

# EXHIBIT I

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF FLORIDA  
TAMPA DIVISION  
IN ADMIRALTY**

ODYSSEY MARINE EXPLORATION, INC.,

Plaintiff,

v.

Case No. 8:07-CV-00614-SDM-MAP

THE UNIDENTIFIED SHIPWRECKED  
VESSEL, if any, its apparel, tackle,  
appurtenances and cargo located  
within a five mile radius of the center  
point coordinates provided to the Court  
under seal,

Defendant,  
*in rem*

and

THE KINGDOM OF SPAIN,

Claimant,

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**DECLARATION OF JAMES A. GOOLD**

1. I am counsel to Claimant Kingdom of Spain ("Spain") in this case. I submit this declaration to provide true and correct copies of the attached publicly available materials, Annexes 1 through 6, in support of Spain's Motion to Dismiss or for Summary Judgment.

2. Annex 1 is a copy of the Statement of Interest of the United States Department of State submitted by the United States in *Sea Hunt, Inc. v. Unidentified, Shipwrecked Vessel or Vessels*, No. 2:98-cv-281 (E.D. Va. Dec. 18, 1998).

3. Annex 2 is a copy of the Statement of Interest of the United States Department of Defense also submitted in *Sea Hunt, Inc. v. Unidentified, Shipwrecked Vessel or Vessels*, No. 2:98-cv-291 (E.D. Va. Dec. 18, 1998).

4. Annex 3 through 6 are excerpts from published historical sources relating to the carrying of specie and other privately owned articles on United States Navy warships.

a. Annex 3 consists of excerpts from Nathan Miller, *Sea of Glory: The Continental Navy Fights For Independence: 1775-1783* (New York: David MacKay, 1974). The attached excerpt at p. 438 describes the 1780 voyage of the Continental Navy Frigate USS Alliance from France to the United States with the personal belongings of U.S. Commissioner Arthur Lee.

b. Annex 4 consists of excerpts from Linda M. Maloney, *The Captain from Connecticut: The Life and Times of Capt. Isaac Hull* (Boston: Northeastern University Press, 1986). The attached excerpt at pp. 162-164 reports on a January 1812 voyage of the U.S.S. Constitution (“Old Ironsides”) from France to the United States carrying property of U.S. merchants seeking military protection because of active Anglo-French hostilities and conflict between the United States and Great Britain. That conflict became the War of 1812, which began in June 1812.

c. Annex 5 consists of excerpts from *American State Papers; Documents, Legislative and Executive of the Congress of the United States*, 18-19th Congress, Vol. II, Naval Affairs; Washington, D.C., Gales and Seaton, 1860. The attached excerpts at pp. 49, 214-16, and 227-30 contain 1822-1823 correspondence and orders of U.S. Navy Secretary Samuel Southard. At p. 229, a letter of Commodore David Porter, Commander of the Navy’s West India station reports about the execution of his assigned mission of “affording protection to our Mexican

commerce.” Commodore Porter reports that he “had kept one vessel constantly in the Gulf of Mexico, to give protection to the persons and property of our citizens and for the transportation of specie to the United States, agreeably to the orders of the Honorable Secretary of the Navy of the 1st of February, 1823.” Commodore Porter also refers to “the transportation of specie in our ships of war, as the most certain means of taking away the powerful temptation for piratical depredations on merchant vessels.”


d. At pp. 215-216 of Annex 5, Secretary of the Navy Southard responds to Commodore Porter with further instructions regarding the discharge of his mission “to repress piracy, and protect our commerce.” The Secretary instructed, *inter alia*, that “You may receive on board specie, and the articles permitted by the act for the better government of the navy, belonging exclusively to our own citizens, and carry them from one port or place to another, when it does not, in any degree, interfere with your other duties, or violate the laws of the country where you are. You may also bring to the United States specie belonging to our own citizens.” The Secretary directed that Commodore Porter was to report all shipments of “the specie and other articles you may carry, and the places to and from which you carry them” so that “the government may know the extent to which the commercial interests of our citizens are benefited by the assistance afforded by our public vessels on this point.”

e. Page 49 of Annex 5 records that Secretary Southard issued the same orders to Captain Hull, then serving in the Pacific Station of the United States Navy.

f. Annex 6 consists of excerpts from *A Call to the Sea: Captain Charles Stewart of the USS Constitution* (Berube and Rodgaard, Washington, D.C., Potomac Books, 2005). The attached excerpt at pp. 179-188 reports that Captain Stewart was found in an 1825

court martial to have carried out “a standard and sanctioned practice” by transporting specie of U.S. merchants threatened by conflict while he was serving in the U.S. Navy’s Pacific Station.

I affirm under penalty of perjury that the statements in my declaration are true and correct to the best of my knowledge and belief.

  
James A. Goold  
Dated: September 19, 2008 at  
Washington, D.C.

ANNEX 1  
TO EXHIBIT I  
(Goold Declaration)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

SEA HUNT, INC,

Plaintiff,

v.

Civil No. 2:98cv281

THE UNIDENTIFIED, SHIPWRECKED VESSEL  
OR VESSELS, their apparel, tackle, appurtenances,  
and cargo located within coordinates 38 degrees  
01'36" North Latitude, 75 degrees 14'3" West  
Longitude; 37 degrees 57'21" North Latitude,  
75 degrees 13'00" West Longitude; 38 degrees  
01'36" North Latitude, 75 degrees 13'14" West  
Longitude; 37 degrees 57'33" North Latitude,  
75 degrees 17'14" West Longitude  
and/or  
37 degrees 55'00" North Latitude, 75 degrees  
19'18" West Longitude; 37 degrees 54'09" North  
Latitude, 75 degrees 17'00" West Longitude;  
37 degrees 51'21" North Latitude, 75 degrees  
18'52" West Longitude, 37 degrees 51'20"  
North Latitude, 75 degrees 21'05" West Longitude,

*in rem,*

Defendant(s).

STATEMENT OF INTEREST OF  
THE UNITED STATES DEPARTMENT OF STATE

I, Ambassador Mary Beth West, declare and say as follows:

1. I am the Deputy Assistant Secretary of State responsible for oceans affairs and have served in that position since October 1996. My current title is Deputy Assistant Secretary of State for Oceans, Fisheries and Space. I make this declaration on the basis of personal knowledge or information made known to me in the course of my official

1

duties. This declaration is submitted on behalf of the United States in the above-captioned case.

2. In my capacity as Deputy Assistant Secretary of State for Oceans, Fisheries and Space, I am responsible for United States policy pertaining to international maritime issues, including, but not limited to, the subject of sovereign warships and recognition of title thereto. As an attorney who previously served as an Attorney-Adviser in the Department of State's Office of the Assistant Legal Adviser for Oceans and Fisheries Affairs, I am also familiar with the United States position on the international law of the sea pertaining thereto.

3. In my current position I have been accorded the rank of Ambassador. As an attorney, I handled international legal issues in the State Department's Office of the Legal Adviser for over 12 years. I was also a visiting Professor of Law at the University of New Mexico School of Law for four years.

4. It is the position of the United States that, under customary international law, sovereign warships and their remains which are identifiable as to the flag State of origin are, unless captured prior to their sinking in armed conflict, entitled to recognition and protection as property of the flag State, unless title to the vessel has been expressly abandoned by the flag State of origin.

5. For example, in 1987 the Department of State asserted to the Government of France that title to the warship ALABAMA of the former Confederate States of America, which had been sunk in 1864 by USS KEARSARGE in battle off Cherbourg, France, vested in the United States Government and that the United States had never abandoned



title thereto. In 1989 the Government of France abandoned its assertion of title to the ALABAMA, which was based on the fact that the wreck was found on the seabed within the French territorial sea; in 1989 France conceded that title to the ALABAMA was with the United States.

6. In 1997, the Government of France asserted its title to the warship LA BELLE, the flagship of Robert Cavalier de la Salle during his expedition in the Gulf of Mexico, which sank in 1686 and was discovered in July 1995 in Matagorda Bay south of Texas. The Government of France provided documentary evidence which established that the ship was a warship of King Louis XIV of France entrusted to Monsieur Cavalier de la Salle as part of an official mission on behalf of the King of France, title to which the Government of France has not abandoned. The United States Government is prepared to recognize France's title to the shipwreck of LA BELLE as part of an international agreement currently under negotiation with France.

7. In September 1998, the United Kingdom asserted title to an anchor which fell off the British frigate H.M.S. CONFIANCE into Lake Champlain during the Battle of Plattsburgh Bay on September 11, 1814, during the War of 1812, before the warship was captured by the United States. The United Kingdom authorized the United States to recover the anchor and place it on historical display at the Lake Champlain Maritime Museum. The United Kingdom has asserted its title to other British warships sunk in the 18th, 19th and 20th Centuries and later located in United States waters. The United States has recognized those claims.

8. The United States recognizes the claims of Germany to title to Nazi U-boats sunk during World War II and located in United States waters.

9. As the foregoing examples illustrate, it is the policy of the United States Department of State to recognize claims by foreign governments -- such as in this case by the Government of Spain regarding the warships JUNO and LA GALGA -- to ownership of foreign warships sunk in waters of the United States without being captured, and to recognize that title to such sunken warships is not lost absent express abandonment by the sovereign.

10. Further, I have examined the provisions of the Treaty of Friendship and General Relations between the United States of America and Spain, signed at Madrid July 3, 1902, 33 Stat. 2105, Treaty Series 422, 11 Bevans 628. The records of the Treaty Office of the Department of State show that this treaty entered into force April 14, 1903, and remains in force between Spain and the United States.

11. Article X of this treaty provides:

In cases of shipwreck, damages at sea, or forced putting in, each party shall afford to the vessels of the other, whether belonging to the State or to individuals, the same assistance and protection and the same immunities which would have been granted to its own vessels in similar cases.

(Emphasis added.)

12. Through its Embassy's Diplomatic Note No. 43/98, dated May 8, 1998, Spain has requested the United States to ensure recognition of Spain's ownership of these wrecks and associated artifacts, which have not been abandoned by Spain, to ensure that the remains of these vessels are treated as maritime graves, and to ensure that their salvaging not be authorized at this time.

13: Article X, by the broad scope of its terms ("in cases of shipwreck"), is applicable to ships sunk before as well as after 1902. Because it is not expressly limited to vessels which might sink in the future, under its literal terms, it therefore applies to vessels already sunk in 1902 that otherwise come within the terms of Article X. Its application, however, is necessarily prospective. I understand that this provision is unique in that no other treaty of friendship, commerce and navigation (FCN) treaty of the United States contains such a broadly worded provision applying to State ships entitled to sovereign immunity. It should be noted that the comparable provision in the 1795 Treaty of Friendship, Limits and Navigation between Spain and the United States, 8 Stat. 138, T.S. 325, 11 Bevans 516, article X, does not expressly mention State ships.

14. It is in the foreign policy interest of the United States to honor the request of the Government of Spain. It is the opinion of the undersigned that Article X requires application of the principles of sovereign ownership ("the same ... protection and the same immunities"), which exist under customary international law, as set forth above. Further, Article X imposes on the United States the responsibility to afford to these Spanish vessels the same assistance and protection and the same immunities which would be granted to sunken United States warships in the same location.

