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| **Reports of Officers** |
| **Source:** MLA**Doc. No.:** 754**Date:** November 3, 2000DOCUMENT NO. 754November 3, 2000THE MARITIME LAW ASSOCIATIONOF THE UNITED STATES**FALL MEETING-NOVEMBER 3, 2000**Present:William R. Dorsey, IIIRaymond P. HaydenThomas S. RueLizabeth L. BurrellPatrick J. BonnerWinston E. RiceHoward M. McCormackand the following 168 members:Julia M. AdamsRobert J. BarbierFrancis J. Barry, Jr.James W. Bartlett, IIIMichael K. BellHelen M. BenziePhilip A. BernsFrank E. BillingsGeoffrey F. BirkheadGeorge William BirkheadDenise S. BlockerDarnell BludworthAllan G. BowderyLawrence J. BowlesJames BrockmeyerCharles D. BrownPhillip A. BuhlerLucienne C. BulowFrederick F. Burgess, Jr.Raymond J. Burke, Jr.William D. Carle, IIIJames K. CarrollWilliam E. CassidyGeorge F. Chandler, IIIJames L. Chapman, IVPeter D. ClarkDavid W. CondeffMichael Marks CohenWilliam R. Connor, IIIJames P. CooneyRichard CorwinAttilo M. CostabelRae M. CroweBruce P. DalcherChristopher B. DanielsChristopher O. DavisA. Robert DegenFrank P. DeGiulioVincent M. DeOrchisChristopher H. DillonCharles S. DonovanWilliam F. DoughertyWilliam A. DurhamPaul S. EdelmanJohn A. EdgintonHenry EngelbrechtWarren M. FarisDavid Farrell, Jr.Joshua S. ForceRobert ForceGeorge J. Fowler, IIIAlbert L. Frevola, Jr.George D. Gabel, Jr.Albert R. GalikGene B. GeorgeAlexander M. GilesRobert S. Glenn, Jr.Andrew J. GoldsteinFrancis J. GonynorJohn B. Gooch, Jr.A. Gordon GrantDonald C. GreenmanKevin J. HartmannWalter C. HartridgeGeorge P. HassapisNicholas J. HealyCharles HerdAnn-Michele HigginsNeal D. HobsonBruce R. Hoefer, Jr.Chester D. HooperAnne D. HopkinsRobert HopkinsAileen JennerKimbley KearneyMarshall P. KeatingR. Brett KellyJames B. Kemp, Jr.Donald J. KennedyJohn D. KimballBruce A. KingSandra L. KnappJean E. KnudsenVictor KoockWalter M. KramerMark J. KreminAlfred J. KufflerMarc I. KunkinJan M. KuylenstiernaLeRoy LambertJ. Dwight LeBlanc, IIIJ. Dwight LeBlanc, Jr.Edward LeBretonRichard M. LeslieJohn T. Lillis, Jr.Henry C. Lucas, IIIC.E. LundinJames M. MaloneyMatthew A. MarionJanet W. MarshallDavid W. MartowskiWarren J. MarwedelHoward M. McCormackMarion E. McDaniel, Jr.Daniel G. McDermottPeter A. McLauchlanSamuel P. MenefeeAnn G. MillerA. Carter Mills, IVJames F. MoseleyJames F. Moseley, Jr.Walter MuffDouglas M. MullerHoward L. MyersonGlen T. OxtonRichard W. PalmerArmand M. Paré, Jr.Patricia L. ParkerRobert B. ParrishEdward J. Patterson, IIIGordon W. PaulsenEdward J. PowersEdward C. RadzikLennard K. RambuschA. Clay Rankin, IIIMary Elisa ReevesRichard J. ReisertStephen RibleJ. Ramon Rivera-MoralesJack RockafellowPaul RosenlundThomas A. RussellJohn M. RyanMichael J. RyanRobert J. RynikerJohn P. SchafferThomas M. SchodowskiGordon D. SchreckJanis G. SchulmeistersDavid J. SharpeJames T. Shirley, Jr.G. Byron SimsDavid F. SippleJohn W. Sipple, Jr.Joseph C. SmithMichael A. SnyderJonathan S. SpencerGraydon S. StaringMichael E. SternWilliam T. StorzMichael F. SturleyNorman C. Sullivan, Jr.Joseph C. SweeneyAlan Van PraagJohn P. VaydaDavid N. VentkerKenneth H. VolkThomas J. WagnerGuilford D. WareHarold K. WatsonJames F. WhiteheadM. H Whitman, Jr.James C. WintonMalcolm J. Williams, Jr.Frank L. Wiswall, Jr.James F. YoungRobert J. ZapfJoAnne Zawitoskiand the following three guests:James E. GouldRemzi KulenCatherine O'ConnellTABLE OF CONTENTS**Resolutions**Approving locations and negotiations for Fall 2003and 2005 meetings 12470Authorizing change in accountants 12454Authorizing expenditure for website library 12464Authorizing expenditure for website librarysearch engine 12474Authorizing letter regarding Marshal feessecurity deposits 12456Authorizing statement to Coast Guard aboutenvironmental crimes 12469Honoring Past President James J. Higgins 12463Honoring USCG Captain Malcolm J. Williams, Jr. 12371, 12462**Board Minutes**Minutes of the Board of Directors Meeting Heldon August 5, 2000 12453Minutes of the Board of Directors Meeting Heldon November 2, 2000 12465**Reports of Officers**Report of Membership Secretary 12367Report of Secretary 12362Report of Treasurer 12366**Reports of Standing Committees**Carriage of Goods 12373Comité Maritime International 12378Cruise Lines and Passenger Ships 12383Electronic Communications and Commerce 12386International Law of the Sea 12388Limitation of Liability 12390Marine Ecology 12391Marine Financing 12393Marine Insurance and General Average 12397Maritime Arbitration and Mediation 12399Maritime Criminal Law and Procedure 12400Maritime Legislation 12401Maritime Personnel 12402Navigation, Coast Guard and GovernmentRegulation 12403Practice and Procedure 12404Proctor Admissions 12413Salvage 12406Uniformity of U.S. Maritime Law 12409Young Lawyers' Committee 12412**Reports of Special Committees and Study Groups**Environmental Crimes 12395Planning and Arrangements for the2001 Fall Meeting 12381**Adjournment** 12415**Reports of Related Organizations**American Maritime Cases 12413American Maritime Law Foundation, Inc. 12387**Formal Standing Committee Reports**Carriage of Goods 12417Carrier Security 12418Classification Societies 12419Comité Maritime International 12420Electronic Communications and Commerce 12423Maritime Arbitration and Mediation 12425Maritime Personnel 12436Navigation, Coast Guard and GovernmentRegulation 12444Recreational Boating 12449Salvage 12450Stevedoring and Terminal Operations 12452PROCEEDINGSPRESIDENT DORSEY: Good morning, ladies and gentlemen. If the content of the Committee meetings that I attended in the past week are any indication, we have some very interesting things to talk about this morning, and so I will call the meeting to order and call on Madam Secretary to make the Secretary's report.MS. BURRELL: Good morning, Mr. President, members and guests. Everyone who wishes his or her attendance to be reflected in the records of the Association should make sure that they have signed one of the cards on the table outside. In addition, if you are going to be speaking today, please be kind enough to drop one of your cards off with the reporter so that you can be correctly identified.The Board met on August 5th in Chicago and yesterday here at the City Bar. The full minutes of those meetings will appear in the proceedings of this General Meeting. We heard reports from the Treasurer and from the Membership Secretary, as you will hear a little later on this morning.President Dorsey reported on his activities on behalf of the Association, which have been many and varied. These activities include President Dorsey's attendance at London Maritime Week in May 2000, during which he both chaired a panel and acted as a panelist on the subject of casualty investigations at the Tulane program entitled "Maritime Law in an International Setting." He also attended the British Average Adjustors meeting and dinner and represented the Association at the meeting of the Assembly of the Comité Maritime International during that same week. The Canadian Maritime Law Association graciously invited President Dorsey to attend their meeting in Halifax in July of this year, at which he also represented our Association.In September, President Dorsey traveled to Toledo to attend a seminar at which the items that are going to be treated at the Singapore Plenary of the CMI in February of 2001 were addressed. You will hear more about those subjects from the Committee chairs who are dealing with these matters later on this morning.President Dorsey also spoke at the Houston Marine Insurance Seminar. His subject was the UNESCO Convention on Underwater Cultural Heritage, which is a topic this Association is much involved in at the moment.President Dorsey also represented the Association at the U.S. Average Adjustors meeting in New York last month and had the pleasure of seeing our Board member and Chair of our Marine Insurance Committee, Jean Knudsen, installed as the new Chair of the Average Adjustors Association.President Dorsey then traveled to London to act as a private sector advisor to the U.S. delegation at the IMO Legal Committee meeting, which occurred in October of this year. I will say more about the subjects that were treated at that IMO meeting later on, as will the Committee chairs who have enabled the Association to participate meaningfully in the work of the IMO.At both of the Board meetings since our last General Meeting, the Board heard reports on our domestic and international endeavors from our industrious Committees, and from the Board members who were specially involved in some of these projects, including the new COGSA proposal, which will also be covered in a report later today.The Board was advised by Board member Jim Bartlett, who chairs the Committee on Practice and Procedure, of a proposed amendment to local admiralty rules for the U.S. District Court of the District of New Jersey that would have increased security deposits for the arrest of vessels over 65 feet to $10,000. The Board passed a resolution authorizing President Dorsey to write to the Clerk of that Court explaining that security should be set in an amount that reflects the anticipated marshal's costs, and the Court has now referred the matter to a committee, including practitioners, for further consideration.Fred Kuffler, who chairs the Board's Special Environmental Crime Subcommittee, will report to you later on items of significance in that area that were treated by the Board.We also heard from the chairs of the Committees on Planning and Arrangements for the Fall 2001 Meeting, and Site Selection for the Fall 2003 Meeting, but I will not steal the thunder of these chairs about the wonderful meetings that are planned for you in those years.The Board approved expenditures to begin to develop a library on our website. MLA documents will continued to be added to the website and our initial search engine will refined over time. The Board also appointed Glen Oxton, who is chair of the Committee on Electronic Communications and Commerce, as our web master. Items for the website calendar, however, should continue to be sent to President Dorsey.President Dorsey also reported on the current status of our efforts to index MLA documents, so that those also will be more accessible as a research resource to everyone interested in maritime law.President Dorsey also reported on the current status of the Titanic suit brought by RMS TITANIC, Inc. against the government seeking a declaratory judgment. That suit has now been dismissed for lack of ripeness because there is as yet no treaty nor any guidelines on the salvage and exploration and investigation of the Titanic. With Board approval and with the able assistance of the chair of the UNESCO study group, John Kimball, and Professor David Bederman, President Dorsey submitted comments and questions about NOAA's proposed guidelines for research, exploration and salvage of the Titanic to the government, but we have not yet received any response.On the international front, there is a considerable amount of activity to prepare for the upcoming Plenary meeting of the CMI in Singapore, which will take place in February of 2001. Because our Committees are very heavily involved in these preparations, I will leave fuller treatment of the subject matter to be addressed at the Plenary to the appropriate Committee chairs who will report later this morning. I will mention, however, that in connection with the CMI's International Subcommittee on Transport Law, there was a joint UNCITRAL-CMI seminar in New York at the United Nations in July, which included speakers from both government and industry stressing the importance of harmony in this area of law.President Dorsey reported on the IMO meeting in London last month at which again he acted as a private sector advisor to the U.S. delegation. The work on the Protocol to the Athens Convention on Liability Related to the Carriage of Passengers and their Luggage by Sea will be covered later by Ann Miller, chair of our Committee on Cruise Lines and Passenger Ships. President Dorsey also reported on the tacit amendment of the limits for oil pollution liability under the Civil Liability Convention and the IOPC Fund Convention, which will take effect in 2003. A Diplomatic Conference on the proposed Bunker Pollution Convention will take place on March 2001, the work on that Convention being substantially complete.Board member Alan Van Praag, who has been acting as advisor to the U.S. delegation on the Convention on Enforcement of Judgments, reported on meetings of British and U.S. specialists addressing issues arising from the special jurisdictional issues that will affect the enforceability of maritime judgments under this Convention.Don Kennedy, chair of our Committee on Maritime Arbitration and Mediation, will report also on the UNCITRAL Working Group on Arbitration, as well as the proposed amendments to the Federal Arbitration Act.President Dorsey also brought the Board up-to-date on Association activities in connection with the UNESCO Convention. John Kimball, who chairs our study group on that subject, provided the Board with an extremely informative report on the third meeting of governmental experts which he attended at UNESCO headquarters in Paris in July of this year. No consensus was reached on the draft Convention or its annex, and, therefore, no vote was taken on either document. Major issues remain to be resolved, but as we previously reported, the present drafts would prevent salvors from any contact with underwater cultural heritage, except as contractors to archæological or governmental groups, and would ban the sale of all salvaged items. This Association has taken the position that salvors and archæologists should be able to reach a solution that would preserve the interests of each group. The United States delegation did an excellent job of presenting a well-balanced statement of positions on a number of important subjects; for example, the inclusion of a "significance" requirement in the definition of underwater cultural heritage, and some issues relating to the current draft's apparent presumption that leaving artifacts *in situ* is preferable to salvage. While it was intended that a draft of the Convention would be completed by April 2001, it appears unlikely that this will be accomplished. A group of experts will have a two-week meeting in March or April of 2001 to work on a draft for presentation to UNESCO sometime later.The Association also had requests for *amicus* activity, but since these issues concerned uniformity, I will leave that subject to Pat Cooney, the chair of our Committee on Uniformity of U.S. Maritime Law.Of course, the issue of uniformity was addressed most ably last night by Professor Robert Force, who delivered this year's Nicholas J. Healy Lecture. Professor Force's lecture truly did honor to the Healy lectureship and the man who has so nobly borne the uniformity flag for this Association for so many years. Professor Force's comments were both pragmatic and highly fascinating, and I'm sure we all look forward to studying his paper.Last, I would like to mention that among the resolutions of the Board was a resolution honoring our Past President, Jim Higgins, who passed away earlier this year.Mr. President, that concludes my report.PRESIDENT DORSEY: May I have a motion to adopt the report.(So moved.)PRESIDENT DORSEY: Second.(Seconded.)PRESIDENT DORSEY: All in favor?(A chorus of ayes.)PRESIDENT DORSEY: Opposed?(No response.)PRESIDENT DORSEY: Motion carried and the report is adopted. Liz, thank you. I think you can tell from the length of that report and that she has to put together that report in less than 24 hours after our Board of Directors meeting that occurred yesterday, it is a truly an amazing feat. Having been Secretary, I know what kind of task that involves, and it is a difficult task, which she always does well. It always amazes me because when she reports on our conversations, they always sound better than the real conversation.(Laughter.)PRESIDENT DORSEY: One other comment on my travel schedule. I'm pleased to report to the Association that I will not have to get on an airplane for another three months. Now our Treasurer, Pat Bonner.MR. BONNER: Thank you, Mr. President. I don't think anybody is as happy about that as I am.(Laughter.)MR. BONNER: We remain financially healthy. We have about $171,000 in the bank now. That compares to about $167,000 last year at this time.The dues increase has enabled us to continue our participation in var-ious international projects, such as the CMI Transport Law Subcommittee meetings in London, the UNESCO meetings in Paris, and the UNCITRAL arbitration meetings in Vienna. All in all, we had about twenty-six trips to Europe during the past year. I think we were able to do this because of the dues increase; and it just shows how active we are on the international scene. I think it's a good thing for the organization.This summer we had our annual audit by a national accounting firm. What this involves is an auditor, an accountant, sits in my office for about a week and goes over all the Association's books and records. I'm happy to say that there were no problems. They passed us and they completed a report. If anybody would like to read it, I would be happy to give it to you.As I said, the Association remains in good shape. This concludes my report, Mr. President, and I move its adoption.PRESIDENT DORSEY: Is there a second?(Seconded.)PRESIDENT DORSEY: All in favor?(A chorus of ayes.)PRESIDENT DORSEY: Any opposed?(No response.)PRESIDENT DORSEY: The motion is carried and the report is adopted. Thank you, Pat. I have almost, I won't say weekly, but monthly e-mails from Pat detailing how much money we have spent and how much we have left to spend. He keeps us on our toes, as well as any Treasurer could. He's also spending a lot of time chasing after those, I'm sure none of you are here, but those of the Association who have forgotten to pay their dues in the last year or so. So thank you very much, Pat, for continuing your good work.Now our Membership Secretary, Winston.MR. RICE: Thank you, Mr. President.Members, I'm delighted to report that since our semi-annual meeting in May, the membership of the Association has increased by a net of twenty-two members. This is especially delightful since we have in the first ten months of the year lost 204 members, the majority of whom were erased from our rolls for nonpayment of dues for periods in excess of three years.Interest in the Association continues to run high. To be more particular, we have been joined by a new academic member, Professor Martin Davis of Tulane Law School. In addition, the Board received and approved the recommendation of the Non-Lawyers Committee for election to membership of Mary Cervati of Marine Transport, Massond Messkoub of Maersk, Carroll Robertson of Boat U.S. and Soren Wolmar from Quincannon Associates. We are also delighted to accept the elevation to proctor status of four associate lawyer members, being Captain Malcolm Williams of Washington, Kirk Trombley of Portsmouth, Randolph Donatelli of New York, and James Maloney of Port Washington.It is really delightful to report that in these few months since our last meeting we have received, acted upon and approved the applications of thirty-seven new associate lawyer members. Interest in the Association at this entry level of membership continues to run very high. We receive applications or requests for applications by phone, which we immediately tell them, no, you have to write, but we will take a one-line fax on your letterhead. About half of those we get through the combined phone-letter media, another half we are getting from the website.The associate and proctor's membership applications will be available in the library section of the website, which will be available to you and to the public within a very few weeks, we hope.Mr. President, I also regret to report that since the May meeting, I've become aware of the deaths of the following among our members: Donald Bruce of Jersey City; Jack Culp of Jacksonville; Judge Edelstein of New York; Judge Fisher of Beaumont; Frederick Gabel of New York; Past President Higgins of New York; Decatur Holcombe of Houston; Bernard Rolnick of New York; Judge Shaw of Lafayette; Jim Schupp of New Orleans, Judge Thomas from Mobile; and former Vice-President Bill Symmers of New York.I would appreciate your joining me in a moment of silence in recognition and honor of these departing members.(A moment of silence recognition was observed.)MR. RICE: Thank you. Mr. President, that ends the membership aspect of my report. I would like to add that if you have not done so already, you should by the time you return to your office next week or shortly thereafter have received in the mail your copy of the 2000-2001 Membership Directory (indicating). The Board of Directors has decided to proceed with the publication of another directory for the period 2001-2002, so that this time next year or before, if at all possible, you will be receiving an update to this volume. It is somewhat enhanced, if you will, from prior editions in that e-mail addresses, such as have been supplied by the members, are included. We have taken advantage of the significant work done by Nick Healy of a historical nature in connection with our Centennial to update the History and Purposes section of the directory to include a more fulsome history of the Association. He has also streamlined the description of many of the Committees. I hope you will find the directory useful; and in the meantime, I will resort to the website for updates in the interim before public publication of the next paper edition of the directory.Mr. President, that concludes my report.PRESIDENT DORSEY: Do I hear a motion to adopt the report?(So moved.)PRESIDENT DORSEY: Second?(Seconded.)PRESIDENT DORSEY: All in favor?(A chorus of ayes.)PRESIDENT DORSEY: Opposed?(No response.)PRESIDENT DORSEY: The motion is carried and the report is adopted. A special thanks to Winston this time because putting out a directory with a two-year lapse was quite a project. There are a lot of changes that have to be made as a result of the fact that we had a two-year lapse in the publication of the directory, and a lot of proofreading and a lot of detail work had to be done. I'm surprised Winston isn't wearing glasses after all the proofreading he has been doing.In addition, when he commented on the inclusion of some of the history of the MLA and the streamlining of descriptions of the Committees, that's Winston's work. That came from him. Thank you, Winston, once again.At this point I would like to recognize a couple of distinguished foreign visitors and visitors that are here today: David Marler, who is Chairman of the Average Adjustors Association of Canada, I think is here. I ask you to welcome him at the dinner. Jim Gould, the President of the Canadian Maritime Law Association, is here.(Applause.)PRESIDENT DORSEY: I forgot to comment on the meeting of the Canadian Maritime Law Association I attended, as did Jim Moseley and Ray Hayden and Howard McCormack, in the summer. It was conducted on a weekend. We were treated royally. It was delightful. It was in Halifax, which is an absolutely beautiful place, and it was on the occasion of the Op Sail Review in Halifax, which was truly magnificent. I commented to the members of the Canadian Maritime Law Association that I thought they were very clever to arrange to have their meeting on a Sunday so that we couldn't call on any of their clients(Laughter.)PRESIDENT DORSEY: I don't think Allan Philip, the former President of the CMI and one of the four honorary members of the Association is here this morning because he is doing an arbitration, but he will be at the dinner tonight, as well.I would also like to recognize Jean Knudsen. She is a Board member, she has been with us for years, we all know her, but she is the Chairman of the Average Adjustors Association of the United States, and I think that deserves a special round of applause.(Applause.)PRESIDENT DORSEY: I think we have somewhere out there our old friend Bruce Dalcher, who we remember from the days when he was with the Office of the Maritime and International Law Division of the Coast Guard. He is now teaching at the Coast Guard Academy as Assistant Professor of Law there.Bruce, where are you? Right over there.(Applause.)PRESIDENT DORSEY: We have a newcomer, Captain Joe Ahern, who is the new Chief of the Maritime International Law Division of the Coast Guard, and my boss because he is the head of the U.S. delegation to the International Maritime Organization Legal Committee. So, welcome Captain Ahern, as well. He is over there (indicating).(Applause.)PRESIDENT DORSEY: I suspect that many of you have already met Captain Ahern because he was very visible and very present at many, many Committee meetings. I asked him if he had any scars to show for it, but he said, no, no, he was treated nicely every place. So I appreciate that.A special visitor-he's not really a visitor anymore-Captain Malcolm Williams is here. He has retired as the Chief of the International Law Division of the Coast Guard, and he has been promoted to proctor member of this Association. At our August Board meeting of this year, the Board passed a resolution in recognition of Captain Williams' many years of involvement with this Association. Captain, if you could come forward at this time, I would like to present that resolution to you. Why don't you come up now.First, let me read the resolution. I'm not going to read it all, but we have our scribe out on Staten Island who does these things and does them up nicely, but I can't read all the letters, so I'll read the resolution from my typed notes. It is entitled "Resolution of Appreciation to Malcolm J. Williams, Jr.":The Maritime Law Association of the United States expresses its appreciation for the services and exemplary assistance of Malcolm J. Williams, Jr., Captain of the United States Coast Guard, Chief of the International Division, Washington, D.C.Captain Williams has been a dedicated officer of the United States Coast Guard, serving with distinction in numerous responsibilities and capacities. In his service to the country and Coast Guard, he has carried out his duties as Chief of the International Law Division in an outstanding manner. These duties included participating as the Chief Delegate of the United States to the International Maritime Organization IMO Legal Committee, and at diplomatic conferences and at International Meetings.Although heavily involved in the aforementioned duties, Captain Williams participated in and closely coordinated numerous significant activities of the Maritime Law Association of the United States by making presentations to various and numerous Committees of the Association on topics of maritime law, marine ecology, government regulations, procedure, Coast Guard policy and other matters. In performing these tasks during the last four years, he has consistently educated and informed the members of the Maritime Law Association of the United States.Further, he brought to the Association not only expertise and knowledge, but a sense of camaraderie, friendship and collegiality, and in so doing he brought the Coast Guard and the Association into a much closer relationship.In consideration of the foregoing, be it resolved that the Maritime Law Association of the United States expresses its sincere and profound appreciation for the services and assistance of Captain Malcolm J. Williams, Jr. and we express our gratitude to our professional colleague and friend;And be it further resolved that a copy of this resolution be made a part of the permanent records of the Association.The resolution is dated the 5th day of August in Chicago, and was signed by me as President.Malcolm, the Maritime Law Association does not award medals, as the Coast Guard does. If we did award medals, I think you would get a combination of a Purple Heart and a Navy Cross for Valor for the past four years of duty, but our method of showing our appreciation is a Resolution, and I'm happy to present it to you at this time.