage you to get the younger members, the associate members to fill out these applications and get them in. The future of the organization is in those younger people and it needs your urging to do that.Thank you.PRESIDENT DORSEY: Thank you, Warren.(Applause.)PRESIDENT DORSEY: I think, ladies and gentlemen, that concludes the reports. I don't think there are any more.I want to thank all of those who did give oral reports for really doing a good job of staying within the time frames. You all did a terrific job in that respect. |