15. It is the view of the U.S. Department of State that U.S. domestic law is consistent with the customary international law rule that title to sunken warships may be abandoned only by an express act of abandonment. Under the Constitution of the United States as interpreted by the Courts of the United States, it cannot be presumed that the U.S. Government has abandoned its sunken warships.

16. The Legislative and Executive Branches of the United States Government have also acted in accordance with the view that title to sunken warships may be abandoned only by an express act of abandonment. Through the Abandoned Shipwreck Act, 43 U.S.C. sec. 2101 et seq. (1994) ["ASA"], the United States asserted title to certain abandoned shipwrecks (sec. 2105(a)) and transferred said title to the States (sec. 2105(c)). In providing the views of the Department of State to the Chairman of the House Committee on Merchant Marine and Fisheries on S. 858, entitled the "Abandoned Shipwreck Act of 1987", the Assistant Secretary of State for Legislative Affairs wrote "the U.S. only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act; mere passage of time or lack of positive assertions of right are insufficient to establish such abandonment." (Letter of J. Edward Fox to the Hon. Walter B. Jones, Feb. 19, 1988, reprinted in House Rep. 100-514, Part 2, 100th Cong., 2d Sess., at 13.) The House Committee on Interior and Insular Affairs agreed in its report No. 100-514, Part I, pp. 3-4, Mar. 14, 1988 ("The Committee notes that the United States only abandons its sovereignty over, and title to, sunken U.S. warships by affirmative act. Passage of time or lack of positive assertions of right are insufficient to establish such abandonment."). These limitations are included in the National Park Service's Abandoned Shipwreck Act Guidelines, vol. 54, Federal Register, No. 63, April 4, 1989, pp. 13642 et seq. passim. In consonance with the foreign policy and treaty responsibilities of the United States as stated above, the term "abandoned" when applied in reference to both foreign and U.S. warships is to be given its customary meaning in

both international and domestic law, as requiring an express abandonment. Thus foreign warships which have not been expressly abandoned are outside the purview of the ASA.

17. In light of the foregoing, the United States recognizes:

a. the international law rule that warships and their associated artifacts, whether or not sunken, are entitled to sovereign immunity.

b. that sunken warships are historical artifacts of special importance and entitled to special protections; that many have unique histories making them part of their country's traditions; and that they may be the final resting places of persons who died in the service of their nations.

c. that the practice of nations confirms the well-established rule of international law that title to such vessels is lost only by an express act of abandonment, gift or sale by the sovereign in accordance with relevant principles of international law and the law of the flag State governing abandonment of government property, or by international agreement or by capture or surrender during battle before sinking.

d. that, absent an express act of abandonment, a coastal State (such as the United States) does not acquire any right of ownership to a sunken warship by reason of its being located on or embedded in the sea-bed over which it exercises sovereignty or jurisdiction, and a State of the United States does not acquire any right of ownership to a sunken warship by reason of its being located on or embedded in the sea-bed to which the State was given certain rights by the Submerged Lands Act, 43 U.S. Code sec. 1301 et seq., and the Abandoned Shipwreck Act, 43 U.S. Code sec. 2101 et seq. (1994), although

access to such vessels is subject to coastal State control in accordance with international law.

e. that, absent an express act of abandonment, no person or State may salvage or attempt to salvage sunken warships or their associated artifacts, wherever located, without the express permission of the sovereign flag State, whether or not the vessel is a war grave.

f. that sunken warships containing crew remains are entitled to special respect as graves and must not be disturbed without the explicit permission of the sovereign.

18. Adherence to these principles is of great importance to the United States, which has nearly 3,000 sunken warships located around the globe, some 1,300 in U.S. waters and over 1,500 in foreign and international waters. If the United States does not grant such protection and immunities to U.S. or foreign warships sunk in its own waters, it would expect difficulties in seeking those same protections and immunities for sunken U.S. warships in foreign or international waters. In particular, if the United States does not protect the wrecks of the Spanish warships JUNO and LA GALGA as requested by Spain, it could be expected that Spain would not be prepared to protect sunken U.S. warships discovered in Spanish waters. Further, the Congress of the United States has recognized that it is in the public interest to preserve our national maritime heritage. 16 U.S.C. sec. 5401.

19. A previous opinion of the Deputy Legal Adviser of the Department of State given in 1980 to the same effect, relating to sunken World War II Japanese warships,

appears in the DIGEST OF UNITED STATES PRACTICE IN INTERNATIONAL LAW 1980, pages 999-1006 (Marian Nash Leich ed., Dep't of State Pub. 9610, 1986).

20. A portion of the memorandum attached to that opinion (pages 1003-1004) cites a number of older cases, the oldest of which involved a British frigate sunk in 1781 or 1782 in New York waters, for the proposition that abandonment of title to warships may be express or implied. The memorandum also states:

The practice of the U.S. and other countries in recent years has been to depart from the earlier view that abandonment of a warship could be implied by the long passage of time (the premise, for example, in [the case involving this 18th Century British frigate]). Factors such as an increased reluctance to abandon title to U.S. government property, including vessels that have become, in many situations, the final resting place of military personnel, as well as the existence of more sophisticated methods of salvaging vessels and communicating decisions to abandon vessels, have in effect resulted in a demise of the earlier view. In the absence of an express transfer or abandonment of a U.S. warship sunk in the near past (*e.g.*, in the World War II era), it should be presumed that title to such vessels remains in the U.S. Title to vessels sunk in the more distant past (such as during the 17th and 18th centuries) would, of course, still be determined by the more conventional interpretation of abandonment of that period.

21. The last sentence of this quotation does not state current U.S. policy and is not consistent with the current practice of the United States and other countries. The procedures for the abandonment of sunken U.S. warships located outside the territory of the United States, set forth in 10 U.S. Code sec. 7305-7308 and 7545 (1994) and implementing regulations 32 C.F.R. parts 172 and 736 (1997), and for other U.S. vessels in 40 U.S. Code sec. 484(i) (1994) and 46 U.S. Code App. sec. 1158 (1994), make no provision for implied abandonment or impose any limitation as to the age of U.S. property. The practice of the United States and other countries since 1980 with regard to


“vessels sunk in the more distant past” is now consistent with that related to “warships sunk in the near past”, i.e., their abandonment is not to be presumed or implied, but must be express. *Accord* Gerald J. Mangone, UNITED STATES ADMIRALTY LAW 225 (Kluwer, 1997) (“U.S. warships, for example, sunk and untouched for more than a century, will not be considered as abandoned”).

22. Neither of the two multilateral international treaties on salvage permit the salvage of sunken warships without the express permission of the flag State. The 1910 Convention for the Unification of Certain Rules with Respect to Assistance and Salvage at Sea (the Brussels Convention), 37 Stat. 1658, T.S. 576, 1 Bevans 780, is expressly not applicable to warships, as Article 14 thereof provides “This convention does not apply to ships of war or to Government ships appropriated exclusively to a public service”. The 1989 Convention on Salvage, Sen. Treaty Doc. 102-12, Sen. Exec. Rep. 102-1, similarly provides in Article 4, State-owned vessels, that “1. ... this Convention shall not apply to warships or other non-commercial vessels owned or operated by a State and entitled, at the time of salvage operations, to sovereign immunity under generally recognized principles of international law unless the State decides otherwise.” These multilateral treaties are but two of the more than 50 treaties in force that recognize the sovereign immunity of warships. Most of these treaties are listed in ROACH & SMITH, UNITED STATES RESPONSES TO EXCESSIVE MARITIME CLAIMS 466-471 nn.45-67 (Kluwer 2d ed. 1996).



I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 18<sup>th</sup> day of December 1998, in Washington, D.C.

  
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Ambassador Mary Beth West  
Deputy Assistant Secretary  
(Oceans, Fisheries and Space)  
United States Department of State

ANNEX 2  
TO EXHIBIT I  
(Goold Declaration)

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

SEA HUNT, INC.,

Plaintiff,

v.

Civil No. 2:98cv281

THE UNIDENTIFIED, SHIPWRECKED VESSEL  
OR VESSELS, their apparel, tackle, appurtenances,  
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19'18" West Longitude; 37 degrees 54'09" North  
Latitude 75 degrees 17'00" West Longitude;  
37 degrees 51'21" North Latitude, 75 degrees  
18'52" West Longitude, 37 degrees 51'20"  
North Latitude, 75 degrees 21'05" West Longitude,

*in rem,*

Defendant(s).

STATEMENT OF INTEREST OF UNITED STATES  
DEPARTMENT OF DEFENSE

Rear Admiral John D. Hutson, Judge Advocate General's Corps, United States Navy, deposes  
and says under penalty of perjury pursuant to 28 U.S.C. § 1746:

1. I am the Judge Advocate General of the Navy, and I also serve as the Department of  
Defense Representative for Ocean Policy Affairs. I make the statements herein on the basis of  
personal knowledge or information made known to me in the course of my official duties.
2. In my capacity as Judge Advocate General of the Navy, I am responsible for providing

legal and policy advice to the Secretary of the Navy on admiralty, maritime, and international law. As the Department of Defense Representative for Ocean Policy Affairs, I serve as the central point of contact and represent the Department of Defense in international and interagency negotiations for matters involving the law of the sea and related ocean policy.

3. Based on official records, the Naval Historical Center currently estimates that 3,000 U. S. Navy vessels lie submerged around the world. Of these, as a very rough estimate, approximately 1,500 vessels are believed to lie in the territorial seas of foreign nations or in international waters. Many of those vessels were lost in World War II.

4. Additionally, approximately 15,000 Navy aircraft lie submerged around the world. Of these, approximately 5,000 lie in foreign or international waters. The legal issues regarding salvage of these aircraft are substantially the same as those involved in vessels and the following arguments apply to them at least to the degree they do to vessels. Specific reference to aircraft is omitted in the following discussion only due to the limited scope of the instant litigation. The large number of submerged aircraft and the comparative ease with which submerged aircraft can be recovered highlights the importance of a correct resolution of these issues.

5. The protection of sunken or submerged vessels from unauthorized salvage, theft, dismemberment, destruction, or disturbance is of high importance to the Department of Defense. Many such vessels are war graves, or are the final resting places of United States service members. As such, submerged vessels are due the same deference as a national cemetery. Some of the vessels or their equipment or cargo are of continuing monetary value. A few still contain classified information or features relevant to the national security. Many such vessels are of significant cultural importance, often representing unique repositories of artifacts emblematic or instructive of

national or maritime history. Many submerged naval vessels also contain unexploded ordnance, which may pose severe dangers to those visiting them. Further, many submerged vessels also contain lead, oil, asbestos, or other materials, which may pose an environmental hazard if released into the environment through disturbance of the site. Efforts to exploit these sites need to be carefully controlled.