(Applause.)CAPTAIN WILLIAMS: Thank you.PRESIDENT DORSEY: I'm delighted with the fact that we are not going to see the last of Malcolm Williams. We are going to see him around at meetings in the future as a very active proctor member and a very valuable proctor member.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 carri-ers 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 cov-erage 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, Tony Whitman, Chairman of the Arrangements Committee for 2001, and following Tony we will have Ann Miller for Cruise Ships.MR. WHITMAN: Thank you, President Dorsey, officers of the Association, members and guests.It is my pleasure to be before a full house today before the end of this meeting to offer you the opportunity to travel not all the way to Singapore, but all the way to San Diego. A year from now the fall meeting will be held at the Hotel Del Coronado in Coronado outside of San Diego, California.The hotel itself, which many of you may have visited and most of you are undoubtedly familiar with, has just been the subject of a $50 million totalrestoration and refurbishment, and it is truly glorious. With Bill and Ann Dorsey, your Committee was fortunate enough to travel out there last month for our Arrangements meeting, and we explored every nook and cranny of the ancient Victorian building, as well as the more modern facilities they have. It really is a spectacular site and we are very confident that our meeting a year from now, October 14 through 20, 2001, will be a great success.We will have a golf tournament on Tuesday rather than Wednesday, which has been the norm in the recent past. So for those of you who are golfers, Tuesday will be your target date. We will not be at Torrey Pines, but for those of you who are interested in that, we will-provided the website can accommodate this-have up and running before the end of the year the ability to punch into the MLA website at mlaus.org, and actually have links to the various golf courses in the San Diego area so that you can make your own arrangements for days other than Tuesday when the actual tournament will be.There will be sailing and fishing and the usual recreational events.It is a spectacular site, and it also is a wonderful place for substantive meetings. We have a CLE program planned that will include both a CLE program to appeal to everyone, and sort of an adjunct CLE program for young lawyers which will focus on professionalism and business development, among other things.We hope that this will be a tremendous success and look forward to seeing all of you and your significant others and families, because San Diego is a tremendous family attraction. There is the zoo, of course; there is the Wild Animal Park; there is Balboa Park; there is La Jolla; there is the beach; there is Mexico, for those who are brave. I hope that we will see you all out there.The dates are October 14 through 20, 2001. That does include Columbus Day, so for those of you whose firms celebrate that holiday, it is a day you are not out of the office because you wouldn't have been in the office anyway, and for those of you whose children might have that day off, it reduces the time away. I have to say that looking back on experience raising our own children, for those of you who have kids in elementary school, the one thing I regret is that I didn't just pack them up and take them places while they were still in elementary school. Those school days are not as important as days spent with the family in interesting places in the world. I encourage you to do that.Thank you, Mr. President.PRESIDENT DORSEY: Thank you, Tony.(Applause.)PRESIDENT DORSEY: Just a couple of comments.The change is, as Tony indicated, a slight change in the scheduling, having the sporting event on Tuesday and then the business meeting Wednesday, Thursday and Friday. That is in response to the questionnaire that was sent out and some of the comments we got back. I think you will see that format repeated in perhaps even a different, slightly different, more truncated format in the future.What we are trying to do is condense the business portion of the meeting. Those that want to have the sports can come earlier; those that aren't interested in sports can come later in the week and concentrate on the meetings.The second thing Tony was mentioning about the conversion of the Hotel Del Coronado. Those of you who were there twenty years ago when Reagan was elected, I remember that very vividly, I guess most of you do, as well. The tennis courts were between the hotel and the ocean. They have taken the courts out and they have this beautiful lawn fronting of the hotel and an outdoor restaurant where you can go and sit and watch the sunset and have a delightful dinner. The place is magnificent, it really is.So I encourage you, even though you may have been there twenty years ago, it is a different feel, it is an even better feel, and we are going to have a great meeting. So I want you to all go.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. So, Dr. Wiswall. Next up will be Sam Menefee.DR. WISWALL: Thank you, Mr. President.I would take the opportunity to make the membership aware of a couple of decisions that have been taken by the Board of Directors of the CMI American Foundation, Inc.The first of these is with regard to the Elliot Nixon Prize. The objective of the Foundation in offering the prize has been, all along, to make it a really prestigious legal prize.The most recent cycle, which was even extended by a few months, has failed to produce both a sufficient number of submissions or any submissions of adequate quality to enable the judges and the Board of Directors to feel that the Prize should be awarded for that cycle. Accordingly, that cycle will close, another will open immediately, and it will close as of the 30th of June 2001. Those who have submitted papers for the Prize in the cycle just closing may rework them, resubmit them, and hopefully stand a better chance of success. The winner will be announced in San Diego and the Prize will either be awarded in San Diego or else in New York at the succeeding spring meeting of the Association.I urge all of you, please, to "talk up" the Elliot Nixon Prize to young lawyers, and to law students by those of you who are teachers, and try to get more submissions. As to the rules for the Prize, they are available in printed form. I'm going to give them to Glen Oxton so that they will be available on the website; and hopefully, as in the past, they will appear on the back cover of the pending issue of AMC.The second matter I referred to was a profound decision for the Foundation, and it is that the Directors have decided to change the name. Originally the Foundation was established to support the CMI in its endeavors, and particularly with regard to those of the CMI Charitable Trust.The CMI Charitable Trust has now attained a capital of something approaching 400,000 pounds, which even with the present rate of exchange is a quite sufficient capitalization for the present aims of the trust. We feel that our attention ought now to be turned to the needs of our own Maritime Law Association and also to the promotion of greater interest in the objectives of this Association; that is the uniformity of maritime law not only internationally, but nationally, as well.Consequently, I don't want to discourage you from sending contributions to the CMI American Foundation, but you should be aware that they will be applied henceforth to the goals and objectives of the American Maritime Law Foundation, Inc.Thank you very much, Mr. President.PRESIDENT DORSEY: Thank you, Frank.(Applause.)PRESIDENT DORSEY: 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 dam-age 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. Fred Kuffler, and next Jean Knudsen.MR. KUFFLER: Mr. President, thank you; members.I can't resist saying that between the President's advance preview of my report and Matt Marion's comments, I hope my report actually lives up to the advance billing I have received today.I stood before the membership two years ago in an inaugural report of this Subcommittee and said that this is a long-term project and you will be hearing through the years quite a lot from this Subcommittee. It is now two years later. I'm here again. Life is only becoming more complicated.This Subcommittee does serve at the pleasure of the President. I am afraid that as long as it pleases the President to have this Subcommittee, you will be hearing from us.In support of that proposition, I would mention that during the meeting of the Environmental Crimes Subcommittee, as well as Marine Ecology and the Coast Guard and Navigation Committees, there was a lot of talk about yet another Federal agency beginning to flex its muscle in this area; that is the Environmental Protection Agency. It has taken a look at the Ocean Dumping Act and thinks it is another means of getting after the shipping industry. There are criminal aspects to the Ocean Dumping Act. So, we have another big player in this area.Turning to the agenda, the highlights of what has been going on:First of all, members will recall that about 18 months ago President McCormack submitted a statement to the House Subcommittee on the Coast Guard and Marine Transportation in support of efforts to eliminate from criminal prosecutions in this area use of the so-called strict liability statutes; that is, the Migratory Bird Act and the Refuse Act.I'm very pleased to report that during the summer Senator Breaux in the Senate and a member of the House Subcommittee on Coast Guard and Marine Transportation introduced companion bills which would have the effect of eliminating the use of these two statutes. We are told that there will be no action in the present Congress; but that the bills will be reintroduced in the new Congress. The Subcommittee will be following the progress of these bills and, if appropriate, will suggest to the President steps that can be taken in furtherance of enactment.One of the ongoing agenda items of the Subcommittee has been consideration of the appropriateness of approaching the Department of Justice, a strategy for that approach, and the timing. At the moment this is a project that is on hold. Once the election is passed and the new Administration is in place, we will take up this issue again.A third project has been consideration of some sort of a member's guide through this area of the law. Most us are civil practitioners and criminal law is a subject that many of us have not had anything to do with since we had to answer a few questions on the Bar exam. I can tell you for some of us it is a lot longer ago than I care to remember. However, events seem to be overtaking us, and I am going to take this subject up with President Dorsey. But over the last 18 months there have been a number of articles in this area that I would like to bring to the members' attention.The first, in the Tulane Maritime Law Journal, Larry Kiern published an update on OPA 90 which touches on some of these issues. Dennis Bryant, published an article dealing with ISO and ISM compliance and the effect it may have in this area. Dave Dickman published an article dealing with some of the concerns, particularly the Fourth and Fifth Amendment issues and an exploration of the Coast Guard's broad authority to investigate not only in the criminal area, but regulatory and compliance issues, as well. I understand there will be two articles from the recent Pacific Admiralty Seminar, which will be published in the University of San Francisco Law Journal; one having to do with things that practitioners need to be alert to at the early stages of shipboard investigations, another article dealing with the effect of various compliance programs on criminal proceedings and sentences.Finally, the U.S. Chamber of Shipping has recently published a quite comprehensive guide in this area. It is not, *per se*, for lawyers, although it is written in large part by lawyers. It is called "The Handbook on Environmental Crimes." It is available from the U.S. Chamber of Shipping. I am in the process of reading it. I commend it to members. It is worth having available.PRESIDENT DORSEY: Is that finally?MR. KUFFLER: Pardon?PRESIDENT DORSEY: Finally?MR. KUFFLER: Yes, finally.Finally --(Laughter.)MR. KUFFLER: -on October 18th, the Coast Guard published a notice of a public hearing dealing with its environmental agenda for the twenty-first century and called for comments, oral and written. There is a hearing on December 12th. Written comments need to be submitted by December 30th.In conjunction with the Committees on Marine Ecology and the Coast Guard and Navigation, the Environmental Crimes Subcommittee will put together a statement dealing with environmental crimes and submit it to President Dorsey and the Board with a recommendation that the statement be transmitted to the Coast Guard in response to its call for comments on its environmental agenda. It is certainly a recommendation of the Environmental Crime Subcommittee that this is a great opportunity to put our views before the Coast Guard, and indeed probably a broader audience, in quite a comprehensive way.That concludes my report. Thank you very much, Mr. President. I apologize for obviously wandering on.(Applause.)PRESIDENT DORSEY: Thank you. Fred is an expert in this area of criminalization of pollution issues, and he is going to be one of the speakers on the panel in Tulane in March on this subject.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 repre-sent 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 surpris-es 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 con-sternation to the suggestion. And at the President's request, ourCommittee 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 denun-ciation 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 wereno 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 inter-national 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 tech-nical formula than that, but they have given to themselves criminal jurisdic-tion.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 Courtin 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 sev-eral 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: And Past President Graydon Staring.MR. STARING: Thank you, Mr. President and fellow members. The yellow book I hold in my hand here signals the subject of this exhortation."American Maritime Cases" was founded under the ægis of this Association more than seventy-five years ago and continues under that ægis today formally. Its constituents are mainly the members of this Association. I think most of the members of this Association need and use it. Most of AMC users are members of this Association.The publication is no longer limited, of course, to the paper I have in my hand, but is available on-line and CD rom. So, there is a complex of modes, if you will, in which to get it.The real value of AMC is in the editorial service. It is an editorial service that is manifest in the collection of cases, in the selection, and in the analysis of them. It includes, therefore, more cases, more law than is available in any other source in the field of maritime law. And some judge, whose name escapes me, but it might have been Holmes, said that the law is what the courts do, in fact-Was it? Yes, Michael Marks Cohen confirms it, it was Justice Holmes-The law is what the courts do, in fact; and AMC tells you what they do, in fact.Now, it has never been the purpose of AMC just to put paper on your shelves. And the cost of rendering that service in the three ways I have described is a very high cost and it doesn't get any less. AMC has, therefore, distributed with the President's report that came out recently a questionnaire that was directed to finding out how people use it, and where they use it and in what mode. And we have gotten a good many of those questionnaires back, but not as many as should have been received. And they are needed in order to find out what the spread is between, on the one hand, those who use a personal set of books or a personal CD rom, all the way up, or rather down, to those who go to the public library.I realize that I'm preaching to the saved here because, of course, most of the people who would come to this meeting, and especially those who are still here at this hour, must be presumed to be saved.(Laughter.)MR. STARING: However, I exhort you, when you go home, to exhort the unsaved among your colleagues and friends who may not have returned those questionnaires to get them in to us, or, if they have lost them or want to make comments in any other way on what AMC should be doing, to send them in by e-mail, fax or mail, as you wish.Thank you very much.PRESIDENT DORSEY: Thank you very much.(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.And before I call on Past President Nicholas Healy for the usual motion at this time, I just want to make a couple of quick announcements.One is about the dinner. 6:45; cocktails, West Side Ballroom, fifth floor; dinner at 8:00, Main Ballroom, sixth floor, black tie, don't forget your tickets.Secondly, the MLA Report is on the table out there, and as usual it is a first class product, and I want to thank Gordon Paulsen and LeRoy Lambert and Matt Marion for their continuing efforts in that regard.And finally I want to call your attention to the seminar that is going to take place this afternoon at 2:30 in this room. The subject of the seminar is "Maritime Suits Against Sovereigns." It is going to be presented by Professor George K. Walker of Wake Forest University School of Law, and Philip A. Berns of San Francisco, who some of you may have heard about from time to time.So with those announcements and my thanks to you all for participating here today, I'll call on Past President Healy to make the usual motion.MR. HEALY: Mr. President, honored guests, fellow members of the Maritime Law Association.When I was called upon to make this motion two or three years ago, I took the opportunity to report that I had acquired another MLA relative of a sort from below the Mason-Dixon Line, in addition to my honorary nephew, Bunky Healy.That was the result of the marriage of my first cousin once removed, Lawrence Phillips, Jr., to one of the fair daughters of our fellow member, Walter Hartridge of Savannah, who is here this morning.I now have a further report to make: that there is now another generation; the happy couple who married several years ago have produced a fine boy and they have named him Lawrence Hartridge Phillips.Now, that doesn't quite make Walter and me blood relatives, but at least we now have a common blood relative, because the young man is of course Walter's grandson, but he is also my first cousin twice removed.(Laughter.)MR. HEALY: On that happy note, I move we adjourn.PRESIDENT DORSEY: Is there a second?(Seconded.)PRESIDENT DORSEY: All in favor?(A chorus of ayes.)PRESIDENT DORSEY: Thank you very much.(Time noted: 12 o'clock p.m.)**FORMAL REPORT OF THE COMMITTEE ON****CARRIAGE OF GOODS**The Committee met on November 1 beginning at 9:00 a.m. at the offices of Haight, Gardner, Holland & Knight. Forty-eight members of the committee were present.The first area of business was the introduction of the chair, vice chair and Subcommittee chair. A questionnaire was distributed to all members present requesting an update on their address, telephone and e-mail. The form also requested information concerning past subcommittee assignments, and requested future subcommittee assignments. In addition, suggestions for areas of future concerns were also requested.The main topic of discussion concerned the upcoming session of the CMI to be held in Singapore during February of 2001. In particular, the members of the International Subcommittee on Transport Law, many of whom were present at the meeting, discussed the various areas of concern. George Chandler, Chet Hooper, Vince DeOrchis, Michael Sturley and Michael Marks Cohen explained to our Committee members the current draft. They also explained the lengthy process which the CMI would need to go through before a finished document would be available. At the earliest, and even that is doubtful, a completed draft might be ready as early as 2004.The chair reported that Bob Motley from *The American Shipper*was able to get Senator Hutchinson to respond to several questions regarding the status of the proposed COGSA. In brief, the senator responded that she believed in the bill, it needed work, but she was optimistic that her committee would reach agreement and that the legislation would ultimately reach the floor for a vote. No dates were given.It was agreed that an attempt would be made to schedule future Subcommittee meetings immediately following the main Committee meeting on Wednesday morning at the same location. Attendance at Subcommittee meetings will increase if this schedule change can be achieved.There being no further business, the meeting was adjourned at 10:30 a.m.Respectfully submitted,William R. Connor III, Chair**FORMAL REPORT OF THE COMMITTEE ON****CARRIER SECURITY**The Committee on Carrier Security met at 4:00 p.m. on Wednesday, November 1, 2000 at the offices of Seward and Kissel, One Battery Park Plaza, New York City. The meeting was attended by five members and one guest.Agenda topics included the following:1. A report on recent changes in INS rules and procedures for the handling of civil penalties imposed under Section 280 of the Immigration and Nationality Act of 1952 for failure to detain alien crew members, stowaways, etc. Recent changes in the amounts of these fines, and procedures for asserting defenses were discussed.2. A discussion of recently promulgated regulations by the U.S. Customs Service dealing with the filing of petitions in penalty, liquidated damages, and seizure cases. The new regulations are intended to allow more flexibility and contact with Customs officials on the local level in an effort to make the administration of such cases more efficient and customer-friendly. At the same time, Customs has delegated increased authority to field personnel to decide petitions for relief with regard to fines, penalties and forfeitures. The new regulations, which came into effect on October 5, 2000, may be found at 65 Fed. Reg. 53565 and 53804 (September 5, 2000).3. A roundtable discussion concerning current INS policies in various ports on the handling, removal and deportation of stowaways.4. A discussion of the problem of container theft and container cargo pilferage, and strategies for preventing same. The Committee continues to explore ways of quantifying and addressing this growing problem, there being agreement that industry involvement and participation in developing strategies is critical.In addition to the Committee's Spring and Fall meetings this year, two Committee Newsletters were also published in an effort to keep members informed of current developments and to generate interest in Committee activities. The Committee continues to seek new members, both from the legal and industry sectors, and to solicit ideas for new carrier security-related projects.Respectfully submitted,Gordon D. Schreck, Chair**FORMAL REPORT OF THE COMMITTEE ON****CLASSIFICATION SOCIETIES**The Committee met on October 30, 2000, with twelve members or guests attending.Referring to the report of our last meeting (on May 1, 2000), the London meeting scheduled for May 5, 2000 among IACS (International Association of Classification Societies) and various industry groups to discuss class developments following the ERIKA casualty produced no agreement or other reported significant result.Subsequent to our October 30 meeting, we have learned that European Union (EU) Directive 94/57, addressing actions to be taken by the EU after the ERIKA casualty, is under revision, which may affect issues of class society liability; however, no concrete developments on that revision have been reported. The CMI stands ready to assist if it can, but neither IACS nor other industry groups have approached it for assistance, and it seems likely that the parties are waiting to learn the EU's position; there has been no further movement concerning the CMI Model Clauses.It can also be reported that, on June 21, 2000, in a Summary Order (Docket No. 99-9265) the Second Circuit Court of Appeals affirmed the judgment of the District Court absolving Bureau Veritas in *Carbotrade v. Bureau Veritas*, referred to in the formal report of our October 12, 1999, meeting (MLA Doct. 747, page 12085).Finally, also subsequent to our October 30 meeting, in November-December, 2000, several actions in behalf of cargo interests were filed in the United States District Court for the Southern District of New York against the classification society Lloyds Register of Shipping in respect of the November 1997 casualty to the MSC CARLA which broke in two during an Atlantic crossing. The committee will monitor any significant developments in that litigation.Respectfully submitted,Richard H. Brown, Jr., Chair**FORMAL REPORT OF THE COMMITTEE ON****COMITÉ MARITIME INTERNATIONAL**1. Maritime Projects of Other Organizations.