6. United States policy has consistently been that these sunken sovereign vessels remain the property of the United States absent the government's formal, affirmative abandonment, sale or donation of ownership, pursuant to Act of Congress and implementing regulations. See, e.g., Hatteras, Inc. v. U.S.S. Hatteras, 1984 A.M.C. 1094 (S.D. Tex. 1981), aff'd mem., 698 F.2d 1215 (5<sup>th</sup> Cir. 1983). This policy has been sanctioned by federal court rulings, and it applies regardless of condition, location, or date of sinking of the vessel. The United States maintains title to such vessels regardless of the circumstances of the sinking, which may include intentional scuttling, sinking after the crew has abandoned ship for lifesaving purposes, or sinking during use as a target. The policy of perpetual ownership facilitates government supervision of these wrecks and serves the United States Government's and the public's interests in preserving the sanctity of service members' graves, preserving historic cultural resources, maintaining the government's fiscal and property interests, and protecting the public against the potential dangers posed by unexploded ordnance and environmental degradation.

7. Consistent with its other interests the Navy's policy generally has been to allow open access to U.S. Navy wreck sites for recreational divers, at the divers' own risk, so long as the site is not disturbed – "Look but don't loot" – and so long as access does not involve risks to personal safety, military security, or the environment .

8. It is the policy and practice of the United States to allow such vessels to remain where they lie until such time as it is in the government's interest to recover them in their entirety or in part or to exploit them for the sake of historical or archaeological study. Because of limitations at any one time on the availability of funding to conduct exploration and/or salvage to curatorial standards and limitations on technology required to accomplish such operations consistent with the government's and public's long-term interests, it is the U.S. Government's practice to cautiously consider any proposed action with respect to such wrecks. Because of variables such as water depth, proximity to land, the degree to which a submerged craft is embedded in the sea bottom, and the date of the sinking, it is not possible to predict, with any degree of certainty, just how much it would cost the United States to salvage or to demonstrate affirmative control over submerged vessels by physically preventing their disturbance. To permit salvage of such vessels without the government's prior authorization would either put those wrecks and sites in serious danger or compel the government to expend immense sums to effect preemptive recovery or to attempt to enforce affirmative control as the means to deny salvage. For the United States policy to be effective, United States title and control with respect to such wrecks must be of indefinite duration.

9. Because a large number of wrecked United States Government vessels are in foreign or international waters, it is in the United States interest that other sovereign nations recognize the United States perpetual interests in its wrecks. A clear inducement for other nations to do so is the United States and its constituent States reciprocal recognition of the sovereign title and ownership interests of other sovereign governments in their wrecks in United States waters. To that end, requests of private individuals or entities for permission to salvage foreign sovereign vessels sunk, without capture, in United States waters are routinely referred to cognizant foreign state owners.

United States failure to recognize such foreign sovereign interests will make it less likely that other nations will recognize the United States interests in its wrecks in their waters.

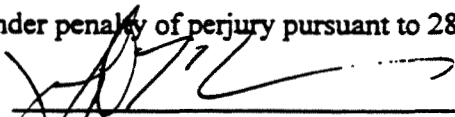
10. Reciprocal recognition of sovereign rights is emerging as customary international practice. For example, the Department of State negotiated a bilateral agreement with France regarding the remains of the C.S.S. Alabama, a Confederate warship that was sunk off Cherbourg in 1864 by U.S.S. Kearsarge. By that agreement France recognized U.S. title to the wreck and both nations agreed to cooperate in the investigation, protection, and eventual recovery of the wreck. Inherent in such negotiations is the good-faith understanding that, when roles are reversed, the United States will recognize appropriate foreign sovereign claims and will take reasonable measures to protect foreign sovereign property.

11. The Department of Defense has a strong interest in ensuring that the Juno and La Galga are treated in the same way that we would want U.S. Navy, U.S. Army, U.S. Air Force and other submerged sovereign, non-commercial United States wrecks in foreign waters to be treated.

FURTHER AFFIANT SAYETH NOT.

Executed this 18<sup>th</sup> day of December 1998, under penalty of perjury pursuant to 28 U.S.C.

§ 1746.

  
\_\_\_\_\_  
JOHN D. HUTSON  
Rear Admiral  
Judge Advocate General's Corps  
United States Navy

ANNEX 3  
TO EXHIBIT I  
(Goold Declaration)



# *Sea of Glory*

THE CONTINENTAL NAVY FIGHTS  
FOR INDEPENDENCE

1775-1783

by  
Nathan Miller

DAVID MCKAY COMPANY, INC., NEW YORK

Indies with four ships of the line, he lamented that none of the coppered vessels had been allowed to accompany him.

While Rodney's fleet was being fitted out for its momentous voyage, Paul Jones and his squadron, fresh from the battle off Flamborough Head, were at the center of a three-cornered diplomatic duel between France, Holland, and Britain that lasted through the autumn of 1779. Jones's ships had no sooner dropped anchor at the Texel, than Sir Joseph Yorke, the British ambassador, lodged a vehement protest with the Dutch government. He demanded "that these ships and their crews may be stopped and delivered up with the pirate Paul Jones of Scotland, who is a rebel subject and criminal of state. . . ." The Dutch moved with deliberate slowness. Discreetly supported by the French and remembering that they, too, had once been rebels, Dutch officialdom engulfed the irate envoy in a flood tide of notes and aide-memoires. In the meantime, Jones repaired his ships and anxiously eyed the movements of a squadron of British cruisers that lay off the port waiting for him. This game of cat and mouse continued for the rest of the year.

One of the commodore's first acts had been to inform Benjamin Franklin of Pierre Landais's irrational conduct during the battle. "Either Captain Landais or myself is highly criminal, and one or the other must be punished," he declared. "His conduct has been base and unpardonable." Franklin summoned Landais to Paris to explain his conduct. Four of the *Alliance's* officers, including her first lieutenant, submitted statements contending they had "told Captain Landais at different times that he had fired upon the wrong ship." Franklin fully realized that the political climate in Paris made it imprudent to take strong action in France against a French officer, even though he held an American commission, so the whole matter was referred to the Continental Congress. "If . . . I had 20 ships of war at my disposition, I should not give one of them to Captain Landais," Franklin observed. He managed either to induce Landais to step down from his command or suspend him from it, for Jones soon raised his pennant on the *Alliance*. But he had not heard the last of Pierre Landais.

Jones's situation was fast becoming intolerable. His crew was restless and angry over the delay in selling the prizes. The men had

received only one ducat each, which some of them contemptuously tossed overboard "in a fit of rage," said Midshipman Fanning. The Dutch were showing signs of collapsing under British pressure and were beginning to insist that he sail as soon as possible. And there were those pesky British frigates off shore, patiently cruising back and forth. "If you can take Paul Jones," Sandwich had told one of his captains, "you will be as high in the estimation of the public as if you had beat the Combined fleets." Jones was unafraid. "The ship is well manned and shall not be given away," he assured Franklin. To protect Jones's squadron, the French ambassador claimed all the ships were French and ordered the Stars and Stripes replaced with the French ensign. He knew that the Dutch authorities would think twice before ordering a French squadron out to face the guns of the Royal Navy. But Jones refused to have any part in this subterfuge. The American flag remained flying on the *Alliance* although the commodore was persuaded to turn the *Serapis* and *Countess of Scarborough* over to the French so they could carry the British prisoners he had taken to England for exchange. As part of the disguise, the French offered Jones a commission as a privateer—which he considered a gross insult. The touchy little Scot's anger at his allies increased when he learned that his prisoners had been exchanged for Frenchmen, not Americans.

Toward the end of the year, foul weather drove the British blockading squadron off its station, which was the opportunity Jones had been waiting for. With high winds singing in the rigging of the *Alliance*, he took her to sea. Characteristically, he chose to ignore the long and safe route around Scotland and sailed directly down the Channel. By the time the frigate's bell had tolled out the old year and ushered in the first day of 1780, she had safely passed through the narrow seas and was off Ushant. The *Alliance* was not a happy ship. There was considerable bad blood between her original officers and men and those from the *Bonhomme Richard*. Fist fights flared among the crew and threats of duels were hurled among the officers over the part both ships had played in the battle off Flamborough Head. "Our ward-room . . . exhibited nothing but wrangling, jangling and a scene of discord among our superior officers," reported Midshipman Fanning. And John Kilby, from his vantage point on the gun deck, said that the *Richard's* men "always insisted that the Crew of the *Alliance*, both officers and men, were Cowards." The crew, claim-

ing that Jones had promised to take them to Lorient where they would receive their pay and prize money, refused to work when he ordered a cruise off the Spanish coast. They were eventually routed out by an armed party led by Lieutenant Dale and persuaded to return to duty but the search for prizes was unsuccessful. Some of the men contracted a venereal disease when the ship put into Coruña to take on wood, water and provisions.<sup>8</sup> So it must have been with a sigh of profound relief that Jones anchored in Lorient on February 19.

While Jones had been on his fruitless cruise, Franklin had received instructions from the Board of Admiralty to get the *Alliance* off as quickly as possible with a cargo of arms, uniforms, and other supplies for Washington's army. As soon as he heard of the frigate's return, he wrote Jones urging him to load and sail immediately. He was also to take Arthur Lee, one of the American commissioners in Europe, as a passenger. Paul Jones probably knew that the quarrelsome Lee was the sworn enemy of Dr. Franklin and anyone considered close to the old man—and that included himself. Even so, he welcomed him to the ship and assured Franklin that he would quickly get the *Alliance* ready for sea. Relations between Jones and Lee rapidly turned stormy. Lee demanded that a huge coach he had purchased be shipped along with the large amount of personal baggage he and his servants had accumulated. Pointing out that a frigate had very little extra room for cargo—and that had already been filled by arms and provisions—Jones refused to carry Lee's property. This affront inflamed Lee's enmity, and he nourished his grudge until he was ready to strike.

Without pay or prize money, the crew of the *Alliance* became even more discontented. Franklin managed to scrape up enough to provide a month's pay for each man—the first in almost a year—but their prize money was still held up for a number of reasons. As naval agent for the American commissioners, Chaumont had control of the money, and he was deeply involved in various speculations. The men, themselves, also contributed to the delay. The French government wished to purchase the *Serapis* and *Scarborough* at fixed prices

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<sup>8</sup> Jones dropped Gustavus Conyngham, who had been a passenger on his vessel, off at Coruña, where he took a ship for America. Conyngham had tunneled out of Old Mill Prison near the end of 1779 and had made his way to Holland where he met Jones. He was unlucky enough to be captured again on his way home and ended the war a prisoner.

of so much per gun, the method customarily used by the French to pay for warships taken as prizes. The crew of the *Alliance* "raised a clamor at this," however, and insisted that they could get more for the ships if they were auctioned off to the highest bidder. That took time, and when the vessels were finally sold they brought less than if the original proposal had been accepted.<sup>9</sup> "Unless the prize money is paid," warned Jones, "my throat will assuredly be cut." To try to speed up the process of payment he went to Paris in mid-April.

The next six weeks were the happiest time in Paul Jones's life. Having won the only important Allied naval victory of the previous year while the Combined Fleet had accomplished nothing, he found himself the social lion of the Paris season. Franklin took him to the French Court where he was introduced to King Louis XVI and Queen Marie Antoinette, whom he described as "a sweet girl." He was inducted into the Order of Military Merit by the King with the rank of Chevalier and presented with a gold-hilted sword. Great men invited him to dine. Beautiful women, ranging from high-priced courtesans to the great ladies of the Court, threw themselves at him. The stamp of the quarterdeck did not follow Jones into the salon and boudoir. "From the intrepid character he justly supported in the American Navy, I expected to have seen a rough, stout, warlike Roman," said Abigail Adams. "Instead of that I should sooner think of wrapping him up in cotton wool, and putting him in my pocket, than sending him to contend with cannon balls."

Jones's return to the *Alliance* was postponed from day to day, week to week. Not all his time in Paris was spent in playing the social lion, however. He kept up the pressure on the Ministry of Marine to sell the prizes and for Chaumont to come up with the overdue funds. He also tried to persuade the authorities to allow him to repeat the cruise of the *Bonhomme Richard* on a larger scale. Because the French navy had lost so many men to disease during the abortive expedition against Britain, there was a shortage of crews to man its frigates. Jones suggested a remedy. He would sail home in the *Alli-*

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<sup>9</sup> The *Scarborough* was finally sold as a merchantman and the *Serapis* was purchased for the French Navy. She was razed, or cut down, and sent out to the Indian Ocean where she was destroyed by fire in 1781. Jones eventually received \$2,658 in gold as his share of the prize money and no other American officer got more than \$818—and the men even less—not much even by the standards of the day considering the risks they took.

ance, obtain command of the *America*, the 74-gun ship of the line being built at Portsmouth, and return to France with double crews. Enough men would be provided to man several of the idle French frigates, which would be turned over to his squadron. Sartine, the Minister of Marine, expressed an interest in the proposal, but nothing came of it.

While Jones was enjoying himself in Paris, Arthur Lee, smarting at his treatment by Jones, encouraged Landais to claim command of the *Alliance*. Stirring the discontent among the frigate's officers and crew, the conspirators promised to get them their long overdue pay and prize money. Near the end of May, one hundred fifteen officers and men signed and sent to Franklin a document written by Landais stating that they would not sail until they had received six months' pay, all their prize money, and Landais, "their legal captain," had been restored to command. Fourteen officers, including those who had originally stated that Landais had deliberately fired on the *Richard*, also signed a statement maintaining that the Frenchman's conduct had been above reproach. Upon receipt of the documents, Franklin wrote Jones, who had left Paris before they arrived, that "you are likely to have great trouble. I wish you well through it."

Instead of returning directly to his ship, Jones dallied in Nantes where he was feted by his fellow Masons. He did not arrive at Lorient until June 9. Even then, he did not go directly on board his ship, but lodged ashore with one of his mistresses. Landais and Lee picked this time for their coup.<sup>10</sup> On June 13, the Frenchman boarded the ship at a time when virtually all the officers who had served under him were on the quarterdeck and Jones's officers were either ashore or below at dinner. He was greeted with cheers. Those officers who did not accept his authority were summarily ordered ashore, although none of the crew were allowed to leave. John Kilby said fifty-two men, all survivors of the *Richard* including himself, were put in irons. When Jones learned that he had been outwitted, Midshipman Fanning said, "his passion knew no bounds; and in the first paroxysm of rage, he acted more like a mad man than a conquerer." But instead of storming aboard the frigate and confronting Landais, as might have been expected, the normally impetuous Jones

<sup>10</sup> In recounting the Landais affair, I have relied upon the account given by Richard B. Morris in "The Revolution's Caine Mutiny," *American Heritage*, XI (April 1960).

returned to Paris to seek fresh authority from Franklin and Sartine. The French Minister issued a warrant for Landais's arrest.

Lee's carriage and baggage were hoisted aboard the frigate and supplies that were badly needed by Washington's army were dumped on the wharf to make room. Jones returned to Lorient on June 20 to discover that the *Alliance* had been warped out of Lorient harbor to nearby Port Louis which was closer to the sea. The port officials, however, had placed a boom across the mouth of the harbor to block Landais's escape, a gunboat armed with three 24-pounders was ordered to stand by to prevent the boom from being cut and the commander of the citadel was instructed to fire on the frigate if she attempted to get away. Similar instructions were given to three French warships in the port, and boats were readied to board the *Alliance*. But the command to attack was never given. To the surprise of those who knew him, Jones had the order to fire upon the *Alliance* reversed and the boom lifted. He justified this strange shift in a letter to Robert Morris: "My humanity would not suffer me to remain a silent witness of bloodshed between Allied Subjects of France and America." It was not a very convincing statement. Morison speculates that Jones was secretly glad to be rid of the *Alliance* and hoped to obtain command of a larger ship. Publicly, he blamed the French officials for his loss of the frigate, but Franklin had no patience with Jones's excuses. "If you had stayed on board where your duty lay, instead of coming to Paris, you would not have lost your ship," he declared.

With the boom removed, Landais lost no time in slipping out to sea on July 8, with Philadelphia his destination. The *Alliance* carried no other cargo than 76 chests of small arms, 216 barrels of powder and a battery of 18-pounders that had originally been ordered for the *Bonhomme Richard* but had been cast too late to be of use. To find room for them in the hold, Landais had ordered Lee's carriage put back on shore but the commissioner did manage to cram a large amount of his own goods on board. The passage to America was one of the maddest on record. Landais quarreled violently with his crew, his officers, and his passengers. Officers who refused to swear allegiance to him were placed under arrest. No one, including Arthur Lee, was exempt from his moods. One day at the dinner table. Landais slammed down a carving knife on Lee's fork as that gentleman was helping himself to some meat on the serving dish. Richard

Morris relates what happened next: "I'll let you know I am captain of this ship and I shall be helped first at the table," the Frenchman cried. "You shall not pick the liver out of the dish. You shall take the first piece that comes to hand as I do." Lee was confounded and declared he had always acknowledged that Landais was the captain of the ship. "I was never so used in my life," he added.

"When you get ashore," replied Landais, "you may load your pistols as soon as you please."

Upon one occasion when the frigate was sailing before a fair wind, the Captain ordered the sails reefed, to the anger of the men who wanted to get home as quickly as possible. At another time, Landais started chasing one of his officers up and down the deck after accusing him of disobeying orders. When the *Alliance* reached the Grand Banks and the crew wished to fish in order to add to their meager rations, Landais refused permission. Fearing that the frigate might be taken if she continued on to Philadelphia, the men insisted that she put into Boston which was closer. The Captain refused. Finally, the officers and passengers banded together and forced Landais, who was pretending to be sick in his cabin, to give up command of the ship to Lieutenant James A. Degge, her first officer. Earlier he had been placed under arrest by the Captain. Degge took the *Alliance* into Boston, arriving on August 19. After receiving Landais's incoherent report, the Eastern Navy Board ordered John Barry to relieve him. The Frenchman refused to quit the ship and three husky marines had to drag him kicking and screaming from his cabin. He then turned up at the Navy Board's office and demanded to be allowed to sleep on the floor as he had no place to go. At the court-martial that followed, most of the witnesses, including Arthur Lee, contended that Landais was insane. He was ordered dismissed from the navy—and so was the unfortunate Lieutenant Degge, who had been charged with mutiny.

To replace the *Alliance*, the French placed the 20-gun sloop-of-war *Ariel* at the disposal of the Americans to carry the arms and equipment that Landais had dumped on the quayside. Although Franklin pressed Jones to get the ship loaded and on her way, she did not sail for another four months. In order to find room for even part of the military supplies awaiting shipment—11,000 muskets, uniforms for 10,000 men, 800 barrels of gunpowder, and 120 bales



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The Captain  
from  
Connecticut ;  
The Life and  
Naval Times of  
Isaac Hull .

*Linda M. Maloney*

Northeastern University Press

B O S T O N

Northeastern University Press

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The Frontispiece is a portrait of Isaac Hull by Gilbert Stuart, ca. 1809, from the collection of Mrs. Roger C. Elliott. Courtesy of the New-York Historical Society, New York City.

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### *That Favorite Frigate*

Marks, who had deserted twice, received twenty-four. Nicholas Fountain, a gunner's yeoman, and John Emmings, a cook, were reduced to the rank of seaman as well. The ringleaders, Nease and Read, were arrested and turned over to Rodgers for trial.<sup>26</sup>

Over one hundred of the *Constitution's* crew would legitimately be entitled to discharge by 1 May, and since most of them had shipped at Boston, Hull asked Rodgers to let him take the ship there to pay them off and recruit replacements. He was particularly anxious not to be ordered back to the Delaware, which he thought was much too shallow and dangerous for such a large frigate.<sup>27</sup> The squadron broke up its winter quarters on 20 March, and the *Constitution* anchored at Boston on the twenty-eighth. She was there six weeks and could replace only sixty or seventy of the one hundred men discharged. Hull was very particular to order his recruiting officers to engage men to serve from "the first day of May next" to avoid any future disputes.

On this visit to Boston, Isaac was able to see his uncle William's family at Newton, though William Hull was in Detroit as governor of Michigan territory. Isaac had not seen him since before he went to the Mediterranean in 1802. He invited his cousin Samuel Clarke, husband of William's daughter Rebecca, and their little son Samuel C., aged six, to spend a day on board the *Constitution*. Isaac particularly asked that the little boy come, and S. C. Clarke remembered all his life "sitting at dinner in the cabin opposite two big guns which projected from the stern windows." The Clarkes, despite their Hull heritage, were Federalists. When little Samuel said he was a Federalist, he was asked by the gentlemen at table to define it. "A Federalist," he replied, "is one who votes for Governor Gore." The little boy was gratified by the burst of approving laughter.<sup>28</sup>

By the spring of 1811 it seemed increasingly likely that the United States would soon find itself at war with England or France, if not with both at once. American commerce was both the lifeblood and the prey of the two great belligerents now locked in total war with one another. The international situation had grown so tense and the fate of commercial shipping so precarious that the government could no longer depend on chance merchant sailings for communication with Europe. The naval vessels were now being sent across the Atlantic in relays every few months with official dispatches. The *John Adams* had gone in February. Now, suddenly, on 3 May the *Constitution* was ordered to close her rendezvous and sail for Annapolis to prepare for a European cruise. The ship was being painted, and Hull was visiting at Medford on 8 May when he received the order. He wrote Morris a hasty scrawl:

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THE CAPTAIN FROM CONNECTICUT

You will use all possible dispatch in getting the ship ready for sea. Do not paint any more. Get the officers and men on board as soon as possible, and give no more liberty. I shall be on board in the morning and shall order the provisions down immediately. . . . Bend all the sails for sea.<sup>29</sup>

A week later the ship was at sea, though she was thirty short of her complement of able seamen, and Hull had to station marines at the great guns to complete their crews.

One of the men shaking off his "dissipation on shore" on that run to Annapolis was a young seaman named Moses Smith. In his old age Smith published his reminiscences of life in the *Constitution* as *Naval Scenes in the Last War*. He shipped at Boston on 10 April and was stationed on the larboard fore yardarm, or in battle as sponger to Gun No. 1. Smith remembered the troublesome men in the crew who thought they should be discharged, and another countryman, named John Brown, shipped at Boston because his wife wanted him out of the grog-shops. He had been persuaded to enter as the "captain's gardener." Brown came on board half sober and asked to be shown to the captain's garden; he was told to wait till the captain came, when he repeated the same question. Hull turned him over to the boatswain for a half-dozen strokes of the rope's end. The amused Smith reported that Brown became a good member of the carpenter's gang instead of a gardener.