* 1. IMO.

* + 1. A draft convention on pollution from bunkers will go before a diplomatic convention in March 2001.

* + 1. A draft convention on anti-fouling paints is tentatively scheduled for consideration by a diplomatic conference in October 2001.

* + 1. A draft convention on ballast water may go to a diplomatic conference in 2002.

* + 1. A new draft protocol to the Athens passenger convention was produced at the last meeting of the IMO Legal Committee in October 2000. President Dorsey advises that the latest compromise follows the approach of the recent Montreal Convention pertaining to the carriage of air passengers with two tiers of liability for accidents caused by shipping incidents. Liability for the first tier up to a certain limit per capita per carriage is based on strict liability, with certain exceptions. Liability for the second tier is based on fault with a reverse burden of proof, *i.e.*, the burden of proof being on the carrier to show that it was not negligent. A shipping incident is defined as one where the injury arises in connection with a shipwreck, collision, stranding of the ship, explosion or fire in the ship, or defect in the ship. For non-shipping incidents, such as a passenger falling down the stairs or being tripped on the dance floor, liability is based on negligence with a reverse burden of proof for all levels of the claim. The protocol could go to a diplomatic conference in 2002.

**For those shipping incidents for which strict liability is applicable, the carrier can escape liability by proving that (1) the incident resulted from an act of war, hostilities, civil war, insurrection or a national phenomenon of an exceptional, inevitable and irresistible character or (2) the incident was wholly caused by an act or omission done with an intent to cause the incident by a third party. In addition, in all cases contributory negligence of the passenger will in all cases reduce the amount that the passenger can recover proportionally.****Interestingly, the exceptions from the strict liability track those in the Montreal Air Convention with one exception. The Montreal Air Convention also provides the carrier with an escape from liability if it can show that the incident was caused solely by the negligent act or omission of a third party. This has not been proposed as one of the exceptions to the Protocol to the Athens Convention.****It is proposed that States may provide for unlimited liability.****As in past drafts, the Protocol contains a provision for compulsory insurance, with the right of a direct action against the insurer.****This subject will be discussed in a seminar at Singapore.*** 1. **UNIDROIT.**

**A Marine Finance Subcommittee chaired by Charles Donovan will organize an effort to draft a protocol to cover containers and other items of marine equipment for the proposed draft Convention on Security Interests in Mobile Equipment. Suggestions were made to take soundings for support among such organizations as the International Council of Container Lessors, National Marine Electronics Association, National Association of Marine Products and Services, American Gaming Association, British Marine Equipment Council, International Banker Industry Association, International Ship Suppliers Association, Japanese Marine Equipment Association, and All Japan Suppliers Association. Nothing has been reported about such inquiries as yet.*** 1. **Hague Conference on Private International Law.**

**The work is going forward on a draft Convention for Enforcement of Foreign Judgments which, at the urging of our Association, will not cover admiralty and maritime judgments. Another session of the Conference to consider the subject is scheduled for June 2001. Alan van Praag is a member of the United States delegation.**1. **Other Committee Activities.**

* 1. Recycling Obsolete and Excess Law Books.

**This is a project, assisted by Mark J. Kremin of Vancouver from the Young Lawyers Committee, to recycle from the libraries of the law firms of MLA members all obsolete editions of maritime treatises, ship registers, law directories, and excess copies of law reviews, as well as the paperback advance sheets of F. Supp. 2d, F. 3d, U.S., and AMC (when superseded by bound volumes), to the libraries of law schools abroad. Six maritime law firms have already signed up and are sending their books to the libraries of law schools in Chile, China, Croatia, Malta, and South Africa. Other law schools in Italy, Korea, South Africa and Spain have asked to become part of the program. But we need more law firms to join up.*** 1. **Foreign Internships.**

**A Committee project has been undertaken, assisted by Barbara L. Rawest of Chicago from the Young Lawyers Committee, to coordinate placement of young American maritime lawyers for several months of internship in admiralty firms abroad, and vice versa.*** 1. **Denunciation of 1910 Salvage Convention.**

**The Salvage Committee has put together a task force under David Sharpe to look into all aspects of the relationship between the 1910 and 1989 salvage conventions including denunciation of the 1910 Convention.**1. **Internal CMI Matters.**

**The Nominating Committee has now recommended:****President: Patrick Griggs (UK) for a second term****Vice-President: Frank Wiswall (USA) for a second term****Vice-President: Karl-Johan Gombrii (Norway) for a first term****Executive Councillor: Thomas Reme (Germany) for a second term****Executive Councillor: Johanne Gauthier (Canada) for a first term****Executive Councillor: Professor Feng Li Qi (China) for a first term****Our Association is considering whether to offer to host the next CMI Meeting in 2004.****The CMI website is operational at "www.comitemaritime.org."****Respectfully submitted,****Michael Marks Cohen, Chair****FORMAL REPORT OF THE COMMITTEE ON****ELECTRONIC COMMUNICATIONS AND COMMERCE**1. **Presentation on the Electronic Court Filing System.**

* 1. **Terry Vaughn and Douglas Palmer of the Eastern District of New York provided a demonstration and presentation of the court's electronic filing system. Palmer said that by 2003 all federal courts in the United States will be using the Electronic Court Filing System ("ECF") for all cases. In the ECF, a username and password arrangement for registered users is a substitute for a holographic signature on papers filed. Registration is also required in order to elect to receive email notifications of filings in cases in which the registrant is not a party. The court administrators want eventually to make the user password valid nationwide so that registered users can file and access documents in any court. The ECF rules permit a user to disclose his or her password to an assistant for the purpose of filing documents under the user's name. However, the system is designed for hands-on use by judges and attorneys, and direct use will make the most of the ECF's speed and convenience.**

* 1. **When a document is filed in the ECF, an email is automatically sent to the judge, the magistrate and all parties. The email will contain the URL of the document filed, so users may view the document simply by clicking on the URL. The email options for registered users are very flexible, *e.g.*, a user may enter several email addresses to which notices of filings should be sent, including the user's weekend email address and addresses of persons who are not registered users, such as clients, associates, paralegals, *etc.***

* 1. **Unfortunately, the US Marshal's Office is not yet on the system.**

* 1. **At the present time, use of the system is free of charge. It is likely that a charge of 7 cents per page will be assessed to non-parties for downloading documents and that parties to the case will be permitted to download each document once without charge.**

* 1. **Documents filed in ECF must be in Adobe PDF (or portable document format). Generally, exhibits will be scanned into PDF and filed. Attorneys are permitted to use excerpts from bulky affidavits that are in their possession in an attorney's affidavit, in order to avoid filing the entire attachment, provided that the attorney offers to make the entire attachment available for inspection to all parties.**

* 1. **It is expected that the Civil Cover Sheet will be converted to an automated form.**

**DRAFT WEB SITE POLICY****This document is for the purpose of assisting the officers of the MLA and its membership in forming agreement as to the purpose, contents and management of the MLA web site, and recording that agreement.****1. Purpose. The purpose of the MLA web site is to facilitate communications between the MLA and its members and among members, and to increase the accessibility of MLA written materials to m embers and the public. In addition, if the membership finds the web version of the directory and other materials useable, it may be possible to reduce or eliminate the substantial printing and postage charges paid by the MLA to produce and distribute paper copies of these materials.****2. Structure. The MLA web site will be hosted by a web site development company, Intercounsel, LLC ("Intercounsel"). Everything viewable on the MLA web site will be accessed on Intercounsel's server (the "Web Server"). A second company, PC Solutions, is serving as the MLA's database developer (the "Developer"). The Developer will maintain the primary records for part of the materials available on the Web Server, namely, Membership, Committees and the billing and payment of dues, on their server (the "Data Server"). W hen there are changes in the data maintained on the Data Server, the Developer will promptly copy those changes to the Web Server.****Data which is not maintained on the Data Server will be maintained directly on the Web Server. Initially, this will consist of the Events Calendar, Resource Links, and information about the MLA.****[Committee Note: this structure is awkward and prone to errors and delays in updating. It would be preferable to permit members to update their entries by using an online update form. This would require assigning passwords to members to prevent unauthorized changes. Passwords could also be used to restrict access to the Library and the discussion forums (if we implement them in the future). Consideration would have to be given to control of changes in a firm's address because the same address is displayed for all members in that firm. Under this arrangement, the printed directory would be prepared from the data on the website. The data would be flowing from the website to the Developer.]****Respectfully submitted,****Glen T. Oxton, Chair****FORMAL REPORT OF THE COMMITTEE ON****MARITIME ARBITRATION****Since May, 2000 the Committee has met three times to discuss issues relating to Maritime Arbitration and Mediation and has been working on a variety of projects.**1. **Proposed Amendments to the Federal Arbitration Act.**