The *Constitution* anchored at Annapolis at five-thirty on the evening of 24 May, having had a pleasant run of four days from Boston to the Chesapeake capes and then being forced to beat the whole distance up the bay against northeasterly breezes. Off the Virginia coast the ship had averaged ten knots before the wind. Hull thought that he could be ready to sail again in a week except for the state of his crew. Besides being shorthanded, he was still having trouble with the thirty men who claimed to be eligible for discharge. At Annapolis on 9 June he received the sentence of the court-martial on Nease and Read and read it aloud to the crew. But the agitation did not stop.<sup>30</sup> The center of dissension now was Quarter Gunner Thomas McCumber; indeed, most of the men claiming discharge were quartermasters, quarter gunners, and other valuable petty officers and able seamen.<sup>31</sup> At Annapolis they wrote to Justice Samuel Chase for a writ of habeas corpus to compel their release; Hull was able to quash the writ only at the last moment by presenting his case to the state's attorney. McCumber was court-martialed as a result. His trial turned on the question of the legality of shipping men for more than the two years stipulated by law; Hull and the members of the court were all in doubt, but after securing another legal opinion, this time from William Pinkney, former minister to England, they con-

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### *That Favorite Frigate*

victed McCumber. He was sentenced to receive one hundred lashes and be reduced to the rank of ordinary seaman for the remainder of his service, but the court recommended to the secretary that the whipping be remitted, and it was.<sup>32</sup> McCumber and the rest of the men who disputed their enlistments were offered the opportunity to transfer to other ships before the *Constitution* left for Europe, and though Hull tried to talk them into staying the extra time—for they were the most experienced hands—all but one chose to transfer so that they could be discharged in September.<sup>33</sup>

In addition to those men, there were others who were foreigners, including Hull's cook, whom he could not take with him to Europe where they might be arrested as deserters or impressed into British or French service. Thus it happened that the *Constitution* had to go to Europe in that perilous year with a crew short of experienced men. Hull estimated that one-third of the sailors had never been on board an armed ship, much less a warship. Relations with England and France were tense, and particularly with England. Pinkney had recently closed the American mission in London, and no replacement had been named, so that diplomatic relations between the two countries had been effectively broken. On 16 May, while the *Constitution* was on her way to Annapolis, Commodore Rodgers in the *President* had fired into the British sloop of war *Little Belt*, which, he said, he mistook for the frigate *Guerrière*, not far from Cape Henry, thus creating another international incident somewhat like the *Chesapeake* affair in 1807. Hull had to expect possible retaliation on the *Constitution* when she met British ships at sea. The crew were kept busy with gun drills, even at Annapolis. Hull did not feel at ease about going to sea with his raw crew, yet he was pleased at Rodgers's exploit, because "I consider the event of that importance that it will be the means of bringing our affairs with that nation to a close, one way or the other."<sup>34</sup>

The *Constitution* had a dual mission: to carry to France the new American minister, Joel Barlow, and his suite, and to convey to the Netherlands a debt payment of \$220,000 in specie. The latter gave Hull a good deal of uneasiness: "that sum is worth quarrelling for and I am not sure that I shall escape it." Soon after the ship reached Annapolis, Hull went to Washington to meet the future minister; he may have known him already, since Barlow was from Connecticut. In addition to Barlow and his wife, there would be David Baillie Warden, appointed consul at Paris and agent for prizes; the Reverend Francis Parkman of Boston; Barlow's secretary, John Mason; William Lee, secretary of legation; the usual assortment of servants; and Mrs. Barlow's sister Clara Baldwin, a young and charming widow. This fact Isaac Hull did not

overlook. "I find I am to take out a *buxom widow*. *Take care*: at sea is a dangerous place to be with ladies."<sup>35</sup>

Preparations for sea continued through June and July. Hull advised the Barlows on what provisions to prepare for a crossing that might last from thirty to sixty days, but he told the minister he had better not try to take his carriage, as "we have not one inch of room below and it would be much in the way on deck and very much exposed to the salt water and being injured by the ropes."<sup>36</sup> He himself laid in a stock of wine and other delicacies with which to entertain his guests, besides providing a goat (for fresh milk) and some crates of turkeys, geese, and chickens. He was besieged by businessmen who wanted him to carry money to Europe, to avoid the nonintercourse law, but was hesitant unless he was sure the money belonged to American citizens. Secretary Hamilton advised him not to take such money unless he were given a commission. Aside from that, he decided to do a little enterprising of his own and entered into an agreement with Charles Stewart to buy some goods in France to import; Stewart apparently to put up most of the capital, as he had about £1,500 credit with London merchants.<sup>37</sup>

Hull's correspondence in June was impaired when he burned his right hand badly, but as soon as he could hold a pen with two fingers he wrote his good wishes to Levi and Mary on their marriage: "now then let me congratulate you (as I do myself) on having taken to yourself a Hull." He went on in a blithely nautical-punning vein: "Tell Levy he ought to be a happy fellow and that I yet have hopes some day not far distant to be made so by Hulling some charming girl myself." He was pleased that the elder Hulls seemed inclined to settle down with the young couple at Huntington Landing. The house and farm at Derby were, he thought, too much for the old people to manage; they would be better off across the river.<sup>38</sup>

Although he denied feeling any difference in affection for any of his brothers, Isaac was probably most closely drawn to William. He felt uneasy if a week passed without a letter from him. Levi was not a faithful correspondent, but fortunately his new wife made up for it. She wrote in July that Levi was planning a voyage to southern Europe, which made her uneasy. Isaac agreed: "I think our affairs so unsettled with the continent of Europe that it cannot be visited with safety in a merchant ship and I do not feel easy at visiting it in a ship of war."

Meanwhile, he was enjoying the society at Annapolis: "I am here in the gay world, sometimes with ladies of seventy and sometimes with those of sixteen. I am now in love with one of seventy—Mrs. [Elizabeth Tayloe] Lloyd, mother of the governor of the state."<sup>39</sup> He visited at the homes of the first citizens of Maryland, including the Carrolls, with

but I believe the people at large are heartily tired of it."<sup>58</sup> All in all, the cruise seemed "the worst I ever made," and Hull was eager to be gone. He sent Charles Morris off immediately to Paris for Barlow's dispatches, but by 1 December a letter from the capital showed that they were still not ready. The minister was confident that the emperor would soon give him a suitable reception. Hull was skeptical: "Great bodies move slow."<sup>59</sup>

He was to be detained seven weeks. The cold, wet, windy weather made life on shipboard unpleasant, yet when he lodged on shore he suffered anxiety because in the worst weather he could not get off to the ship. And the whole time he was besieged with appeals—demands, in fact—to take goods and passengers to America. He was forced to give in on the passengers, though the famous lady had changed her mind about going. Among those he accepted were Abbé José Francisco Correa da Serra, F.R.S., a Portuguese scientist and diplomat; John Rodman, whom Hull had seen at Paris; and four or five other Americans.<sup>60</sup> Hull stipulated that the passengers pay fifty guineas for the expenses of the passage and bring nothing on board but their clothes, for he was at wit's end over the bales, boxes, and barrels of goods being pressed on him to carry.

Carrying goods from France to America was legal but unsafe except in a warship, which could not be molested by British cruisers. Consequently, every American in France wanted to send something home in the *Constitution*. Hull had already angered Jonathan Russell by refusing outright to carry a flock of Merino sheep that the former empress Josephine had offered as a gift to the United States. His memories of the horse jockeys were too strong. Now he found he must leave behind dozens of boxes, as well, that Russell had shipped to Cherbourg. Russell's disgust over this is perhaps the reason why, in the fall of 1812, he started some scurrilous rumors that Hull had been profiteering on passages across the Channel. The rumors would dog Hull for thirty years.

Warden was sending down from Paris box after box of goods purchased on order for friends in America. Mrs. Eliza Parke Custis's orders occupied three cases, one quite large, and with orders for Mrs. Elizabeth Patterson Bonaparte "would fill cases of sufficient bulk to load a common merchant ship . . . I could not suppose that any lady would give orders to such an amount, particularly for articles that would take so much room. I have sent down for Mr. Russell boxes sufficient to load a ship of sixty tons, all of which I must leave behind. I am sure he will be angry. Indeed," Hull noted prophetically, "I find I am about to make many enemies by endeavoring to serve my friends." It seemed to him after a time that



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*That Favorite Frigate*

people in Paris think that I have nothing to do but to take on board whatever they wish to send. They will, however, find that I am tired of endeavoring to please those I know nothing about and those who, when I was in Paris, did not find out I was there. . . . Some send wine in great hampers; some send things without any direction . . . and all expect that their things must go, although I do not believe one in ten would go the length of my ship to serve me.

Hull was in the last stages of exasperation: "Indeed . . . I have everything to trouble me: detained far beyond my calculation; fifty men on the sick list; constant bad weather; a cold and unpleasant passage to make, &c. &c. &c. &c. If I get home safe you need not calculate on seeing me soon on a voyage of this sort."<sup>61</sup>

The dark days of the winter solstice brought Hull to the nadir of his cruise. On Thursday, 19 December, he had to have two men flogged for smuggling rum into the ship. The next morning Midshipman William C. Pierpoint and Abraham Harding, the cabin boy, died of the influenza that had attacked the crew in England. The ship was littered with boxes, and Hull's own purchases were lying on deck while other people's goods were stored in the hold. Hull was sure that he would be censured by the government for carrying goods and that the people for whom he incurred the displeasure would not be satisfied either. "I would not again, was I to come on to this or any other country," he swore, "take the value of a pin from anyone, not even the President."<sup>62</sup>

Isaac Hull spent a lonely Christmas writing a letter to his brother William, detailing all his monetary transactions in Europe, to be sent by another ship—again a precaution in case he did not return alive. The wind had begun to blow from the east; if the ship could only get under way she could go booming down the Channel. Hull was disconsolate at losing the rare chance of an east wind. It continued to blow that way for a week; on 30 December a ship came beating up against it under American colors and answered the *Constitution's* recognition signal. It was the sloop of war *Hornet*, Captain James Lawrence commanding, come for the next relay of dispatches from France and England. Hull and Lawrence were able at least to regale one another over the New Year before the *Hornet* sailed again for England the next day. Soon after that Charles Morris arrived from Paris, at last, in weather so thick that thirty-six hours passed before he could even let Captain Hull know of his arrival. Morris, Barlow's letters, and the passengers were on board on 6 January, but by then the wind was unfavorable. The *Constitution* finally weighed anchor at sunrise on 9 January and stood out of Cherbourg with her men at action stations as she bore down for the blockading frigate *Hotspur*. Captain Percy sent his boat on board and was

satisfied that he did not want a quarrel with this frigate. The *Constitution* bore up for Alderney and secured the guns.<sup>63</sup>

Hull's fears of a long passage home were, happily, not realized. The *Constitution* was forty days from Cherbourg to Hampton Roads, compared with thirty days on her outward passage. But forty days in the North Atlantic in January and February had less to recommend them than a month in the same waters in August. There was only one bad storm, 29–31 January, but the weather was cold and damp throughout and the crew continued sickly—fifty-eight men were on the surgeon's report on 2 February. Those who were well were kept continually at work setting, reefing, and altering sails until by the end of the voyage Isaac Hull had the expert crew he wanted. There was little else to break the monotony. The *Constitution* did not sight a single ship from the time she left the Channel until 11 February. By this time she was in Bermuda waters, and the temperature was a pleasant sixty degrees. A week later she was on soundings, and at 10:00 A.M. Hull made his land-fall, as neatly as could be, within five hours' run of Cape Henry Light. Lieutenant Morris went off in the pilot boat with the letter bag. The wind tantalized the frigate with calms for another night and day till the anchor splashed in Lynnhaven Bay at 11:00 P.M. on 19 February. The *Constitution* had been out six and a half months.