**The Arbitration and Mediation Committee unanimously approved four proposed amendments to the Federal Arbitration Act (FAA) at the meeting on October 4, 2000.****In considering what amendments to propose, we considered the following criteria:****1. Does the proposed amendment preserve party autonomy?****2. Does the proposed amendment limit the involvement of the courts?****3. Does the proposed amendment promote uniformity of law whether national or transnational?****4. Can the proposed amendment be limited to "maritime transactions"?****For each proposed amendment, specific statutory language has been proposed followed by explanatory "Notes" discussing an analysis of existing case law and the need for change. The amendments, in short, provide as follows:****Consolidated Arbitration. Under current law, the parties are presumed in many cases to object to consolidation unless all agree otherwise. The proposed amendment to 9 U.S.C. §4 reverses the presumption only in maritime transactions and closely tracks the corresponding provision of the Revised Uniform Arbitration Act.****Appointment of Second Arbitrator. Under current law, if one party to an arbitration agreement fails to appoint an arbitrator, the party demanding arbitration has to seek the assistance of the District Court to compel the appointment of the second arbitrator. The proposed amendment to 9 U.S.C. § 4 permits the party demanding arbitration, without the interven-tion of the court, to appoint the second arbitrator if one has not been appointed within thirty (30) days.****Preserving Evidence in Maritime Transactions. Under current law, arbitrators are authorized to subpoena witnesses to give testimony at a hearing with the subpoenas subject to enforcement by the Federal Court for the district in which the hearing is held. The proposed amendments to 9 U.S.C. §7 would authorize arbitrators to issue a subpoena to any person to give deposition testimony, produce documents or provide access to material evidence, throughout the United States. A district court may enforce the subpoena or otherwise order a person to give a deposition.****Modification of Awards in Maritime Transactions. Under current law, arbitrators are not authorized to modify final awards on their own initiative or upon the application of either party. The proposed amendment to 9 U.S.C. §11 permits arbitrators to correct an award to eliminate a typographical, arithmetic or similar clerical error or omission in the award.****MLA Arbitration and Mediation Committee****Proposed Amendments to the FAA dated October 4, 2000*** 1. **CONSOLIDATED ARBITRATION**

**The following amendment is proposed to The Federal Arbitration Act, 9 U.S.C. § 4. Renumber existing § 4 as § 4(a) and adding new subsection (b).****(b) Consolidation of Separate Arbitration Proceedings in Maritime Transactions****(i) In one or more maritime transactions and except as provided in subsection (iii), upon motion of a party to an agreement to arbitrate, or to a maritime arbitration proceeding, the district court in the exercise of its admiralty jurisdiction may order consolidation of separate arbitration proceedings as to all or some of the claims if:****(A) there are separate agreements to arbitrate or separate maritime arbitration proceedings between the same persons or one of them is also a party to a separate agreement to arbitrate or a separate maritime arbitration proceeding with a third person;****(B) the controversies subject to such agreements to arbitrate or arbitration proceedings arise in substantial part from the same maritime transaction or series of related maritime transactions;****(C) there is a common issue of law or fact creating the possibility of conflicting decisions in the separate maritime arbitration proceedings;****(D) in the event there is more than one agreement to arbitrate, they are similar and provide for the arbitration proceedings to be held in the same city; and****(E) the prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.****(ii) The court may order consolidation of separate maritime arbitration proceedings as to certain claims and allow other claims to be resolved in separate arbitration proceedings.****(iii) The court may not order consolidation of the claims of a party to a maritime arbitration agreement which prohibits consolidation.****Notes to proposed subsection 4(b):*** + 1. **This proposal is recommended because:**
			1. **it avoids the possibility of inconsistent results from separate maritime arbitration proceedings;**
			2. **it simplifies the arbitration process, thereby saving time and expense;**
			3. **it is a development and refinement of the law consistent with the Revised Uniform Arbitration Act and the Rules of the Society of Maritime Arbitrators [SMA].**

* + 1. **As noted in the National Conference of Commissioners on Uniform State Laws, Reporters Notes to Section 10, Consolidation of Separate Arbitration Proceedings, in the recently Revised Uniform Arbitration Act, multiparty disputes have long been a source of con-troversy in the enforcement of agreements to arbitrate. When conflict erupts in complex transactions involving multiple contracts, it is rare for all parties to be signatories to a single arbitration agreement. In such cases, some parties may be bound to arbitrate while others are not; in other situations, there may be multiple arbitration agreements. Such realities raise the possibility that common issues of law or fact will be resolved in multiple fora or multiple proceedings, enhancing the overall expense of conflict resolution and leading to potentially inconsistent results. See III MACNEIL TREATISE § 33.3.2. Such scenarios are particularly common in construction, insurance, maritime and sales transactions, but are not limited to those settings. See Thomas J. Stipanowich, "Arbitration and the Multiparty Dispute: The Search for Workable Solutions," 72 Iowa L. Rev. 473, 481-82 (1987).**
		2. **Charter party transactions are not exclusively between a registered owner of a vessel and a charterer. There are many types of charter parties including bareboat, time and voyage. It would not be unusual for an owner to charter its vessel to a charterer for a fixed period of time and for the charterer in turn to subcharter the vessel to a third party for a specific voyage. In the situation described above disputes may arise between the owner/charterer and/or between the charterer/subcharterer which involve common questions of law or fact.**
		3. **The practice of consolidating two or more arbitration proceedings developed rapidly in the maritime area after the decision in*Compania Espanola de Petroleos v. Nereus Shipping*, 527 F.2d 966 (2d Cir. 1975), *cert. denied*, 426 U.S. 936 (1976), which involved a single arbitration agreement covering more than two parties. But the Circuit Courts thereafter refused to consolidate maritime arbitrations which arose under more than one agreement to arbitrate unless a State statute authorized consolidation. *SeeWeyerhaeuser v. Western Seas Shipping*, 743 F.2d 635 (9th Cir. 1984); *New England Energy v. Keystone*, 855 F.2d 1 (1st Cir. 1988); *Glencore v. Schnitzer*, 189 F.3d 264 (2d Cir. 1999).**

* + 1. **There may be situations when the same person is a party to two or more arbitration agreements with identical contractual terms . . . as when an ocean common carrier issues bills of ladings to different parties on similar voyages at different times. These would not be regarded as related transactions. It is not intended that the language of subsection (b)(i) would apply to arbitrations arising out of similar events which do not otherwise constitute related maritime transactions.**

* + 1. **The Society of Maritime Arbitrators revised its rules in 1994 to provide for consolidated arbitration, Section 2 of the revised SMA Rules provides for the consolidation of arbitration proceedings involving related contract disputes with others "arising from common questions of fact and law." The SMA made its change to preserve consolidation, which simplifies the arbitration process, saves time and expense and avoids the possibility of inconsistent results from separate arbitration proceedings.**
		2. **The Federal Arbitration Act (FAA) already recognizes the important role arbitration plays in "maritime transactions." Indeed, that term is the first one mentioned and defined in the FAA, 9 U.S.C. § 1. The FAA also includes unique provisions for enforcement of admiralty provisional remedies in the context of an arbitration. 9 U.S.C. § 8. Under current law the parties are presumed in many cases to object to consolidation unless all agree otherwise. The MLA proposal amends 9 U.S.C. § 4 and reverses the presumption only in maritime transactions which are defined in §1, to mean "charter parties, bills of lading of water carriers, agreements relating to wharfage, supplies furnished vessels or repairs to vessels, collisions, or any other matters in foreign commerce if the subject of controversy, would be embraced within admiralty jurisdiction."**

* 1. **APPOINTMENT OF SECOND ARBITRATOR**

**The following amendment is proposed to The Federal Arbitration Act, 9 U.S.C. §4 by adding new subsection (c).****(c) Appointment of Arbitrator in Maritime Transactions****(i) In a maritime transaction where an agreement to arbitrate provides for each party to appoint an arbitrator but imposes no time limit for appointment of the second arbitrator, if the party demanding arbitration refers to this section in his notice to the other party of the appointment of the first arbitrator, and the other party within thirty (30) days after his receipt of the notice fails to give notice to the party demanding arbitration of the appointment of the second arbitrator, then thereafter at any time before the party demanding arbitration receives such notice of the appointment of the second arbitrator, the party demanding arbitration may appoint the second arbitrator and give notice to the other party of this appointment. The second arbitrator shall be a disinterested person with the same qualifications, if any, required by the arbitration agreement.****(ii) Notwithstanding anything contained in this subsection, in exigent circumstances a party demanding arbitration arising out of a maritime transaction may petition a United States district court to exercise its admiralty jurisdiction by enforcing the arbitration agreement with an order directing the other party to appoint the second arbitrator on less than thirty (30) days notice.****Notes to proposed subsection 4(c):*** + 1. **This proposal is recommended because:**

* + - 1. **It would eliminate or substantially reduce the district courts' involvement in the appointment of arbitrators in "maritime transactions."**
			2. **It would clarify and settle the law with respect to so called "default arbitration clause" in maritime transactions and make time of the essence in an arbitration clause calling for the appointment of an arbitrator within a specified number of days.**
			3. **It would bring uniformity to the procedures for the appointment of arbitrators in "maritime transactions" in the United States.**

* + 1. **Typically, charter party arbitration clauses provide for a panel of three arbitrators. Many of the commonly - used tanker form charter parties, including the Association of Ship Brokers and Agents (U.S.A.), Inc. ASBATANKVOY form and the New York Produce Exchange Form (NYPE) provide that each party, appoint an arbitrator and the two party - appointed arbitrators are to appoint the third arbitrator.**

* + 1. **When the first party appoints an arbitrator and calls for arbitration under the ASBATANKVOY form, the arbitration clauses provides that the second party has twenty (20) days to appoint its arbitrator, failing which the first party shall have the right, without further notice, to appoint a second arbitrator, "who shall be a disinterested person with precisely the same force and effect as if said second arbitrator has been appointed by the other party."**

* + 1. **Some printed form charter parties frequently used in the dry cargo trade, including the NYPE form charter party, provide for a panel of three arbitrators. However, the arbitration clause does not provide for the appointment of the second arbitrator by the first party when the second party fails to appoint its arbitrator. Therefore, after the first party calls for arbitration and the second party fails or refuses to appoint an arbitrator, the first party must file a petition in the United States district court to compel the second party to appoint an arbitrator. In many instances, the district court will itself appoint the second arbitrator.**
		2. **In situations where the first party has the right to appoint the second arbitrator after a specified number of days, one district court has found that the arbitration clause calling for the appointment within 20 days did not make time of the essence. *Compania Portorafti v. Kaiser*, 616 F. Supp. 236 (S.D.N.Y. 1985). *But also see* *Universal Reinsurance Corp. v. Allstate Ins. Co.*, 16 F.3d 125 (7th Cir. 1994), where the court held that a similar clause should be strictly enforced.**

* 1. **PRESERVING EVIDENCE IN MARITIME TRANSACTIONS**

**The following amendment is proposed to The Federal Arbitration Act, 9 U.S.C. § 7:****Designate the existing text as subsection (a) and add new subsections (b) and (c):****(a) The arbitrators selected either as prescribed in this title or otherwise, or a majority of them, may summon in writing any person to attend before them or any of them as a witness, and in a proper case to bring with him or them any book, record, document, or paper which may be deemed material as evidence in the case. The fees for such attendance shall be the same as the fees of witnesses before masters of the United States courts. Said summons shall issue in the name of the arbitrator or arbitrators, or a majority of them, and shall be signed by the arbitrators, or a majority of them, and shall be directed to the said person and shall be served in the same manner as subpoenas to appear and testify before the court; if any person or persons so summoned to testify shall refuse or neglect to obey said summons, upon petition the United States district court for the district in which such arbitrators, or a majority of them, are sitting may compel the attendance of such person or persons before said arbitrator or arbitrators, or punish said person or persons for contempt in the same manner provided by law for securing the attendance of witnesses or their punishment for neglect or refusal to attend in the courts of the United States.****(b) In a maritime transaction, the arbitrators, or a majority of them, may issue a subpoena to any person to give deposition testimony deemed material to the transaction and/or to produce documents or provide access to evidence which may be deemed material to the transaction; and may authorize a party to seek court assistance in obtaining testimony and such other evidence for use in the arbitration proceedings. A district court, acting within its admiralty jurisdiction may, enforce the subpoena or otherwise, order that a person give a deposition, produce documents, or provide access to evidence on terms that the court deems just and reasonable.****(c) In a maritime transaction, where the formation of an arbitration tribunal is incomplete, or in other exigent circumstances impairing a party's ability to obtain authorization from the arbitrators to seek court assistance, a district court acting within its admiralty jurisdiction and upon application by any interested party, may order that the testimony of a person or other evidence be preserved for use in future maritime arbitration proceedings, on terms that the court deems just and equitable.****Notes to proposed subsection 7(a)(b) and (c):*** + 1. **Section 7 of the Federal Arbitration Act (9 U.S.C. §7) authorizes arbitrators to subpoena witnesses to give testimony at a hearing, with the subpoenas subject to enforcement by the Federal Court for the district in which the hearing is held. As a practical matter, this limits their reach to the geographical limits of the State or 100 miles from the hearing situs, whichever is greater. FRCP Rule 45(b)(2).**
		2. **In court litigation, "discovery" subpoenas are enforceable under the Federal Rules throughout the United States by the Federal Court at the situs where the evidence is sought, regardless of where the suit has been filed. FRCP Rule 37(a)(1). But the Federal discovery rules do not apply to arbitrations. FRCP Rule 81(a)(3). A few states, like New York, have statutes providing for some discovery in aid of arbitration. CPLR 3102(c). But Federal statutes, authorizing courts to compel discovery in aid of foreign "tribunals," do not apply to arbitration. *National Broadcasting Co. v. Bear Stearns & Co.*, 165 F.3d 184 (2d Cir. 1999).**
		3. **Arbitrators, of course, have great power to compel disclosure from parties, simply by threatening to draw adverse inferences if dis-closure is not made. But, there are limits even to this power. For example, unless otherwise provided in the agreement to arbitrate (see SMA Rule 23) arbitrators are not authorized to order that depositions be taken. *Comsat Corp. v. National Science Foundation*, 190 F.3d 269 (4th Cir. 1999).**
		4. **These limitations on the power of arbitrators to obtain relevant evidence, and on the power of Federal courts to assist arbitral tribunals in this regard, create especially severe difficulties for maritime arbitrations both here and abroad. Those held in the U.S. tend to go forward in only a few port cities like New York, San Francisco, New Orleans, Houston and Miami. Frequently, the relevant evidence exists elsewhere in the country, far away from the place of the hearings.**

* + 1. **Another problem arises with perpetuation of evidence. Ships generally do not remain in port for long periods of time. Material documents, like logbooks and charts, as well as crucial witnesses, can sail away putting the evidence at risk. Under the old*de bene esse* statute, special provision was made for a Federal court to order that testimony be taken from a witness "bound on a voyage at sea." Rev. Stat, § 863, republished in 7A Moore's Federal Practice 247 (2d ed. 1996). FRCP Rule 27 superseded the *de bene esse* statute. No special provision is made in Rule 27 for maritime claims nor, indeed, for arbitration. Moreover, the notice requirements of the Rule do not accommodate the realities of shipping matters. The Federal courts have managed to deal awkwardly on an ad hoc basis with applications under Rule 27 to perpetuate evidence for use in future maritime arbitrations. *See* *In re Deilulemar*, 198 F.3d 473 (4th Cir. 1999). But the recent decisions construing Federal statutes which authorize discovery in aid of proceedings in foreign tribunals as not applying to arbitrations, cast some doubt on the case law applying Rule 27 to arbitrations as opposed to admiralty lawsuits.**

* + 1. **Discovery is now permitted in maritime arbitration only as authorized by the arbitrators in each case. Obviously, this close con-trol of discovery should continue to be maintained. But arbitrators should be permitted to order depositions in lieu of hearings to obtain the testimony of party employees, especially seafarers, who may be subject to travel on short notice. Moreover, when maritime arbitrators decide that testimony or evidence from third parties is important to their deliberations, they should be able to authorize parties to seek court assistance to compel production of the testimony or evidence, and the courts ought to be empowered to provide such assistance. Finally, when events occur before a maritime arbitration tribunal is even in place, or at a time when the tribunal cannot take timely action, the Federal courts should be empowered to perpetuate the evidence, lest it disappear.**

* 1. **MODIFICATION OF AWARDS IN MARITIME TRANSACTIONS**

**The following amendment is proposed to The Federal Arbitration Act, 9 U.S.C. §11. Add a new subsection (d) as follows:****(d) Without limitation of the foregoing, if an arbitration award is rendered in a dispute arising out of a maritime transaction,****(i) The arbitrators may correct an award to eliminate a typographical, arithmetic, or similar clerical error or omission in the award, provided that an application by a party so to modify the award is received by them within 30 days after the date the award was filed or delivered.****(ii) If any party to an award applies to the arbitrators to modify the award under Section 10(d)(i) above, the time for confirming, vacating, modifying or correcting the award under the other provisions of this Act shall not begin to run until the award on the application is filed or delivered. Their decision on the application shall be deemed part of and included in their final award.****Notes to proposed subsection 10(d):*** + 1. **Under 9 U.S.C. § 10 a federal district court may vacate an arbitration award. Under 9 U.S.C. § 11 a federal district court may modify or correct an award. The Act does not authorize the arbitrators to modify final awards on their own initiative or upon the application of either party.**
		2. **Courts have tended to interpret these provisions narrowly so as to confirm awards. Courts have been reluctant to exercise their power to vacate or correct awards. To do either might be perceived as not promoting arbitration or as encouraging others to challenge awards without grounds, clogging congested court calendars.**
		3. **Arbitrators have tended not to reconsider or reopen final awards, usually believing themselves *functus officio*, absent the agree-ment of the parties or specific authority in the arbitration agreement or rules incorporated by it. For example, Section  30 of the Rules of the Society Maritime Arbitrators, Inc. provides: "The Panel shall retain jurisdiction to modify the Award for the sole purpose of correcting obvious clerical and/or arithmetical mistakes." The SMA Rules, however, are not incorporated into all forms of charter parties.**

* + 1. **At the same time, awards do sometimes contain more or less obvious mistakes. If the party benefitting from the mistake does not voluntarily agree to accept performance without the benefit of the mistake, the party that believes itself aggrieved has no alternative but to ask the court to vacate or correct the award. This costs money and occupies the court's time, perhaps needlessly. See Judge Haight's decision in*Laurin Tankers v. Stolt Tankers*, 1999 AMC 1290 (S.D.N.Y. 1999), for a discussion of the cases and description of how arbitrators and courts struggle with these issues under the existing law.**

* + 1. **The proposed amendment attempts to allow mistakes to be corrected relatively easily by the arbitrators without weakening the*functus officio* doctrine and minimizes the need to go to court for relief when mistakes are made.**

* + 1. **The concept of allowing such a remedy is not novel. For example, similar provisions are contained in: 1) Article 30 of International Arbitration Rules of American Arbitration Association; 2) Section 20 of the recently adopted revised Uniform Arbitration Act; 3) Section 57 of the English Arbitration Act; 4) Articles 35-37 of the UNCITRAL Arbitration Rules; and 5) Section 33 of the UNCITRAL Model Law.**

1. **Pending Projects.**

* 1. Preparing a policy paper on Manifest Disregard of the law for discussion at our May, 2001 meeting.