Hull had first to get his sick into the Norfolk naval hospital, then to discharge the passengers and baggage. He had seen enough to convince him that, if there were not war between the United States and one of the European empires soon, there should be. "In my opinion," he wrote a friend at Boston, "no good can be expected either from France or England."<sup>64</sup> But he was undecided what should be done to prepare the *Constitution* for the eventuality. Her copper was in very bad condition, "so that she sails dull and will not be fit to cruise until she is hove out. And whilst that is doing," he mused,

it would be a pity that her upper works should be left in a state that they would cause her to be laid up again in a year or two to repair them, and on the other hand it would be a pity to take her to pieces and lose the year or two of service that the upper works would bear.

Besides, the *Constitution* needed a complete suit of sails and running rigging: "many of her spars are bad and those that are not are much too heavy." Hull would have liked to take her to New York for repairs, but he pointed out that many of the crew were now to be discharged, and it would not be safe to take the frigate outside the Chesapeake capes without recruiting more men.<sup>65</sup>

After a month's hesitation, Secretary Hamilton finally made up his

ANNEX 5  
TO EXHIBIT I  
(Goold Declaration)

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AMERICAN STATE PAPERS.

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DOCUMENTS,

LEGISLATIVE AND EXECUTIVE,

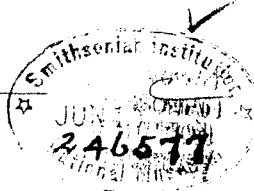
OF THE

CONGRESS OF THE UNITED STATES,

FROM THE

FIRST SESSION OF THE EIGHTEENTH TO THE SECOND SESSION OF THE NINETEENTH CONGRESS, INCLUSIVE:

COMMENCING MAY 13, 1824, AND ENDING JANUARY 5, 1827.



SELECTED AND EDITED, UNDER THE AUTHORITY OF CONGRESS,

BY

ASBURY DICKINS, SECRETARY OF THE SENATE,

AND

JOHN W. FORNEY, CLERK OF THE HOUSE OF REPRESENTATIVES.

VOLUME II.

NAVAL AFFAIRS.

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WASHINGTON:  
PUBLISHED BY GALES & SEATON.  
1860.

## FORM No. 7.

I hereby certify, that I have examined \_\_\_\_\_, who, this day, offered himself at the rendezvous at \_\_\_\_\_, to be entered as \_\_\_\_\_ for \_\_\_\_\_, by \_\_\_\_\_; and that the said \_\_\_\_\_ is sound and healthy.  
Given under my hand, this \_\_\_\_\_ day of \_\_\_\_\_, 18—.

\_\_\_\_\_, Surgeon of \_\_\_\_\_.

## [CIRCULAR.]

Serious inconveniences and loss having been sustained, by the enlistment of persons into the naval service, who are incompetent to the performance of their respective duties; it has become necessary that the following additional regulations be henceforward rigidly enforced:

1st. Recruiting officers are to use every exertion to procure, as expeditiously as possible, the number of men which may be required; but they are to enter none but sound, healthy men, and such as are qualified to perform the duties of the station for which they may be entered. They are to enter none but citizens of the United States, except by special orders from the Department.

Every person offering to enlist shall be carefully examined by a surgeon or surgeon's mate of the navy, or, if none such is attached to the station, by some competent physician, who shall certify to his being sound and healthy, before he shall be enlisted, or entitled to receive any advance of pay, or gratuity of any kind whatever, and the certificate signed by the surgeon, surgeon's mate, or physician as aforesaid, shall be countersigned by the recruiting officer, and forwarded with the person enlisted to the commander of the vessel to which he may be sent.

When practicable, some vessel will be designated to receive men entered for the navy, and stationed at or near the recruiting rendezvous, and the commander of said vessel shall take charge of and receipt for such men as may be sent him by the recruiting officer, which receipt shall exonerate thereafter the recruiting officer from any liability on account of the *desertion* of those persons mentioned in it. Within six days after the delivery by the recruiting officer of any men on board the receiving vessel, or, where none is provided, on board the vessel to which they may be assigned, it shall be the duty of the senior officer in command upon the station, upon the application of the recruiting officer or commander of the receiving vessel, to direct two medical and three commissioned sea officers, if there shall be so many upon the station, to examine carefully such recruits, as to their health, qualifications, and national character, and all such as they, or a majority of them, shall pronounce to be unfit for service, or enlisted contrary to the directions of the Department, shall forthwith be reported by them to the said senior officer in command upon the station, who shall forward one copy of the report of survey to the Secretary of the Navy, one to the Fourth Auditor of the Treasury, and one to the officer by whom the men may have been entered. If persons appointed by the commander of a station, as provided in the preceding section, shall be of opinion that the recruiting officer, surgeon, or surgeon's mate, whose duty it was to have examined the men at the time of their enlistment, might, with proper attention, have ascertained the unfitness for service, or other disqualification, of any person whom they may have found cause to reject, they shall in their certificate particularly state such opinion, and the person whom they may believe to have been guilty of the neglect, that any loss which shall be sustained by the improper enlistment may be charged to the person through whose neglect it was incurred.

No recruiting officer shall receive credit for any moneys advanced, unless he produce the receipt of the person to whom it was paid, the certificate of the purser of the vessel to which they may be sent, that their accounts have been received and charged, and the certificate of the officers of the survey ordered by the senior officers in command, as directed by these instructions, stating that no loss had been incurred through his neglect or misconduct in the enlistment of improper persons.

## C.

*Extract of a letter to Capt. Isaac Hull, dated —*

DECEMBER 24, 1823.

Our national vessels ought not, and must not, be used for purposes of commercial adventure. You may receive on board specie and the articles permitted by the "act for the better government of the navy," belonging exclusively to our own citizens, and carry them from one port or place to another, when it does not, in any degree, interfere with your other duties, or violate the laws of the country where you are. You may also bring to the United States specie belonging to our own citizens, but you are in no case to permit anything in the shape or character of public advertisements to be used, for the purpose of giving information that you will carry them. So many complaints have been publicly made on this subject, that you will carefully abstain from everything which can give rise to unfriendly comments; and that the government may know the extent to which the commercial interests of our citizens are benefited by the assistance afforded by our public vessels on this point, and be prepared to answer any complaints on the subject which may be made by individuals or governments, you will, from time to time, make reports to this Department of all the specie and other articles you may carry, the places to and from which you carry them, and the circumstances, terms, and conditions, under which you do it.

The vessels intended to be placed immediately and ultimately under your command, are comprised in the annexed list marked A, in which those designated by the letter B, in red, are the vessels now and lately in the United States, refitting for the West India service, where they will proceed, as soon as they shall have performed some indispensable, but temporary duties, which have been assigned them.

I also annex a list marked C, which gives the names of those lieutenants and midshipmen who have been ordered to report to you for duty, and to whom you will assign such parts thereof as, in your judgment, will best promote the interests of the service and the object to be attained.

Your force, when once united, will be amply sufficient for the accomplishment of your views, as well as the better accommodation of yourself and those under your command; and you will, no doubt, give it such distribution and arrangement as will unite these objects.

The vessels ordered to join you, (which are enumerated in paper A,) will enable you, in pursuing your first plan, to afford more adequate convoy to merchantmen, while the ability for examining and searching the coasts and inlets, for the lurking places of pirates, by means of the schooners and barges, will be greatly increased.

Every assistance which the Department can afford, consistently with its other relations, shall be cheerfully and promptly extended; and while a just expectation is indulged that, from the extent and character of the means afforded, the object contemplated will be speedily and satisfactorily realized, no doubt is entertained of the zeal and ability that will be exerted on the part of those entrusted with the performance.

Too much attention cannot be placed upon the cleanliness of the men, and the good condition of the vessels; for, to causes incident to every naval service in the generation of disease and mortality, are superadded the baneful influence of a tropical climate upon constitutions unaccustomed to its operations, and unprepared for its effects.

I refer you particularly to my letter of the 23d ult. for instructions in relation to the purchase of supplies, and the negotiation of drafts upon the Department.

I am, with great respect, sir, your obedient servant,

SMITH THOMPSON.

Capt. DAVID PORTER, commanding *U. S. West India Squadron, Thompson's Island.*

NAVY DEPARTMENT, *May 12, 1825.*

I certify the foregoing to be a true copy from the records of the Department.

CHAS. HAY, *Chief Clerk.*

NAVY DEPARTMENT, *August 19, 1823.*

SIR: In the last paragraph of your letter, dated the 1st instant, transmitted by the *U. S. schooner Ferret*, you mention that circumstances will, towards the fall, render your return to the United States, for a short period, necessary; you will please to avail yourself of the time most suited for this purpose, and return to the United States in the manner most convenient to yourself, and least prejudicial to the interests of the service.

I am, very respectfully, sir, your most obedient servant,  
(Signed)

SMITH THOMPSON.

Commodore DAVID PORTER, commanding *U. S. Naval Forces, West Indies, &c.*

I certify that the above is a true copy from the original on record in the Navy Department.

CHAS. HAY, *Chief Clerk.*

MAY 11, 1825.

NAVY DEPARTMENT, *August 19, 1823.*

SIR: Your letter of the 1st instant, relative to the transportation of specie, from Vera Cruz to Cadiz, has been submitted to the President; and it would afford both him and myself great pleasure to comply with your request, could it be done consistently with the honor of the American flag, and the relation in which we stand to the belligerents.

Your letter is not explicit, as to whom the money belongs. I take it for granted, however, it is Spanish property, and from the amount, most likely belonging to the Spanish government. In either case, it is deemed inadmissible to employ our public armed vessels for its transportation; under no circumstances could it be permitted to send a vessel direct from Vera Cruz to Cadiz. Should I be under a misapprehension as to the ownership of the property, and, upon further explanation, your request can with propriety be complied with, I can assure you it will give me great satisfaction to promote your interest in this respect.

I am, very respectfully, &c.,  
(Signed)

SMITH THOMPSON.

Commodore DAVID PORTER, commanding *U. S. Naval Forces, West Indies, &c.*

NAVY DEPARTMENT, *May 10, 1825.*

I certify that the above is a correct copy from the records of this Department.

CHAS. HAY, *Chief Clerk.*

NAVY DEPARTMENT, *September 27, 1823.*

SIR: The United States schooner Weasel, under the command of Lieutenant John P. Zantzinger, will sail this day for Thompson's Island, and take the route pointed out in your orders to Lieutenant Kennon of the 14th August last. It was not possible to prepare her to sail at an earlier day. The Beagle will be ready in three or four days.

The schooner Shark, having on board Commodore Rodgers, and several surgeons, will leave New York about the 1st October, and reach Thompson's Island as soon as practicable. The uncertainty and anxiety which prevail as to your own health, and the health of the squadron, and a desire to furnish the best assistance and procure information which may be a safe guide on all future occasions, are the inducements to this measure. The orders of Commodore Rodgers will be communicated to you on arrival, and you will render all the aid, which your health will permit, in accomplishing the object of your visit. It is intended that you shall remain in command of the station, or return home, as your health may require and inclination prompt. Commodore Rodgers will return immediately after he shall have accomplished the object of his visit.

It is wished that Midshipman Hoban should return in the first vessel from Thompson's Island to this place, some of his family being at this time very sick.

I am, very respectfully, &c.,  
(Signed)

SAM'L L. SOUTHARD.

I certify that the above is a true copy of the original on file in the Navy Department.

CHAS. HAY, *Chief Clerk.*

MAY 11, 1825.

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*The Secretary of the Navy to Commodore Porter.*

NAVY DEPARTMENT, *September 29, 1823.*

MY DEAR SIR: This letter will be handed to you by Commodore Rodgers. The object of his visit to Thompson's Island will be fully communicated to you by him. The various, and in many points contradictory, reports, respecting the condition of the station, the uncertainty whether you still live, the deepest anxiety for your safety, the desire to furnish speedy relief, and acquire full information respecting the health of the station, and its fitness as a rendezvous during the sickly season, and the fear that, debilitated as you are, you could not secure that information for us, have prompted the wish that Commodore Rodgers should undertake the expedition, and have induced him, cheerfully and voluntarily, to enter on its performance.

He will find united in it the sacred offices of private friendship and public duty. A report that your health is restored will give to me, individually, and to the nation at large, most sincere gratification.

I am, very respectfully, dear sir, your most obedient servant,

SAMUEL L. SOUTHARD.

Com. DAVID PORTER, *commanding U. S. Naval Forces, West Indies and Gulf of Mexico.*

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NAVY DEPARTMENT, *October 28, 1823.*

SIR: Your letter of the 27th inst. has been received. On your recovery from a dangerous illness, produced by great exposure and much suffering, you will be pleased, sir, to accept my sincere congratulations.

In conducting the movements of the squadron entrusted to your charge, you have displayed that intelligence, promptitude, and vigor, which effectually arresting the depredations of the freebooters, have afforded security to our trade, and justly entitle you to the unqualified approbation of this Department, and to the thanks of your country.

The conduct of the officers and men under your command, has been such as might have been expected, from the example of their chief; and you will be pleased, sir, to assure them of the consideration in which their services are held, and the high sense entertained of their devotion to a most arduous and dangerous service.

The want of medical aid, of which you so justly complain, will claim the early and special attention of this Department.

If the state of your health will permit, you will take upon yourself the general superintending direction of the equipment of the vessels of your squadron, now at this yard and at Norfolk. Let their commanders report to you their wants, that you may make them known to the Board of Navy Commissioners, who will cause every requisite supply to be furnished.

I am, very respectfully, sir, your most obedient servant,

I. CHAUNCEY, *for the Secretary of the Navy.*

DAVID PORTER, Esq., *commanding a Squadron in the West Indies and Gulf of Mexico.*

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*Extract of a letter from the Secretary of the Navy to Commodore Porter.*

NAVY DEPARTMENT, *December 2, 1823.*

SIR: You will, as speedily as possible, with all the vessels under your command, resume your station at Thompson's Island, and continue your exertions to repress piracy, and protect our commerce.

It is the intention of the Department to increase the force under your command, as soon as it can be

effected. To this end, the frigate Congress will, after her arrival in the United States, be ordered to join you, and in the course of the spring one or more sloops of war will be added to those already with you. The officers engaged in the survey of the coast of Florida will report to you, and you will communicate their proceedings to this Department.

You will keep as constantly as you can, one of your vessels in the neighborhood of Vera Cruz, cruising between that port and Punto Lázaro, to protect our commerce in that quarter. As soon as possible send the Hornet, or one of the large schooners, to cruise on the coast of Africa, touching at Cape Mesurado, ministering to the wants of the African agency, and thence returning in the usual track of the slave ships.

Let the cruise of the vessel be such as will comport, as far as possible, with the health and comfort of the officers and men. Upon its return, you will report the proceedings to this Department, and send the vessel upon the same service.

Our national vessels ought not, and must not, be used for purposes of commercial adventure. You may receive on board specie, and the articles permitted by the act "for the better government of the navy," belonging exclusively to our own citizens, and carry them from one port or place to another, when it does not, in any degree, interfere with your other duties, or violate the laws of the country where you are. You may also bring to the United States specie belonging to our own citizens; but you are, in no case, to permit anything in the shape or character of public advertisements to be used for the purpose of giving information that you will carry them. So many complaints have been publicly made on this subject, that you will carefully abstain from everything which can give rise to unfriendly comments; and that the government may know the extent to which the commercial interests of our citizens are benefited by the assistance afforded by our public vessels on this point, and be prepared to answer any complaints on the subject which may be made by individuals or governments, you will, from time to time, make reports to this Department of all the specie and other articles you may carry, the places to and from which you carry them, and the circumstances, terms and conditions under which you do it.

I certify that the above is a true extract from the records of the Navy Department.

MAY 11, 1825.

CHAS. HAY, *Chief Clerk.*

NAVY DEPARTMENT, *December 27, 1823.*

SIR: In reply to your letter of the 29th ultimo, I inform you that it is not believed the Executive has the power to make any rule for the distribution of the premium received for the transportation of specie. The public vessels will be in the neighborhood of Vera Cruz, &c., and will be permitted to receive on board and carry specie, under the general orders heretofore given.

I am, very respectfully, &c.,

(Signed)

Captain DAVID PORTER, *commanding U. S. Naval Forces, &c.*

SAM'L L. SOUTHARD.

NAVY DEPARTMENT, *May 10, 1825.*

I certify that the above is a correct copy from the records of this Department.

CHAS. HAY, *Chief Clerk.*

*Extract of a letter from the Secretary of the Navy to Commodore David Porter, dated—*

NAVY DEPARTMENT, *December 31, 1823.*

I have heretofore sent you some accounts of piracies lately committed, and I herewith enclose two more, and request your particular attention to the letter signed by Mr. Lawrence, and the course pointed out as a mode of effecting the object.

*Extract of a letter from the Secretary of the Navy to Commodore Porter, dated—*

DECEMBER 31, 1823.

I have received several communications from you, by the mail of this morning, and shall attend to them as early as possible.

I have ordered Captain Biddle, (the orders sent herewith,) to report to you for duty, and you will dispatch him in the Congress, to the Floridas, on the Thompson's Island station, with such orders as you may consider necessary to execute the views of the Department contained in the instructions heretofore given you. You will send with him all the vessels under your command, which are ready, and will permit no delay which is not indispensable.

I have heretofore sent you some accounts of piracies lately committed, and I herewith enclose two more, and request your particular attention to the letter signed by Mr. Lawrence, and the course pointed out as a mode of effecting the object.

I certify that the above is a true extract of the original on record in the Navy Department.

MAY 11, 1825.

CHAS. HAY, *Chief Clerk.*



*Commodore Porter to the Secretary of the Navy.*SEA GULL, *Allenton, Thompson's Island, July 17, 1823.*

SIR: It is with infinite satisfaction I do myself the honor to lay before you Lieutenant Commandant Watson's official report of the almost total annihilation of the crews of two piratical vessels, by the barges Gallinipper and Musquito, under his command.

When we take into consideration the immense superiority of force opposed to him, the advantage and preparation on the part of the pirates, and the result of the action, we cannot but be impressed with the conviction, that nothing less than Providential influence and protection could have occasioned consequences so fatal to the pirates, and so exempt from injury on our side as to appear almost miraculous.

The five surviving pirates, being desperately wounded, I have, in compliment to the favorable disposition and zealous co-operation of the authorities of Havana, sent to the Captain General of Cuba, to be tried by the laws of Spain.

Enclosed is a copy of my letter to him on the subject.

I cannot close this communication, without expressing a hope that the brilliant success of Lieutenant Commandant Watson, and his excellent character as an officer and man, may induce the Department to promote him to a higher grade, as the most suitable reward for his services.

I have the honor to be, with great respect, your obedient servant,

D. PORTER.

Hon. SMITH THOMPSON, *Secretary of the Navy.*SEA GULL, *Port Rodgers, August 1, 1823.*

SIR: Application has been made to me by the American consul, to take one million of dollars from La Vera Cruz to Cadiz, in October, and as we have but few opportunities in this way, to make a little for ourselves, may I ask the indulgence of the Department in this respect.

If a direct conveyance cannot be granted, can I send the money to the United States; and can a transshipment take place from thence to Cadiz? This course will obviate all objections as regards the belligerent character of the property, if any exists.

An answer by the return vessel is desirable. I have the honor to be, your obedient servant,

(Signed)

D. PORTER.

Honorable SECRETARY of the Navy.

I certify the above to be a true copy from the original.

CHARLES HAY, *Chief Clerk.*NAVY DEPARTMENT, *May 10, 1825.**Extract of a letter from Commodore David Porter to the Secretary of the Navy, dated—*ON BOARD THE SEA GULL, *Allenton, Thompson's Island, August 1, 1823.*

I have been engaged, since the return of the barges under Lieutenant Commandant Watson, in preparing them for an expedition to the piratical establishment at New Malaga, against the arrival of the expected vessels, from which I calculated on getting men; but I have lately been informed, by the arrival of a British brig-of-war at this place, (with every officer and man down with the yellow fever, except thirteen,) that a sloop-of-war and several light vessels from Jamaica, have gone against that place. I shall, consequently, as there is much danger from sickness on that coast, delay my departure until I hear the result of the British expedition, and have directed the commander of the Hornet to take one of the small schooners, (now on the coast of Cuba,) with him, to send back with such information as he may collect on the subject. There have been no captures, (except Spanish, by open boats,) by pirates, on this side of the Island of Cuba, since I have been here and no pirate has appeared that we have not captured.

*Extract of a letter from Commodore David Porter to the Secretary of the Navy, dated—*SEA GULL, *Port Rodgers, August 31, 1823.*

It is with the deepest regret I have to inform you, the yellow fever has lately made its appearance among us to an alarming degree, and has carried off several. For information as to the number of deaths, and the present situation of the sick, I beg leave to refer you to the enclosed medical reports, and to say that we are badly off for medical assistance.