* 1. Proposing ways to provide for a mediation in disputes subject to Maritime Arbitration.

* 1. Working with the Society of Maritime Arbitrators and participating on the planning committee for the International Convention of Maritime Arbitrators (ICMA) to be held in New York on October 22-26, 2001.

**Respectfully submitted,****Donald J. Kennedy, Chair****FORMAL REPORT OF THE COMMITTEE ON****MARITIME PERSONNEL****The Committee met on Thursday, November 2, 2000 in New York, New York at the fall meeting of the Association. John Schaffer chaired the conference. Twenty-five members and guests participated in a lively meeting on changes in status, current cases and other developments affecting the MLA, practice of Committee Members and other personal injury practitioners.**1. **Recent Developments in the Death On the High Seas Act (DOHSA)**

* 1. 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 (DOHSA) to change the portion regarding marine deaths to resemble that for aviation deaths occurring more than one marine league from shore. Recovery for loss of care, comfort and companionship would be allowed for deaths of passengers on a vessel other than a recreational vessel. We understand that the Senate has passed such a bill. We also understand that it is unlikely that the amendments will be enacted this year.

* 1. In *Brown v. Eurocopter, S.A.*, a helicopter crashed into a fixed platform in the gulf. The pilot and passengers were killed. In this case, where the helicopter crashed and then fell into the sea, Judge Kent held that DOHSA, rather than Texas law, through the Outer Continental Shelf Land Act (OCSLA) applied.

**In a later decision in this case, Judge Kent of Galveston had to decide whether the helicopter, as a commercial helicopter air taxi, would be considered in a "commercial aviation accident," as would an international passenger plane. He did so hold, so that the family could recover the non-pecuniary damages now allowed. He had no problem with the retroactivity issue. The case is Civil No. G98-529 (Galveston Div.), decided August 22, 2000.**1. **Tort Reform**

**Congress has accomplished little in the way of substantive product liability reform.****Efforts to limit punitive damages did gain some momentum in****February, when the House finally passed the Small Business Liability Reform Act of 2000 (H. R. 2366). However, the bill is unlikely to become law during this year, as President Clinton has indicated he will veto the bill when and if it reaches his desk.****Under H. R. 2366, a plaintiff would need to establish by clear and convincing evidence that the defendant's conduct was willful or flagrantly indifferent to the rights or safety of others. The Bill, in its current form, would limit small businesses' joint liability for non-economic damages, and limit punitive damages against small businesses to the lesser of $250,000.00 or three times the amount awarded for economic and non-economic losses. The Bill defines small businesses as those with (25) or fewer full time employees.****In passing the Bill, the House adopted several key amendments, including permitting a court to exceed the $250,000.00 cap on punitive damages, if it finds by "clear and convincing evidence that the defendant acted with a specific intent to cause the type of harm for which the action was brought." Furthermore, an amendment clarified the definition of "Punitive Damages" so as to not include civil penalties, civil fines or treble damages assessed or enforced by a government agency under federal or state statute.****The Bill has now been sent to the Senate, where its prospects are uncertain. Since it is likely to be vetoed by the President, it probably doesn't make a big difference what the Senate does. The Bill's fate in the next Congress will depend upon who wins the White House.**1. **Punitive Damages**

* 1. **A Miami-Dade County circuit judge upheld a jury's landmark award of $145 billion in punitive damages in a class action lawsuit brought by sick Florida smokers against the nation's largest cigarette makers.**

**Circuit Judge Robert Kaye, himself a former smoker, rejected the tobacco companies' request that he reduce the record-setting award that a six-member jury had handed down in July to some 500,000 sick smokers and the relatives of people who died of cancer and other smoking-related diseases.****Judge Kaye, disregarded the tobacco companies' contention that such a large punitive damage award would bankrupt them.****Lawyers for the tobacco companies have repeatedly said the jury's award was illegal because it should have required each of the 500,000 smokers to prove they had been harmed by tobacco.****And the companies' lawyers have stressed that both Florida and federal law say a jury's award cannot be so large that it bankrupts the defendant. The tobacco companies' lawyers have said the $145 billion award would do that.****The jury's punitive damage award was seen by many as a crushing defeat of cigarette makers, coming at the close of a two-year trial in Miami and after the same jury had awarded more that $12 million in compensatory damages in the class action suit.****Jurors said they chose such a large punitive damage award because they wanted to send a strong message to tobacco companies, which, the jurors said, had deceived the public.*** 1. ***CSX Transp. Inc. v. Palank*, 1999 WL 641885 (Fl. App. 4th Dist.):**

**The U. S. Supreme Court has denied *certiorari* to CSX Transportation Inc. in an appeal of a $50M punitive damages judgment, letting stand one of the largest punitive awards ever to a single family. On July 31, 1991, an Amtrak train on a CSX track in South Carolina killed (8) and injured (50) others when the last five cars of the train derailed and smashed into a freight train parked on an adjacent track. Paul Palank was one of the passengers killed. His family sued CSX (*CSX Transportation Inc. v. Palank*), charging that the accident had been caused by the railroad's negligence in maintaining the track. In July 1995, a Florida jury awarded the Palanks $6.1M in compensatories. The compensatory award was appealed, but affirmed and subsequently paid, with interest, in 1997. A second Florida jury found CSX liable for punitive damages, then ordered the railroad to pay an additional $50M.*** 1. **In re *Horizon Cruises Litigation*, 101 F. Supp.2d 204 (S.D.N.Y., May 25, 2000), the U. S. District Court for the Southern District of New York has ruled that passengers on a cruise ship may, in appropriate cir-cumstances, recover punitive damages in an admiralty action. In the instant action, plaintiff passengers on a cruise ship contracted Legionnaires' disease after utilizing a whirlpool spa on the vessel. They brought an action, including a claim for punitive damages, against the cruise ship owner and operator and against the manufacturer and dis-tributor of the filter used on the spa. The cruise ship owner and operator filed cross-claims against the filter manufacturer and distributor, who moved to strike the claims for punitive damages. Noting that courts have issued conflicting opinions on the issue, the court held that the equities favored allowing punitive damage claims to be brought by passengers on a cruise ship. The court ruled that provisions in the Jones Act and the Death On The High Seas Act barring punitive damage claims were to be limited to claims filed under those statutes.**

1. ***St. Romain v. Industrial Fabrication and Repair Service, Inc*., 203 F.3d 376 (5th Cir. 2000)**

**Seaman status was denied to a plaintiff whose duties included decommissioning oil wells under offshore platforms. Part of his work was performed from a lifeboat also used as a transport vessel. But the plaintiff's employer didn't own the lifeboat and the plaintiff worked on other boats owned by nine different companies chartered by different entities. He was not connected with an identifiable fleet of vessels, having worked on vessels not under common ownership or control. The court did acknowledge that *Papai's* "Perils of the sea language" was not determinative of status. Rather, a seaman's status must be determined by examining the overall employment-related connection to a vessel, not focusing only on the facts at the time of injury. Status is a mixed question of law and fact and it is generally inappropriate to decide the issue on motion.**1. ***Lewis v. Lewis & Clark Marine Inc.*, 120 S. Ct. 2193 (2000)**

**The U.S. Supreme Court has granted *certiorari* in case of interest to the maritime personal injury community. The Supreme Court said it would use a dispute from Illinois to resolve what the justices were told are conflicting legal rules for maritime businesses on different stretches of the Mississippi River. The court said it will decide whether a man who says he hurt his back while working on a ship can sue the ship's owner in state court, even though the owner previously filed a federal lawsuit seeking to limit its liability for the accident. A week after the accident, Lewis & Clark Marine filed a federal lawsuit invoking the federal Limitation of Liability Act. About a week later, Lewis sued the shipping company in an Illinois State court. After being informed of Lewis' state court lawsuit, the federal judge dismissed the limitation lawsuit that had been filed by the shipping company. In November, 1999, the Eighth Circuit reversed and remanded the order of the district court holding that there was no conflict between the Act and the "saving to suitors" clause and thus no grounds for disso-lution of the injunction imposed upon the state court action. Accordingly, the court found that the district court abused its discretion when it****ignored this lack of statutory conflict and prematurely applied the "adequate fund" exception instead. Lewis' lawyer said the appeals court's ruling conflicts with those of other federal appeals courts. Lawyers for Lewis & Clark Maritime had urged the justices to reject Lewis' appeal.**1. ***Calhoun v. Yamaha Motor Corp.*, 216 F.3d 338 (3d Cir. 2000):**

**The U. S. Court of Appeals for the Third Circuit has determined that both federal and state law are to be applied to a near-shore wrongful death action involving a non-seaman. In 1996, the U. S. Supreme Court held that plaintiffs could assert a cause of action based upon a state wrongful death or survival statute in such case where the death occurred in U. S. territorial waters. In this case, the death, which happened while the person was riding a Jet Ski, occurred in Puerto Rico. The deceased (a minor) and her parents were residents of Pennsylvania. As a result of the death, the parents sued the manufacturer of the Jet Ski. In answering the two major legal issues left undecided by the Supreme Court, the intermediate court has ruled that federal maritime law must be used to determine liability. Compensatory damages are to be determined under the law of the state of the residency of the deceased. Punitive damages are to be determined under the law of the state of the situs of the death.****We understand that a petition for *certiorari* to the U. S. Supreme Court has been filed.**1. ***Gravatt v. City of New York*, 226 F.3d 108 (2d Cir. 9/18/2000):**

**The U. S. Court of Appeals for the Second Circuit has ruled that, in a suit brought under the Longshore and Harbor Workers' Compensation Act (LHWCA), an employer who owns the vessel on which an employee is injured is not liable in tort to the employee if the employer was only negligent in its capacity as employer and not in its capacity as vessel. In the instant case, plaintiff dock builder was employed by defendant construction contractor. The job of repairing a bridge was performed from a barge chartered by defendant. Thus, defendant acted in two capacities-employer and vessel owner. Plaintiff was injured on the barge due to negligence of defendant's employees occurring on an adjacent barge while handling materials in making repairs to the bridge. Rather than seeking recovery from defendant as a LHWCA employer, plaintiff brought suit in tort against the vessel and the defendant as vessel owner. The court held that, under the LHWCA, where the negligence relates to the employer's work, not to the performance of vessel-related duties, the employee's sole recovery is against the employer, as such. We believe this case is on appeal again.**1. ***Jackson v. North Bank Towing Corp.*, 2000 WL 27857 (5th Cir. 2000)**

**The Fifth Circuit declared that, while the Jones Act bars certain foreign seamen from bringing an action under American maritime law, it does not bar actions in U. S. federal court under foreign law by foreign seamen who are injured while employed offshore in waters of nations other than the United States. This federal case involved the same plaintiff whose federal claims were already dismissed in Louisiana State court. See *Jackson v. North Bank Towing Corp.*, 742 So. 2d 1 (La. App. 3d Cir. 1999).****The Fifth Circuit withdrew its earlier opinion in *Jackson v. North Bank Towing Corp.*, 2000 WL 27857 (5th Cir. 2000) allowing a foreign seaman to prosecute foreign law claims in U. S. federal court, and subsequently held that the foreign seaman's lawsuit was barred by res judicata. See *Jackson v. North Bank Towing Corp.*, Civil Action No. 99-30030, 2000 WL 719588 (5th Cir. June 2, 2000).**1. ***Solano v. Gulf King 55, Inc.*, 212 F.3d 902 (5th Cir. 2000):**

**The U. S. Court of Appeals for the Fifth Circuit has ruled that coastal state law may be applied in cases involving foreign nationals injured on board U. S. vessels while serving as crew members where the vessels are semi-stationary. In the instant case, ten Nicaraguan seamen brought suit in federal court against the owner of a fleet of U. S. fishing vessels. The vessels were engaged in long-term fishing operations off the coast of Nicaragua. The seamen were hired in Nicaragua and paid in Nicaraguan currency. The trial court ruled that U. S. law applied, primarily based on the flag of the vessels. The appellate court ruled that the significance of the flag of the vessel in making choice of law determinations was greatly lessened where, as here, the vessels were not engaged in traditional blue water operations, but rather were operating in the waters of one foreign nation for an extended period of time. This holding would appear to be applicable to offshore supply vessels and other craft when they spend extended periods operating off the coast of one nation.**1. ***Motts v. M/V Green Wave*, 2000 U. S. App. LEXIS 9140 (5th Cir. May 9, 2000):**

**The Appellate Court took back from the survivors of Neville Motts $625,000, which the trial court (Galveston-based U. S. District Judge Samuel B. Kent) had awarded Motts' widow on account of his death in a Houston hospital after initially suffering crushing injuries aboard the M/V Green Wave. Specifically, the appellate court reversed damages for mental anguish, loss of society, and punitive damages, based upon state law, but affirmed (pecuniary) damages totaling about $675,000 for physical pain and mental anguish, loss of care, maintenance and support, and prejudgment interest.****In reversing the nonpecuniary damages awarded by the trial court under state law, the 5th Circuit held that the Death On The High Seas Act (DOHSA) "applies where the decedent is injured on the high seas, even if a party's negligence is entirely land-based and begins subsequent to that injury."**1. ***Young v. Players Lake Charles* (District Court of Texas 2000)**

**The plaintiffs' decedents sustained fatal injuries when their vehicle was struck by another vehicle driven by a motorist on a highway. The motorist had been drinking on a casino boat owned by defendants in Lake Charles, Louisiana. The defendants argued that Louisiana law governed the action, and sought dismissal on the grounds that Louisiana's Dram Shop Law insulated providers of alcohol from liability for the actions of those to whom they sell or serve alcohol.****The court acknowledge that in the absence of a maritime law on this particular subject, they needed to determine whether it should fashion such a rule or instead apply existing State Law. The court viewed the issue as follows:****Did defendants have a duty toward plaintiffs, did defendants breach that duty, and was there a causal connection between defendants' breach and plaintiffs' injury? According to . . . the general maritime law . . . plaintiffs are owed a duty of ordinary care. If a defendant fails to exercise ordinary care and the resulting harm was reasonably foreseeable, liability arises. There is nothing inherently complicated about this rule as it relates to dram shop liability.****In essence, the court concluded that there was an existing maritime rule governing the issue of dram shop liability and that it was contained within the defendants' duty to exercise reasonable care.****The court has cast doubt on the viability of the rule enunciated in a body of cases (and especially in the leading case of *Meyer v. Carnival******Cruise Lines*) that courts exercising admiralty jurisdiction should apply State Dram Shop Laws as the rule of decision. More significantly, the court's ruling is a rejection of any concept of immunity, qualified or otherwise, for sellers of alcohol on vessels when sued by someone injured as a result of the intoxication of a person to whom the alcohol was provided. It would appear that vessel owners and operators can no longer feel safe simply by avoiding serving alcohol to "minors," "obviously intoxicated persons," or any others to whom State Dram Shop Laws provide an exception to immunity.**1. **Verdin v. R&B Falcon Drilling**

**A class action has been instituted in Judge Kent's court, Galveston, Texas against essentially all U. S. offshore drilling contractors alleging a conspiracy to suppress the wages of offshore workers.****The named Plaintiff and alleged class representative, Raymond Verdin, was employed by Defendant R&B Falcon Drilling USA, Inc. ("R&B") for a couple of years. He operated an R&B crew boat, which serviced R&B's inland barge drill fleet. On one or two occasions he may have operated an offshore service boat but never served on a mobile offshore drilling unit (MODU) such as a jackup, semi-submersible or drill ship. The first amended complaint adds additional defendants. The second amended complaint also adds additional defendants and substitutes Thomas Bryant in the stead of Verdin as the proposed class representative. For a brief period of time, Bryant did work on offshore drilling rigs as an electrician.**1. ***Gulf Marine and Industrial Supplies, Inc. v. M/V Golden Prince*, November 24, 2000-No. 99-30909 - New Orleans, Louisiana:**

**Under the Federal Maritime Law Act, 46 U.S.C. § 31342, legal services furnished to the vessel are not "necessaries," and the law firm which provided the services is not entitled to a maritime lien for its attorney fees, senior to a mortgage on the vessel.**1. ***Stepansky v. Florida*, \_\_\_ U. S. \_\_\_ (October 30, 2000):**

**The U. S. Supreme Court has denied the petition for a writ of*certiorari* filed by attorneys for a man prosecuted and convicted in a Florida State court for a crime committed on a foreign flag cruise ship while the ship was underway approximately 100 miles off the Florida coast.****The State Supreme Court had upheld the use of a state law allowing such prosecutions where at least 50% of the passengers were embarked and debarked in Florida.****We are always looking for additional and interesting projects, relevant decisions, and are also continuously seeking potential new members.****Respectfully submitted,****John P. Schaffer, Chair****FORMAL REPORT OF THE COMMITTEE ON****NAVIGATION, COAST GUARD AND GOVERNMENT REGULATION****The Committee met at 4:00 p.m. on November 1, 2000 at the offices of Haight, Gardner, Holland & Knight in New York. A substantial agenda had been circulated by the Chair some two months in advance. The regular membership of the Committee was joined by Captain Joseph Ahern, U.S.C.G., the new Chief of the Coast Guard's Office of Maritime and International Law. The discussion of the agenda items is summarized below.****1. Ballast Water Management Programs****There was extensive discussion of new Ballast Water Management Programs at the IMO, federal, state and local levels. The IMO Program is voluntary and open-ended, providing for exchange of ballast in mid-ocean. There is expected to be a diplomatic conference on the IMO effort in about 2004. The Coast Guard is also attempting to rationalize federal and IMO requirements. The federal program set up by the Coast Guard calls for mandatory reporting, but voluntary exchange, with certain exceptions. The voluntary federal program will become mandatory after three years if there is not sufficient participation, and the first annual report indicates that only 20.8% of vessels participated in this voluntary program, so it may be likely that this program will become mandatory.****The *INTERTANKO* decision did not specifically address ballast water management programs, and federal law allows state and local programs to exist. Certain states, including California, Washington, Alaska, Maryland and Hawaii have established ballast water exchange requirements.****Hawaii's programs applies to alien aquatic species as well as ballast water transfer and provide that the state can adopt regulations to ban vessels that have significant quantities of hull fouling organisms. Contact with a senior marine biologist in Hawaii indicates that the state has not yet decided how to proceed with regard to the alien aquatic species, particularly because the phasing out of TBT as an anti-fouling element for hull coatings was environmentally driven, to avoid toxic leeching into surrounding waters. The environmental lobby faces a Hobson's choice, as phasing out TBT may mean increased hull fouling organisms on vessels coming from overseas.****California has opted for mandatory exchange, turning all recommendations in the federal regulations into requirements under California regulations. In addition, certain ports, such as Oakland, have adopted their own ballast water management programs.****2. Application of ADA and Other Federal Civil Rights Laws to Foreign Flag Vessels****In a decision of June 22, 2000, the Eleventh Circuit has ruled that ADA applies to public places on foreign flag passenger vessels calling in U.S. ports. The analysis of the court was somewhat cursory and would be subject to challenge on appeal, but the defendant, Premier Cruise Line, has gone bankrupt and ceased operation. Thus, an appeal is unlikely.****3. State Regulation of Ships after *United States v. Locke*****After the *INTERTANKO* decision, although routine operations of the vessel appear to be off-limits to state regulations, the states are continuing to regulate financial responsibility, response plans, ballast water management, air pollution and water pollution. Captain Ahern stated that the Coast Guard is coordinating with the states in an amicable way and is not acting in a heavy-handed fashion.****Various states have withdrawn or rolled back state regulatory schemes in the wake of the *INTERTANKO*decision. Air and water pollution remain areas where the EPA can choose to enforce standards even if the state chooses not to, and there are particular concerns for air pollution in areas such as Houston/Galveston and Alaska, since the state of the art for engines and fuels may not permit vessel owners to comply with new or existing regulations for air pollution.****4. EPA****EPA is becoming a more active player in the maritime industry, particularly in connection with the Ocean Dumping Act and in connection with air pollution issues. The EPA's Cruise Ship White Paper of August 27, 2000 may be read as a plan for how the EPA views environmental problems on cruise ships, and as an indication that pollution and dumping issues will be aggressively pursued by the EPA and will continue to be the subject of criminal enforcement.****Substantial fines have been imposed on RCCL in two cases ($9,000,000 for a bypass pipe around the oily water separator, and $18,000,000 for discharging toxic chemicals from dry cleaning, photo lab, etc.), and there appears to be follow-up in the subpoenaing of Carnival Cruise Lines. Captain Ahern emphasized that the Coast Guard has heard concerns of industry with regard to criminalization and heavy-handed enforcement, and that the Coast Guard is being careful in this regard. Larry Kiern stressed the concern for a disparate affect on the U.S. flag fleet and the concern for serious unintended consequences if acts not previously criminal become criminal on account of a change in regulatory policy.****The London Dumping Convention prohibits dumping of waste at sea, with an exception for dumping permitted by MARPOL. The U.S. Ocean Dumping Act does not exactly track the London Dumping Convention and does not specifically incorporate the MARPOL exception, and the EPA has not accepted the position that the MARPOL exception is recognized in U.S. law. The EPA's policy, if carried to the extreme, would prohibit dumping of dunnage and cargo sweepings generated in the U.S., not only in U.S. waters but also in the EEZ and on the high seas. There were indications that the EPA has been telling agents that such activity will lead to prosecution, and there was also anecdotal discussion of at least one case in which Coast Guard had advised an agent that discharge of dunnage would be permissible but the Master decided to play safe after asking others whether this would be a problem. Larry Kiern stressed that the issue of the reach of the Ocean Dumping Act has been around the Coast Guard for quite awhile, and that historically the Coast Guard did not press enforcement, but it appears that the EPA is beginning to proceed more actively in this area.****5. Submarine Cables****On August 23, 2000 there was published at 65 Fed. Reg. 51264 an advance notice of proposed rulemaking with regard to regulating subma-****rine cables in national marine sanctuaries. Concerns were expressed at the meeting regarding the expansion of national marine sanctuaries and critical habitats. The Endangered Species Act requires NOAA and the FWS to identify critical habitats, and in January 2000, NOAA published regulations saying that harming the critical habitat is prohibited, even if the threatened or endangered species are not present and therefore are not themselves harmed. It appears from the Federal Register of 23 August that violators of the critical habitat and marine sanctuaries regulations could be facing criminal exposure. This is an area in which there is a division of responsibility within the federal government, as the Federal Communications Commission regulates landing rights for submarine cables, but issues of marine sanctuaries and critical habitats are vested in NOAA and FWS.****6. Exclusive Tug Franchises****The FMC has recently opened an investigation arising out of imposition by various marine terminals on the Mississippi River of requirements that vessels deal exclusively with one tugboat company. Fred Kuffler indicated that in the River Parrishes case about two years ago, the FMC asserted jurisdiction but decided there was no violation of the Shipping Act. On August 21, 2000, the FMC issued a Section 15 order requiring ocean common carriers to provide additional information. The FMC may decline ultimately to accept jurisdiction, and the issue of defining "common carrier" for purposes of these cases appears to be a matter of dispute within the FMC.****In a further development, at least one grain company was reported to now also require use of its exclusive designated shipping agent.****7. Recent Legislation****Larry Kiern mentioned that the Coast Guard Authorization Act did not pass on account of issues involving amendments to the Death on the High Seas Act and certain issues involving Alaska. Larry indicated that the authorization bill will be re-introduced in the next Congress. Uncontested provisions include extension of the Bridge- to-Bridge Radiotelephone Act to twelve miles, providing emergency borrowing authority to the Oil Spill Liability Trust Fund, increased penalty for negligent operations, limiting the liability of pilots acting at a Coast Guard VTS site to provide immunity from liability except for gross negligence or willful misconduct, amendment of the Ports and Waterways Safety Act with regard to haz-ardous condition reporting and directing vessels in hazardous circum-stances, prohibition  of  the  enactment  of  additional  maritime  user  fees through the year 2006, and a provision with regard to the Jones Act requiring escort and towing tugs to be U.S. vessels.****Items in the act that might be subject to some degree of controversy included the provision permitting recording of a notice of lien on a vessel that is documented but on which there is no mortgage, and a provision prohibiting cargo vessels from loading or discharging in the United States if they are registered with a "substandard" flag state.****8. Ocean Dumping Act & MARPOL****See paragraph No. 4 above.****9. Report of the Interagency Commission on Crime and Security in U.S. Seaports****There is interest on Capitol Hill, led by Senator Gramm, in tightening security in U.S. seaports. The issue is complicated politically, not only because increased security efforts are likely to be expensive and may require a user fee but also because organized labor generally does not favor increased security efforts to the extent that they would involve background checks and other possible limitations on their members. The consensus of those who spoke at the meeting appeared to be that the government is likely to push for increased security on anti-terrorism grounds.****10. Setting the Environmental Agenda of the Coast Guard for Oil Pollution Prevention, Preparedness and Response in the 21st Century****The Coast Guard published a notice in August at 65 Fed. Reg. 62408 providing for public meeting on December 12 and closing of comments on December 30th. No one outside the Coast Guard has yet been able to divine the specific agenda of the Coast Guard , and agency spokesmen have disclaimed any purpose other than gathering information from the public. Non-partisan comments on behalf of the MLA are to be drafted by Dennis Bryant, Fred Kuffler, and perhaps others.****11. Public Access to the U.S. Coast Guard****This was felt to be an issue, particularly with the recent cancellation of a public meeting of the Shipping Coordinating Committee. Captain Ahern assured all concerned that the Coast Guard is reaching out and seeking input from the public.****After completion of discussion of items on the agenda, certain additional items were discussed.****A. Richard Corwin raised a concern that each Coast Guard district may be setting its own guidelines for times within which drug and alcohol tests must be administered. Captain Ahern indicated that he did not know how this was currently being handled.****B. Fred Kuffler recommended reading the State of Oregon's report on the New Carissa casualty with regard to that state's views on what the industry should be doing.****C. Dennis Bryant mentioned that there is a proposal to increase limits of liability for non-tank vessels, and that rulemaking on hazardous spill response plans should be expected soon.****D. Paul Kitchner of the subcommittee on pilotage was at the pilot's convention taking place at the same time as our meeting. Bucky McAllister reported on developments, including the new Maryland law requiring state licensing of docking pilots, and impending New Jersey regulations that would apply to federally-licensed docking masters in New York Harbor. There was a discussion generally of the docking master issue with regard to safety, numbers and training.****Respectfully submitted,****Dennis L. Bryant, Chair****FORMAL REPORT OF THE COMMITTEE ON****RECREATIONAL BOATING****The Committee met on 2 November 2000. Robert D. McIntosh presented an informational report on a proposal to amend the law to allow recording a notice of claim of lien against any federally documented vessel, whether subject to a preferred ship mortgage or not. Although this has been in Congress as part of the Coast Guard Authorization Act, we understood that final action had not yet been taken. We also noted that the VIS and VDS programs remain in limbo since authorized by Congress, without visible progress on the horizon. We also noted potential changes to the Death on the High Seas Act, and examined recently-published NTSB Recommendations and Statistics regarding recreational boats.****Frank P. DeGiulio handed out the Fall/Winter 2000 issue of*Boating Briefs* which he had, as usual, ably prepared for distribution at the Association's General Meeting. Frank brought particular attention to the Third Circuit's use of depeçage to apply the laws of three jurisdictions to different issues in the latest round of *Calhoun v. Yamaha Motor Corp.*, 2000 AMC 1865 (3d Cir. 2000), and a recent decision making federal law exclusive of state statutory or common law with regard to propeller guards on boats, *Lady v. Neal Glaser Marine, Inc.*, 2000 AMC 2958 (5th Cir. 2000) (answering question left open when the Supreme Court dismissed *Lewis v. Brunswick Corp.*, 1998 AMC 2998 (1998) based on a settlement after oral argument in the Court).****Finally, the subject of amending the Inland Rules of the Road to accommodate the Sail Racing Rules when they conflict remains tabled. The Committee has no present plan to revive the issue unless substantial support for doing so and/or new developments appear.****Respectfully submitted,****Donald C. Greenman, Chair****FORMAL REPORT OF THE COMMITTEE ON****SALVAGE****The Fall Meeting of the Salvage Committee was held on November 1 from 9:00 a.m. to 10:30 a.m. at the offices of Haight Gardner Holland & Knight. The regular meeting was followed by a special session chaired by Professor David Sharpe, discussing the work of the Study Group which had been established to review denunciation of the 1910 Salvage Convention and legislatively incorporating into U.S. law the 1989 Salvage Convention.****Twenty five persons attended the regular Salvage Committee meeting. The topics discussed included the most recent edition of the Lloyd's Standard Form of Salvage Agreement (LOF 2000), and the modifications to the SCOPIC Clause which may be incorporated into that Agreement. Copies of the new agreement and SCOPIC provisions were passed out, along with "ISU Bulletin 19," which included an article on LOF 2000 and the new SCOPIC clause. Additional articles on these same topics, published by London law firms and P&I Clubs, were handed out to attendees.****We spoke very briefly about the work that Professor Sharpe and the Study Group he chairs have done with respect to the 1910 and 1989 Treaties. This topic has become much more involved than we had originally envisioned, with many pros and cons to be considered in each decision. Professor Sharpe had prepared a comprehensive report on the subject and the points the Study Group has studied in reaching its preliminary recommendations. A special meeting was held after the Salvage Committee meeting amongst those interested in this topic. This enabled keeping to the schedule for the regular meeting for the benefit of those attending who wanted to hear the other topics being discussed.****We next spoke about treasure salvage and marine archeology. Peter Hess updated the attendees on various recent cases. This included injunctions against salvors working to recover U.S. naval property that had not been "expressly abandoned," and the Fourth Circuit decision on the two Spanish ships sunk off the coast of Virginia, which was resolved in favor of Spanish government ownership. Peter also provided an update on the SS Central America case. Bob Blumberg addressed Peter's remarks on salvage of U.S. Naval assets by eloquently setting forth the U.S. government position with respect to its property, requiring "express abandonment" for title to divest from the sovereign. This is, in fact, consistent with the position of the Fourth Circuit on the Spanish vessels.****In this same context, Marc Davis gave a brief update on the litigation arising from the Titanic, as well as some information on changes in ownership of RMS Titanic, Inc. Bob Blumberg followed up by discussing prospective agreements amongst France, the U.S., the U.K. and Canada with regard to handling the Titanic situation. Marc Davis expressed concern that these sorts of agreements inherently contain the threat of salvage law being usurped.****The Ferry Vessel Estonia situation was also discussed. Peter Hess remarked that divers on the wreck of that vessel had discovered information as to the cause of her sinking contradicting that officially offered. He advised, however, that arrest warrants have been issued for the leader of the divers. John Cartner advised that a SNAME committee is addressing this issue.****A UNESCO Treaty update was given by Bob Blumberg, noting that many of the earlier concerns of commercial and legal interests have been addressed, including the addition of some criteria to the definition of "underwater cultural heritage." It was asked noted there would be a meeting in the afternoon of the Study Group appointed by past-President McCormick to study this matter.****Other discussions related to the recovery of the confederate submarine Hunley, whether U.S. Government cargo on board a vessel would convey sovereign immunity status to the vessel itself, the Presidential proclamation extending the contiguous zone from twelve miles to twenty four miles, and "salvor's negligence" and "responder immunity."****The follow up meeting of the Study Group chaired by Professor David Sharpe covered in detail the work done by that group. It is their intention to have a firm proposal ready for vote at the Spring Meeting of the Salvage Committee, to be taken before the Board by resolution to the general meeting of the MLA.****Respectfully submitted,****James T. Shirley, Jr., Chair****FORMAL REPORT OF THE COMMITTEE ON****STEVEDORING AND TERMINAL OPERATIONS****The committee list update continues at a snail's pace. It should be completed by May and will be sent to each of the members on the list. We doubt that we will be successful in having it made part of the MLA webpage, but will continue that effort as well. Apparently, the thinking is that a committee membership list might be considered representation by MLA of expertise in the field. We are of the opinion that a disclaimer should be effective to dispel that thinking.****In our continuing effort to encourage attendance at the Fall meeting which is not usually as well attended as our Spring meetings, we had a speech by Harry Higham which was well received. It will be appreciated if members have suggestions of speakers and subjects which might increase our Fall attendance, that they let F.E. Billings know.****Once again, the Longshore Subcommittee discussion was lively and informative. In the absence of both the subcommittee chairman and vice chairman, the discussion was led by John Chamberlain.****We received a request from a committee member for an*amicus* brief in the United States Supreme Court. In a deft sleight of hand, it was determined that the real interest of the MLA in the matter was uniformity and so the matter was referred to the Uniformity Committee where an *amicus* brief was filed in support of the application for writ. It is going to be the chairman's suggestion that a list of committee members anxious or at least willing to take part in *amicus*activities in Stevedoring and Terminal Operations areas be comprised so that we can have a ready tool for future activity. This will be taken up in our Spring meeting.****Respectfully submitted,****Frank E. Billings, Chair****MINUTES OF THE BOARD OF DIRECTORS MEETINGS OF****THE MARITIME LAW ASSOCIATION OF THE UNITED STATES****Held at the****The Omni Hotel, Chicago, Illinois,****on****August 5, 2000****The meeting was called to order by President William R. Dorsey, III, at 9:00 a.m. In addition to President Dorsey, the following officers were present:****Raymond P. Hayden, First Vice President****Thomas S. Rue, Second Vice President****Lizabeth L. Burrell, Secretary****Patrick J. Bonner, Treasurer****Winston Edward Rice, Membership Secretary****Howard M. McCormack, Immediate Past President****The following Board members were present:****James W. Bartlett, III****Vincent M. DeOrchis****John B. Gooch, Jr.****Bruce A. King****Jean E. Knudsen****George J. Koelzer****Robert B. Parrish****Mary Elisa Reeves****Alan van Praag****James F. Whitehead, III****At the invitation of President Dorsey, Warren J. Marwedel, who together with Kimbley A. Kearney graciously headed the group hosting the Board in Chicago, was also present at the meeting. President Dorsey thanked all the members of the Chicago maritime bar for making such wonderful arrangements for this meeting.****SECRETARY'S REPORT****Secretary Lizabeth L. Burrell of New York reported on the publication and distribution of the Proceedings for the Spring 2000 General Meeting.****Upon motion duly made and seconded, the minutes of the May 4, 2000 meeting of the Board of Directors and the Secretary's report were unanimously approved and accepted. The minutes of the March and May 2000 Board meetings were published in the Proceedings of the Spring 2000 General Meeting.****TREASURER'S REPORT****Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on April 30, 2000, and reported on the cash on hand and investments as of that date, both of which reflected the cost of our participation as advisors on international conventions and in connection with the new COGSA proposal.****Treasurer Bonner also noted that there is a lag in dues payments, and that members who remain in arrears have been dropped from the membership. We must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, including the upcoming CMI meeting in Singapore.****Upon motion duly made and seconded, the Board unanimously approved a change in the Association's accountant and auditor to Goldstein Golub.****Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted.****MEMBERSHIP SECRETARY'S REPORT****Membership Secretary Winston E. Rice presented twenty applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.****The Proctor Admissions Committee recommended that two members be advanced to Proctor status. They are Captain Malcolm J. Williams and John Kirk Trombley. Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved.****Membership Secretary Rice also reported, with regret, the death of the following members:****Donald W. Bruce of Jersey City****The Honorable Joe J. Fisher, U.S.D.J., of Beaumont****Frederick D. Gabel of New York****James J. Higgins of New York****Decatur J. Holcombe of Houston****Bernard Rolnick of New York****The Honorable John M. Shaw, U.S.D.J., of Lafayette****James L. Shupp, Jr. of New Orleans****The Honorable Daniel H. Thomas, U.S.D.J. of Mobile****Membership Secretary Rice reported that a new edition of the Directory will be published in the Fall.****After May 4, 2000 Board meeting, the Association had 3,424 members. As of May 4, 2000, after the changes approved by the Board at its meeting, the total membership was 3,454.****Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted.****The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.****PRESIDENT'S REPORT****On behalf of the Association, President Dorsey attended London Maritime Week, May 8 through 12, during which he acted as both chair as well as a panelist treating maritime casualty investigations at the Tulane program entitled "Maritime Law in an International Setting." President Dorsey also attended the British Average Adjusters meeting and dinner, and represented the Association at the CMI Assembly meeting.****President Dorsey also reported on his attendance at the meeting of the Canadian Maritime Law Association, which took place in Halifax on July 23 at the same time as Op Sail 2000.****COMMITTEE AND STUDY GROUP REPORTS****Carriage of Goods****Board member Vincent M. DeOrchis, former Chair of the Association's Committee on Carriage of Goods, reported that Senator Hutchinson contin-ued to support the Association's COGSA proposal, as she confirmed in a June newspaper article. Past President Chester D. Hooper recently spoke with Senator Hutchinson's chief of staff, who was in the process of considering some editing of the proposal. It appears that any introduction of COGSA will have to await the outcome of the November presidential election.****NIT League has been focusing mainly on the Ocean Shipping Reform Act, which will probably cover about 80% of the trade to the United States by the end of the year, and its provisions for service contracts between carriers and large shippers.****The State Department issued a statement that they would not voice any opposition to the COGSA in view of U.S. industry support for the proposal.****Practice and Procedure****The Board was advised by Board member James W. Bartlett, III, Chair of the Committee, that an amendment has been proposed to the Local Admiralty Rules for the United States District Court for the District of New Jersey that would increase the security deposit for seizure of vessels more than 65 feet in length to $10,000. Upon motion duly made and seconded, the Board resolved to authorize President Dorsey to send a letter to the Clerk of the Court noting that the security deposit in every district should reflect the reasonably anticipated costs to be incurred by the Marshal and recommending that the proposed amendment not be adopted because it might discourage legitimate claimants from exercising their admiralty rights.****Environmental Crimes Subcommittee****Senator Breaux of Louisiana and Congressmen Vitter, Coble and Clement have introduced bills which would preclude the use of the strict liability provisions of the Refuse Act and Migratory Bird Act for criminal prosecutions arising from oil spills, and would restrict criminal liability from oil spills exclusively to that provided by OPA ' 90 through its amendments to the Clean Water Act. These bills reflect the Association's position stated last year to the House Committee on the Coast Guard and Marine Transportation.****Study Group on the Marine Insurance Project****Immediate Past President Howard M. McCormack reported that the Study Group is going forward with its work and expects to have a draft of the scope of the project by the Fall 2000 meeting of the Association.****Special Committee on Site Selection for the Fall 2003 General Meeting****Board member Robert B. Parrish reported on the efforts of the Special Committee, chaired by Ben L. Reynolds of Houston, to find an appropriate site for the Fall 2003 meeting of the Association.****Merger of the Committee on Alternative Dispute Resolution with the Committee on Maritime Arbitration and Mediation****These Committees and their membership have been merged.****INTERNATIONAL ACTIVITIES****Comité Maritime International****President Dorsey reported on the CMI Assembly meeting in London in May, and provided a copy of Frank L. Wiswall, Jr.'s comprehensive report on the meeting of the CMI Executive Council. The CMI's finances are on a better footing, and certain national associations which were substantially in arrears on their dues have been expelled. The dues of national associations and titulary members will be raised next year.****At the Assembly meeting, Secretary Lizabeth L. Burrell, CMI Committee Vice Chair Christopher O. Davis and Life Member Warren M. Faris were elected to titulary membership.****The Association will nominate Frank Wiswall to serve another 4-year term as Vice President of the CMI.****One of the most significant CMI endeavors to be treated during the plenary meeting in Singapore in February 2001 is the work of its CMI's International Study Group on Transport Law, which is considering methods of bringing about greater uniformity in international transport by harmonizing and filling gaps in existing international regimes for transport. Mr. DeOrchis, who, together with Past President Hooper, George F. Chandler, III, and Professor Michael Sturley (the Study Group's Rapporteur), attended the CMI/UNCITRAL Colloquium on Transport Law at the United Nations in July, reported on the Study Group's progress. One subject on which controversy continues is whether multimodal transport should be covered. A working paper should be ready for discussion in Singapore. There will be a further meeting of the Study Group in London in October.****Other subjects to be discussed at the Singapore plenary meeting include the CMI's efforts to prepare a model law on piracy to be submitted to the national associations for their comments. The International Union of Marine Insurers (IUMI) has proposed changes to the York-Antwerp Rules, primarily to do away with general average contributions for port of refuge charges (a position opposed by the Association), which will be discussed at the Singapore meeting. The CMI's International Marine Insurance Subcommittee will also meet, with the topics to be narrowed at the upcoming CMI colloquium in Toledo in September.****The Executive Council of the CMI also decided to monitor and oppose the UNESCO draft Convention on Underwater Cultural Heritage in its present form. The CMI has taken no position on the Association's COGSA bill.****UNCITRAL****President Dorsey reported on the recent the Colloquium on International Transport Law held by the CMI and UNCITRAL (the United Nations Commission on International Trade Law), which took place at the United Nations in July. Speakers who included government officials and members of industry appeared to agree that the time was ripe for a new international transport convention. Themes included uniformity, harmonization, globalization, e-commerce and multimodal transportation.****International Maritime Organization****President Dorsey will attend the meeting of the IMO Legal Committee in London from October 15 through 20, 2000 as a private sector advisor to the U.S. delegation. The two main topics will be the Committee's continuing work on a draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea and a new item, proposed amendments to the limits of oil pollution liability under the Civil Liability Convention and the IOPC Fund Convention.****In an attempt to resolve the difficulties in reaching acceptable terms on the Athens Convention Protocol, a compromise has been proposed which would create a two-tiered system of liability, the first imposing strict liability with a per capita damages cap for death or personal injury incurred in connection with an "operational incident," such as shipwreck, collision, stranding, explosion, fire or a defect in the ship, and the second tier imposing liability based on negligence for damages resulting from operational incidents that exceed the strict liability per capita limit and for damages resulting from all other causes. Compulsory insurance is part of the compromise proposal, with a direct right of action against the insurer. In the second tier liability scheme, negligence on the part of the carrier would presumed, so the carrier would have the burden of proving that it was not careless. The per capita limits of the first tier strict liability would be left to a diplomatic conference.****The new item-proposed amendments to the limits of oil pollution liability under the Civil Liability Convention and the IOPC Fund Convention-arose from the Erika incident off France, in which the total cost of incident response efforts and compensation claims is estimated to exceed the compensation available under the CLC and Fund Conventions. CLC Article 15 and Fund Convention Article 33 both provide for amendment of the liability limits by contracting states at an IMO Legal Committee meeting without the need to convene a diplomatic convention, so this procedure may be invoked at the upcoming Legal Committee meeting in October 2000.****Thanks to the efforts of members Michael Marks Cohen, Paul S. Edelman, John P. Schaffer (Chair of the Committee on Maritime Personnel) and Douglas B. Stevenson, the Association was able to provide a comprehensive response to the Coast Guard so that they could formulate answers to the IMO/ILO Ad Hoc Working Group on Repatriation of Seamen.****UNESCO Convention on Underwater Cultural Heritage****John D. Kimball, Chair of the Association's Study Group on Underwater Cultural Heritage, provided the Board with an extremely informative report on the Third Meeting of Governmental Experts, which he attended at UNESCO headquarters in Paris from July 3 through 7. No consensus was reached on either the draft Convention or its Annex, and therefore no vote was taken on either document. Major issues remain to be resolved, but the present drafts would prevent salvors from any contact with underwater cultural heritage, except as contractors to an archæological or government groups, and would ban the sale of all salved items. This Association has taken the position that salvors and archæologists should be able to reach a solution that would preserve the interests of each.****The United States delegation did an excellent job of presenting well-balanced positions on a number of important issues-for example, the inclusion of a "significance" requirement in the definition of underwater****cultural heritage, recognizing that *in situ* preservation is a management tool and not a legal presumption, opposing an outright ban on the application of the laws of salvage and finds, and requiring consistency with UNCLOS-but there is still great opposition from other delegations on these issues.****While it was intended for a draft of the Convention to be ready by April 2001, it appears unlikely that this will be accomplished.****President Dorsey expressed his gratitude for the tremendous investment of time and effort graciously given by Mr. Kimball and other members who have devoted so much to the Association's projects.****Convention on Enforcement of Judgments****Board member Alan van Praag reported on the status of the Convention. Congress appears to be eager to act, but at the last meeting at the Hague, there was some opposition to key U.S. positions, as a result of which there will be a meeting of a group of experts to try to resolve some of the difficulties.****DEATH ON THE HIGH SEAS ACT****The Coast Guard authorization bill currently pending before Congress includes provisions that would modify DOHSA to allow survivors to recover noncompensatory damages. The President will consult with the Chairs of the Committees on Maritime Legislation and Maritime Personnel to determine what, if any, action the Association should take in connection with the bill.****TITANIC GUIDELINES****Pursuant to a 1986 congressional act, the State Department has been negotiating an international Agreement with Canada, France and the United Kingdom establishing the Titanic as a memorial. The proposed Agreement provides rules in many respects similar to those in the Annex Rules to UNESCO Draft Convention on Underwater Cultural Heritage, including *in situ* preservation as the preferred management of the site and provisions for stringent State oversight and management of the wreck.****In June, NOAA published "Proposed Guidelines for Research, Exploration and Salvage of R.M.S. Titanic," which are identical to the pro-****posed Agreement rules, including provisions prohibiting any recovery of any artifacts unless "justified by educational, scientific, or cultural interests," requiring that any recovered items be kept together as a project collection and prohibiting the sale of any artifacts, except in a sale or transfer of the entire collection to a museum.****With Board approval, and with the able assistance of John D. Kimball and Professor David Bederman, President Dorsey submitted comments on the Guidelines and posed questions to NOAA about the effect of several of the guidelines. No response has yet been received. A suit has been brought by RMS Titanic Inc., the party granted exclusive salvage rights, to enjoin the United States from proceeding with the Agreement.*****AMICUS* BRIEFS****President Dorsey reported that since the May meeting, he had received three requests for the Association's participation as *amicus*. The first request involved issues of the definition of abandonment in salvage law in *Columbus America Discovery Group v. Atlantic Mutual Insurance Co.*, and *Yukon Recovery, LLC v. Certain Abandoned Property*. Because the request was deemed not to fall within the very exacting requirements set forth in By Law 702.3, it was declined.****The second request came in connection with *Mobil Mining and Minerals v. David R. Nixson and Director, Officers of Workers Compensation Programs*, which involved the issue of whether the nonmaritime sections of a manufacturing facility at which vessels are loaded and discharged are "customarily used" for vessel cargo operations and thus are "covered sites" for the purposes of the Longshore and Harborworkers Compensation Act. Because of the conflict among the Circuits on this issue, the Board voted to support the petition for *certiorari* in order to have the question decided, but to refrain from taking a position on the merits if the Court accepts the case.****The third request was made in *Stepansky v. Florida*, which involves the assertion of criminal jurisdiction by the State of Florida over an alleged crime committed on the high seas. The Board voted not to enter the case at this time.****RESOLUTIONS HONORING MEMBERS****President Dorsey presented a resolution honoring USCG Captain Malcolm J. Williams, Jr., Chief of the Office of Maritime and International Law, on his retirement from the Coast Guard. Upon motion duly made and seconded, the Board unanimously passed the following resolution:****The Maritime Law Association of the United States expresses its appreciation for the services and exemplary assistance of Malcolm J. Williams, Jr., Captain, United States Coast Guard, Chief, International Law Division, Washington, D.C.****Captain Williams has been a dedicated office of the United States Coast Guard, serving with distinction in numerous responsibilities and capacities. In his service to his County and the Coast Guard, he has carried out his duties as Chief of the International Law Division in an outstanding manner. These duties included participating as the Chief Delegate of the United States to the International Maritime Organization, IMO Legal Committee and at diplomatic conferences and international meetings.****Although heavily involved in the aforementioned duties, Captain Williams participated in, and closely coordinated numerous significant activities of, The Maritime Law Association of the United States by making presentations to various and numerous Committees of the Association on topics of maritime law, marine ecology, government regulations, procedure, Coast Guard policy and other matters. In performing these tasks during the last four years, he has consistently educated and informed the members of The Maritime Law Association of the United States. Further, he brought to the Association, not only expertise and knowledge, but a sense of comradery, friendship and collegiality. In so doing he brought the Coast Guard and the Association into a much closer relationship.****In consideration of the foregoing:****BE IT RESOLVED, that The Maritime Law Association of the United States expresses its sincere and profound appreciation for the services and assistance of Captain Malcolm J. Williams, Jr., and we express our gratitude to our professional colleague and friend.****BE IT FURTHER RESOLVED, that a copy of this Resolution be made a part of the permanent records of the Association.****President Dorsey and the Board also congratulated Board Member Jean E. Knudsen on her nomination as Chair of the Average Adjusters Association of the United States.****President Dorsey reported that the Association had made a donation to Lenox Hill Hospital in memory of Past President James J. Higgins, and the Board, upon motion duly made and seconded, unanimously passed the following resolution:****The death of James J. Higgins on June 20, 2000 marked the passing of a valued and distinguished member of the Maritime Law Association of the United States.****Jim Higgins was a graduate of Manhattan College and took his law degree at Fordham University. He was admitted to the bar in 1947. A few years after obtaining his law degree he joined the firm of Kirlin, Campbell & Keating, eventually becoming a partner. He remained with that firm for the rest of his professional life.****He distinguished himself in the maritime field by dedicating his career to the specialty of admiralty law. He first joined the MLA in 1948 and was an active participant in the affairs of the Association until his retirement. After chairing various committees he quickly rose to positions of leadership within the Association. He served as Membership Secretary from 1959 to 1961, Secretary from 1961 to 1966, and First Second Vice President from 1966 to 1968. In 1968 he was elected President of the Association and served in that capacity until 1970. For many years until his death he also served as Parliamentary Aide to the MLA. He was also a Titulary Member of the Comité Maritime International.****In addition to his reputation for competence and ex-pertise in the field of maritime law, Jim Higgins was well known for his wit and great personal charm. Despite his eminence and stature, he was never too busy to assist young lawyers and to help promote their careers in the field of maritime law and within the Association. With his high professional skills, unfailing courtesy, and great sense of humor he epitomized the best of his profession and the Association.****James J. Higgins was respected by the Bench and Bar. His death is a great loss to his numerous friends, family, community and this Association. He will be greatly missed, but never forgotten.****In consideration of the foregoing:****BE IT RESOLVED, that the Maritime Law Association of the United States expresses its sincere and profound appreciation for the life and services of James J. Higgins and that it does hereby express to his wife, Patricia, and his family our deepest sympathy and great sense of loss.****BE IT FURTHER RESOLVED, that a copy of this Resolution be made a part of the permanent records of the Association and the original duly inscribed by the President of this Association be forwarded to his wife, Patricia Higgins.****ASSOCIATION RECORDS: WEBSITE STATUS and ARCHIVES****President Dorsey reported that the Chair of the Committee on Electronic Communications and Commerce, Glen T. Oxton, will be the new webmaster. The Events Calendar will be channeled through the President, so information about upcoming events of interest to the maritime community should be sent to President Dorsey. The Committee has proposed a draft website policy, which is being considered by the officers and Board. The Association will move cautiously in adding features to the website in order to maintain the security of its databases, but we will move forward with a document library on the site.****Accordingly, upon motion duly made and seconded, the Board approved a resolution authorizing the expenditures necessary to add the library to the Association's website, and to start making the Proceedings available on the site. We would then work backwards, adding older and older Association documents.****President Dorsey also noted that with the assistance of the Young Lawyers Committee, the Association's archives are being indexed, build-ing upon the major work already accomplished on that endeavor by Past President Kenneth H. Volk.****OTHER ASSOCIATION ACTIVITIES****Second Vice President Thomas S. Rue reported on his tabulation of the results of the questionnaires sent out to the membership about our resort meetings. It appears that of those responding, many would like an increase in CLE credit and business-associated activities and a shorter meeting duration. The Committees on Site Selection and Planning and Arrangements for the Fall meetings will try to incorporate these preferences into their planning.****\* \* \*****There being no further business to come before the Board, the meeting was adjourned at 12:15 p.m.****Respectfully submitted,****/s/ Lizabeth L. Burrell****Secretary****MINUTES OF THE BOARD OF DIRECTORS MEETING OF****THE MARITIME LAW ASSOCIATION OF THE UNITED STATES****Held at the****Association of the Bar of the City of New York, New York, New York****on****November 2, 2000****The meeting was called to order by President William R. Dorsey, III, at 9:00 a.m. In addition to President Dorsey, the following officers were present:****Raymond P. Hayden, First Vice President****Thomas S. Rue, Second Vice President****Lizabeth L. Burrell, Secretary****Patrick J. Bonner, Treasurer****Winston E. Rice, Membership Secretary****Howard M. McCormack, Immediate Past President****The following Board members were present:****James W. Bartlett, III****Geoffrey F. Birkhead****James K. Carroll****Vincent M. DeOrchis****John B. Gooch, Jr.****Bruce A. King****Jean E. Knudsen****Robert B. Parrish****Mary Elisa Reeves****Alan van Praag****James F. Whitehead, III****At the invitation of President Dorsey, Michael Marks Cohen of New York, Chair of the Committee on the Comité Maritime International, Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, Ben L. Reynolds of Houston, Chair of the Special Committee on Site Selection for the Fall 2003 General Meeting, and M. Hamilton Whitman of Baltimore, Chair of the Special Committee on Planning and Arrangements for the 2001 Fall Meeting, were also present at the meeting.****SECRETARY'S REPORT****Secretary Lizabeth L. Burrell of New York reported on the distribution of the Proceedings for the Spring 2000 General Meeting.****Upon motion duly made and seconded, the minutes of the August 5, 2000 meeting of the Board of Directors were unanimously approved and accepted, and the Secretary was authorized to amend the minutes of the August 2000 meeting to reflect more accurate dates in the resolution honoring Past President James J. Higgins. The minutes of the August and November 2000 Board meetings will be published in the Proceedings of the Fall 2000 General Meeting.****Upon motion duly made and seconded, the Secretary's report was unanimously approved and accepted.****TREASURER'S REPORT****Treasurer Patrick J. Bonner of New York presented the Treasurer's Report for the three months ending on July 31, 2000 and distributed copies of the auditors' report for the fiscal year ending April 30, 2000, which found the Association's accounting to be proper. Treasurer Bonner reported on the cash on hand and investments as of the date of the meeting, both of which reflected the cost of our participation as advisors on international conventions, and on the substantial expenditures anticipated in the coming year.****Treasurer Bonner also noted that there is a continuing lag in dues payments, and that members who remain in arrears have been dropped from the membership. We must continue to exercise a policy of fiscal caution in view of other Association projects and activities that will require expenditures over the next two years, including the upcoming CMI meeting in Singapore.****Upon motion duly made and seconded, the Treasurer's report was unanimously approved and accepted.****MEMBERSHIP SECRETARY'S REPORT****Membership Secretary Winston E. Rice of New Orleans presented seventeen applicants for Associate Lawyer membership. Upon motion duly made and seconded, the candidates for Associate Lawyer membership were unanimously elected.****The Board approved Professor Martin Davies of Tulane University Law School as a new Academic member.****The following four applicants were recommended for Non-Lawyer membership:****Mary Cervati of Weehawken****Massoud Messkoub of Madison****Carroll C. Robertson of Alexandria****Soren Wolmar of New York****Upon motion duly made and seconded, the four Non-Lawyer applicants were unanimously elected to Non-Lawyer membership.****The Proctor Admissions Committee recommended that two Associate Lawyer members be advanced to Proctor status. They are:****Randolph H. Donatelli of New York****James M. Maloney of Port Washington****Upon motion duly made and seconded, the recommendations of the Proctor Admissions Committee were approved and the two Associate Lawyer members were granted Proctor status.****Membership Secretary Rice also reported, with regret, the death of the following members:****George H. Chamlee of Savannah****John B. Culp, Jr. of Jacksonville****The Honorable David N. Edelstein, U.S.D.J., of New York****G. Sage Lyons of Mobile****William G. Symmers of New York****After August 5, 2000 Board meeting, the Association had 3,441 members. As of November 2, 2000, after the changes approved by the Board at its meeting, the total membership was 3,461.****Membership Secretary Rice reported that the new Directory has been published and should be in the hands of the membership in November 2000. That Directory includes an amplified history of the Association and streamlined Committee descriptions. A new Directory will be published in the Fall of 2001.****Upon motion duly made and seconded, the Membership Secretary's Report was unanimously approved and accepted.****The list of all the successful candidates for membership and Mr. Rice's written report are appended to the original of these minutes.****COMMITTEE AND STUDY GROUP REPORTS****Carriage of Goods****Board member Vincent M. DeOrchis, former Chair of the Association's Committee on Carriage of Goods, reported that Senator Hutchinson was awaiting confirmation of industry support for the Association's proposal. Because of the current posture in Washington, there will be no action on the proposal until the next session of Congress in January 2001, at which time a bill number will be assigned.****Several Board members commented on the need for a revised COGSA in view of the increasing fragmentation of the law in this area.****Practice and Procedure****At the August 5, 2000 Board meeting, the Board was advised by Board member James W. Bartlett, III, Chair of the Committee, that an amend-ment had been proposed to the Local Admiralty Rules for the United States District Court for the District of New Jersey that would increase the security deposit for seizure of vessels more than 65 feet in length to $10,000. Upon motion duly made and seconded, the Board resolved on August 5, 2000 to authorize President Dorsey to send a letter to the Clerk of the Court noting that the security deposit in every district should reflect the reasonably anticipated costs to be incurred by the Marshal and recommending that the proposed amendment not be adopted because it might discourage legitimate claimants from exercising their admiralty rights. On August 10, 2000 President Dorsey sent such a letter to the Clerk of the Court, as well as Chief Judge Thompson and Judge Bissell of that Court. President Dorsey reported on November 2, 2000 that he had received a reply indicating that the Court had withdrawn the proposal and would seek further commentary from the bar on the proposed amendment.****The Committee on Practice and Procedure will also review the decision of the United States Court of Appeals for the Eighth Circuit in *Anastasoff v. United States*, 223 F.3d 898 (8th Cir. 2000), and make a recommendation about whether or not the Association should participate as *amicus* in that court's *en banc* reconsideration of that opinion, which holds that the court's current practice and policy concerning unpublished decisions are unconstitutional.****Environmental Crimes Subcommittee****Alfred J. Kuffler of Philadelphia, Chair of the Environmental Crimes Subcommittee, reported that in the October 18, 2000 Federal Register, there was a Notice of a Public Meeting requesting comments on setting the Coast Guard agenda for oil pollution. The meeting will take place on December 12.****Mr. Kuffler conferred with Dennis L. Bryant, Chair of the Committee on Navigation, Coast Guard and Government Regulation, and Matthew A. Marion, Chair of the Committee on Marine Ecology, to seek the views of these Committees on the subjects to be addressed at the Public Meeting. The Committees recommended that the Association submit a statement to be presented at the Public Meeting to state the Association's views on government policy in connection with pollution incidents.****Upon motion duly made and seconded, the Board authorized Mr. Kuffler, Mr. Bryant and Mr. Marion to draft a statement to be sent by President Dorsey to the Coast Guard stating that the current government policy of criminalizing acts in connection with pollution incidents actual-ly works against the public interest in protecting the environment, pro-posing that only acts taken with criminal intent be subject to criminal****sanctions, and urging the government to adopt as its most important priority policies which encourage effective responses to spills. After the Board meeting, such a statement was drafted and approved by the relevant Committees. In a vote by poll, the Board approved the proposed statement and President Dorsey sent it to the Coast Guard.****Special Committee on Site Selection for Fall 2003 and 2005 General Meetings****Chairs Ben L. Reynolds of Houston and Robert B. Parrish of Jacksonville reported on Princess properties in Scottsdale and Bermuda as appropriate sites for the Fall 2003 and 2005 meetings of the Association. Upon motions duly made and seconded, the Board approved Bermuda as the location for the Fall 2003 meeting and Scottsdale as the location for the Fall 2005 meeting, delegated authority to the Chairs of the Site Selection Committees to negotiate with the Princess properties for appropriate dates, and delegated authority to approve the final contracts for these sites to the President and First and Second Vice Presidents.****INTERNATIONAL ACTIVITIES****Comité Maritime International****First Vice President Raymond P. Hayden of New York reported on the CMI colloquium which took place in Toledo in September 2000 in order to discuss items to be treated at the upcoming CMI plenary meeting in Singapore from February 12 through 16, 2001. Topics included international transport law, piracy, marine insurance and the proposals by the International Union of Marine Insurers (IUMI) in connection with general average, primarily to do away with general average contributions for port of refuge charges (a position opposed by the Association).****President Dorsey reported that in the CMI elections, the Association nominated Frank L. Wiswall, Jr. for a second four-year term as Vice President of the CMI, and supported Patrick Griggs for a second term as President and Joanne Gauthier of Canada for membership on the Executive Council. The Association will propose Lawrence J. Bowles of New York, Vincent M. DeOrchis of New York and Michael Sturley of Austin as new Titulary members.****Michael Marks Cohen of New York, Chair of the Committee on the CMI, reported on the issues to be treated at the upcoming plenary and the preparations by the U.S. delegation. At Singapore, Past President Graydon S. Staring will head the Association delegation's working group on marine insurance, Howard Myerson will head the Association delegation's working group on general average, Past President Hooper will head the Association delegation's working group on transport law and George Gabel will head the Association delegation's working group on piracy.****One of the most significant CMI endeavors to be treated during the plenary meeting in Singapore in February 2001 is the work of its CMI's International Subcommittee on Transport Law, which is considering methods of bringing about greater uniformity in international transport by harmonizing and filling gaps in existing international regimes for transport. Board member Vince DeOrchis reported on the fourth meeting of the International Subcommittee on Transport Law, which he attended together with Past President Chester D. Hooper, George F. Chandler, III, and Professor Michael Sturley (the Subcommittee's Rapporteur) in London in October 2000. The question of whether a new convention will cover multimodal transport has not yet been decided. A draft outline of an instrument has been prepared and will be discussed at the Singapore meeting. While it is not anticipated that there will be a complete draft convention ready in time for consideration at the CMI plenary in February, there will be discussion of existing liability regimes, multimodal carriage and transport documents. The U.S. delegation at Singapore will try to support positions consistent with the COGSA proposal and the Pomerene Act, but there are issues, for example, shipper's liability, on which the Association has not yet taken a position. After the Singapore meeting, there will be a further meeting of the International Subcommittee in May 2001 to prepare a consultation paper to be sent to all constituent members of the CMI as well as industry representatives through the assistance of UNCITRAL. Comments from these groups should be received by November 2001, and it is anticipated that a draft will be prepared for the UNCITRAL meeting in May 2002. The CMI will participate in further refinement, together with UNCITRAL, over the following two or three years. UNCITRAL would probably not act on the draft until 2005.****In connection with the developments on the UNCITRAL project on sea transport law, the Association may have to take a position on whether or not the CMI should vary its usual procedure of producing a major instrument only after having it first considered at a plenary. In the case of the sea transport project, the proposal is for representatives of CMI mem-bers on the International Subcommittee to approve a draft, and to take the resulting instrument directly from the Assembly to UNCITRAL. At the upcoming plenary, the discussions of transport law will focus on four documents that will be published in the CMI's 2000 Yearbook: The first is the current draft outline (a rough draft of the instrument), the second an agenda paper on multimodal transport, the third an agenda paper on transport document issues and the liability regime and the fourth is a paper on the e-commerce implications of the draft instrument.****Apart from issues of transport law, other subjects to be discussed at the Singapore plenary meeting include the CMI's efforts to prepare a model law on piracy to be submitted to the national associations for their comments, several marine insurance issues (on which discussion documents are not yet available) and the IUMI proposals concerning general average. Because discussion documents have not yet been circulated and there may be proposals on which the Association has not taken any position, the Board will stand ready to advise the delegation on issues as they arise.****In addition, John D. Kimball, Chair of the Association's Study Group on Underwater Cultural Heritage, has been appointed Rapporteur of the CMI's working group on Underwater Cultural Heritage. The CMI study group may be redesignated as an international subcommittee at the Singapore conference, with the purpose of preparing a report for the CMI 2001 Assembly on the UNESCO draft Convention on Underwater Cultural Heritage that may include as a recommendation the preparation of a protocol to the Salvage Convention along the lines of the protocol prepared by the late Geoffrey Brice.****International Maritime Organization****President Dorsey attended the meeting of the IMO Legal Committee in London from October 15 through 20, 2000 as a private sector advisor to the U.S. delegation. The two main topics were the Committee's continuing work on a draft Protocol to the Athens Convention on Liability Relating to Carriage of Passengers and their Luggage by Sea and a new item, proposed amendments to the limits of oil pollution liability under the Civil Liability Convention (CLC) and the IOPC Fund Convention.****CLC Article 15 and Fund Convention Article 33 both provide for amendment of the liability limits by contracting states at an IMO Legal Committee meeting without the need to convene a diplomatic convention. This procedure was invoked at the upcoming Legal Committee meeting in October 2000 to make a tacit amendment to the CLC and IOPC Fund increasing liability limits by 50.37%, which will take effect in November 2003.****As for developments in the Athens Convention draft protocol, pro-posals have been drafted: (1) that would make it clear that a carrier's, as opposed to an insurer's, liability was not subject to a "cap"; (2) impose strict liability with a per capita damages cap for death or personal injury incurred in connection with an "operational incident," such as shipwreck, collision, stranding, explosion, fire or a defect in the ship; (3) reverse the burden of proof and impose liability based on negligence for damages resulting from operational incidents that exceed the strict liability per capita limit and for damages resulting from all other causes. Recent ferry accidents may encourage progress on the protocol because without an international regime, there is a possibility that conflicting national legislation may be enacted in response to these incidents.****The next Legal Committee meeting will take place from October 8 through 12, 2001.****A diplomatic conference on the Bunker Pollution Convention will be held from March 19 through 23, 2001, the only open question being the gross tonnage of the vessels subject to the Convention. The chair of the IMO has indicated that the Athens Convention Protocol will be ready for a diplomatic conference in 2002 or 2003.****Convention on Enforcement of Judgments****Board member Alan van Praag reported on the status of the Convention. Congress appears to be eager to act, but at the last meeting at the Hague, there was some opposition to key U.S. positions, as a result of which there will be a meeting of a group of experts to try to resolve some of the difficulties. There will be a meeting of all delegations in June 2001.****DEATH ON THE HIGH SEAS ACT****The Coast Guard authorization bill currently pending before Congress includes provisions that would modify DOHSA to allow survivors to recover noncompensatory damages. The President consulted with the Chairs of the Committees on Maritime Legislation and Maritime Personnel to determine what, if any, action the Association should take in connection with the bill, but because the legislation has stalled because of opposition from the cruise ship industry, there was no need for action at the time of the Board meeting.****TITANIC GUIDELINES****Pursuant to a 1986 congressional act, the State Department has been negotiating an international Agreement with Canada, France and the United Kingdom establishing the Titanic as a memorial. The proposed Agreement provides rules in many respects similar to those in the Annex Rules to UNESCO Draft Convention on Underwater Cultural Heritage, including *in situ* preservation as the preferred management of the site and provisions for stringent State oversight and management of the wreck.****In June, NOAA published "Proposed Guidelines for Research, Exploration and Salvage of R.M.S. Titanic," which are identical to the proposed Agreement rules, including provisions prohibiting any recovery of any artifacts unless "justified by educational, scientific, or cultural interests," requiring that any recovered items be kept together as a project collection and prohibiting the sale of any artifacts, except in a sale or transfer of the entire collection to a museum.****Previously, with Board approval, and with the able assistance of John D. Kimball and Professor David Bederman, President Dorsey submitted comments on the Guidelines and posed questions to NOAA about the effect of several of the guidelines. No response has yet been received.****The suit brought by RMS Titanic Inc., the party granted exclusive salvage rights, to enjoin the United States from proceeding with the Agreement, has been dismissed on the ground that the issue is not ripe because there is not yet a treaty nor guidelines.****ASSOCIATION RECORDS: WEBSITE STATUS and ARCHIVES****In addition to authorizing modifications necessary to add Association documents to the website, the Board, upon motion duly made and seconded, approved adding a search engine to the website in a vote taken by poll between regular meetings.****\* \* \*****There being no further business to come before the Board, the meeting was adjourned at 12:10 p.m.****Respectfully submitted,****/s/ Lizabeth L. Burrell****Secretary** |