*Commodore Porter to Commodore Chauncey.*WASHINGTON CITY, *October 27, 1823.*

SIR: I have the honor to report to you my arrival here, in the United States galliot the Sea Gull, from Thompson's Island, in forty-three days, and from which place I was driven, with the squadron, by a pestilence which made its appearance there, carrying off, in a short time, for the want of the necessary

examples having struck a panic which will, no doubt, long serve to deter others from embarking in similar pursuits.

The fixing an establishment at Thompson's Island for rendezvous and supplies, as my instructions required, has had the most happy effect in attaining the object in view. Its vicinity to Havana, placed, as it were, in the thoroughfare of vessels sailing through the gulf, makes it, in many points of view, an object of great importance to the United States; and, although for three months in the year it must ever remain sickly, while existing causes continue, it is, from its extraordinary salubrity for the remainder of the year, worthy a closer examination, to ascertain whether they may not be eradicated. It is my opinion that, by thinning the woods and draining off the heavy rains of the month of June, thereby promoting a free circulation of air, evaporation and dispersion of the water rendered stagnant by the excessive heat of June, and which causes the rapid decomposition of the vegetable matter with which the island abounds, the months of August, September, and October might be sufficiently healthy for the residence of man; but, at present, the poisonous effluvia arising from these causes is almost certain destruction to whoever breathes it. Had I been aware of its pernicious effects, I could, without any inconvenience, have guarded against them by an earlier removal of the ships; but it took us by surprise, and the malignity of the disease was unparalleled. It is certain that it originated on the island, for our ships, with the exception of those sent to work on shore, have, in their crews, enjoyed uncommon health.

In my intercourse with foreign officers, in general, I have received from them every attention, and from none more than those of the British navy. The Jamaica station had heretofore been commanded by an admiral; but, when Sir Edward Owens, an officer of the same rank as myself, was charged with a force for the suppression of piracy, Admiral Rowley was recalled to England, that we might meet on equal grounds.

Offers for co-operation were repeatedly made to me, but, feeling that the forces under my command were fully adequate to the object, I declined confining myself to any general plan, leaving it altogether to the accidental meetings of our respective forces, and to circumstances. It affords me pleasure to say, that whenever such meetings did take place, with a common object in view, they have been attended with the happiest results.

The law making appropriation for the suppression of piracy, limited the amount to be expended to \$160,000; and, in the expenditure, much latitude was given to me by the honorable Secretary of the Navy and the Board of Navy Commissioners. In the exercise of the trust reposed in me, I have endeavored to observe the utmost economy; and, when all shall be deducted which has been charged to the appropriation for this object, and shall be charged under the proper heads, it will be found that a large unexpended balance will be remaining in the treasury.

The improvements of Thompson's Island, transportation of stores for the general service, medicines, hospital stores, &c., &c., &c., are of this description; and, when the sale of the vessels purchased for this service shall take place, and their proceeds be returned to the treasury, the expense of the expedition will be a subject scarcely worthy of consideration.

Should the gradual withdrawal of the small vessels take place, I beg leave to suggest that a frigate, in addition to the two sloops-of-war now attached to the squadron, is due to the character of our service, to the respectability of our flag in that quarter of the world, and would, by the convenience she would afford to our open boats, in the pursuit of pirates, offer the most certain means of keeping them in check.

The moral effect produced by this expedition should not be overlooked. The system of privateering which has prevailed, has, from its looseness, been the cause of many vexations to our commerce. Our presence has occasioned the oldest governments to recall vessels of this description, and the new governments of America to issue their commissions with more precautions, to guard against abuse; consequently, our commerce is free from interruption, and our flag respected throughout those seas.

I have the honor to be, &c.,

D. PORTER.

Hon. Secretary of the Navy, Washington.

WASHINGTON CITY, November 27, 1823.

SIR: Agreeably to your wish, I have perused the letter from Mr. Biddle, and fully concur with him in the necessity of affording protection to our Mexican commerce, and the advantage resulting from the transportation of specie in our ships of war, as the most certain means of taking away the powerful temptation for piratical depredations on merchant vessels.

Since I have had the honor to command on the West India station, I have kept one vessel constantly in the Gulf of Mexico, to give protection to the persons and property of our citizens, and for the transportation of specie to the United States, agreeably to the orders of the honorable Secretary of the Navy, of the 1st February, 1823. Many applications have been made to me to permit cochineal to be embarked with the specie, but I have invariably opposed it, because I had no instructions which would authorize my consenting to the measure; and however it might have been to my interest, or to the interest of the merchants, I was not willing to give my sanction to what might be liable to abuse, and bring censure on me.

I have gone no further in this respect than my orders required, and the consequence has been that many millions have found their way to England in British men-of-war, that would otherwise have been brought to this country in our own ships, as merchants invariably embark their specie in the same vessel with their cochineal.

Of the propriety of adopting the measure, being a party interested, it might be improper in me to speak. I can only say, that whatever orders I may receive, they shall be punctually obeyed; and whatever course the Department may think proper to take, I shall endeavor, by an honest and faithful discharge of the trust reposed in me, to meet its views; and if vigilance can prevent abuses, none shall be practiced by any under my command.

I have the honor to be, with great respect, your obedient servant,

(Signed)

Hon. SAM'L L. SOUTHARD, Secretary of the Navy.

D. PORTER.

I certify the above to be a true copy of the original.  
NAVY DEPARTMENT, May 10, 1825.

CHAS. HAY, Chief Clerk.

WASHINGTON CITY, November 29, 1823.

SIR: I have the honor to state to you, that it is in my opinion necessary and proper, that the rate and application of freights for carrying specie in our ships of war, should be fixed by the Department, as there is no existing regulation on the subject.

The merchant is glad to avail himself of the protection and security thus offered to his property, for which he is willing to pay. It is made the duty of the commander of the ship to give protection and security, and to take on himself responsibilities for which he ought to be paid. It increases the duties and responsibilities of the commander of the squadron, for which he ought to be compensated, and it gives some additional trouble and labor to the officers and crew, for which they ought to receive some benefit.

It has been the custom to divide the freight into three parts, of which one part has been given to the commander of the squadron, and the other two to the captain of the ship, thereby making the distribution the same as the shares in prize money; but there being no established rule, it depends altogether on the terms the commander of the squadron and the captain may be on, whether the custom shall continue. For my own part, I have never claimed any share, but it has invariably been paid to me voluntarily by the captains, from a sense of justice on their part.

The British regulations established by a proclamation of the King, dated 12th of July, 1819, copy of which I have the honor to submit to you, divides the amount of freight into four parts, one of which is paid to the commander of the fleet or squadron, two-fourths to the commander of the ship carrying the treasure and signing the bill of lading or receipt, and one-fourth to Greenwich Hospital, for the use of that institution.

This rule embraces every desirable object, and is founded on justice, as it gives to the one who has the greatest responsibility, the largest amount of compensation.

A similar rule might be adopted to advantage in our service, giving one-fourth to the navy pension fund, which should be received by the commander of the squadron, and which he should pay over to those appointed to receive it. As regards the rates of carrying freight, we have always been governed by those established by the proclamation above alluded to, wherein you will perceive a difference between the freight of treasures belonging to the crown, and of those belonging to other parties. In both cases there is great responsibility on the officer commanding, who is held answerable for the exact amount, and it is proper that he should receive an indemnity.

By the adoption of this rule as suggested, I should certainly be the sufferer in a pecuniary point of view; but a strict regard to justice, and a desire to reduce to rule what is now left to chance, which might, under other circumstances, jeopardize the harmony of the squadron, and occasion disputes, induces me to ask your early instructions on the subject.

I have the honor to be, with great respect, your very obedient servant,  
(Signed)

D. PORTER.

Hon. SECRETARY of the Navy.

I certify the above to be a true copy from the original.

CHAS. HAY, *Chief Clerk.*

U. S. SHIP JOHN ADAMS, January 14, 1824.

SIR: I have the honor to state, for the information of the Board of Navy Commissioners, that I shall put to sea with this ship, the Grampus, and the Sea Gull, on the 17th of this month. The Hornet is still in the hands of the officers of the yard, and it is uncertain when she will be ready. She is in want of one more chain cable, as the one intended for her was sent to the Peacock. There will be sufficient time for one to be made and sent to her before she leaves this place.

I have the honor to be, with great respect, your obedient servant,  
(Signed)

D. PORTER.

Hon. JOHN RODGERS, *President of the Board of Navy Commissioners, Washington.*

*Copy of a letter from Com. David Porter to the Secretary of the Navy, dated—*

U. S. SHIP JOHN ADAMS, Norfolk, January 20, 1824.

SIR: In reference to your letter of the 15th inst., enclosing one from Mr. Cambreleng, I have the honor to state that I dispatched the United States schooner Shark, on or about the 1st of this month, to cruise in the neighborhood of La Vera Cruz, Tampico, and Alvarado, until the 1st of March, for the protection of our commerce in that quarter, and to be relieved at that time by the United States brig Spark and schooner Weasel, which vessel sailed two days since, with instructions to scour the West Indies for piratical vessels, said to be out previous to going there.

The Spark will be relieved by the Grampus and another small schooner by the middle of May, and I shall give regular and constant protection to the persons and property of our citizens in the Gulf of Mexico, so long as I am honored with my present command, unless I receive orders from you to the contrary. I contemplate, by a constant routine, giving equal protection to our colony on the coast of Africa and guarding against the slave trade, provided it meets with your approbation.

I have the honor to be, with great respect, your obedient servant,

D. PORTER.

Hon. SAMUEL L. SOUTHWARD, *Secretary of the Navy.*

ANNEX 6  
TO EXHIBIT I  
(Goold Declaration)

POTOMAC BOOKS

*Accounts from the Final Days of the*

*6th Atlantic Blockading Squadron*

*Christopher Prince and the*

*Keel to Mast, 1934-46*

*John Reeves and the Origins of*

# A CALL *to the* SEA

CAPTAIN CHARLES STEWART  
*of the* USS CONSTITUTION

CLAUDE G. BERUBE *and* JOHN A. RODGAARD



Potomac Books, Inc.  
Washington, D.C.



## *Court-Martial*

Commodore Stewart arrived in New York City at the end of his tour on Pacific Station in 1824. Since 1818 he had been overseas for five of six years. He returned to the United States to find forces at work against him. His problems began when his brother-in-law, William Tudor Jr., was appointed U.S. consul to Lima, Peru, taking the offer made initially to Jeremiah Robinson but then rescinded; Robinson subsequently found himself without a position. Unable to secure another appointment in the U.S. government and or Foreign Service, Robinson returned to the United States and became instrumental in bringing forth matters that led to Stewart's court-martial.

Captain Caldwell, commander of the merchant brig *Cora*, was another likely source of charges against Stewart. He provided testimony concerning Stewart's handling of money on board the *Franklin*. The *Franklin* housed money from several American merchant ships to protect their finances from pirates or other adversaries. Some \$60,000 of the *Cora*'s money was on the *Franklin*, and, for a reason lost to history, Stewart refused to release the money to the *Cora*'s captain upon his request. Caldwell threatened to prosecute Stewart if the situation was not immediately resolved to the captain's satisfaction, and given the nature of some of the charges, the issue was never able to be resolved between Caldwell and Stewart.

The decision to court-martial Stewart was based initially on complaints by at least one new South American government and later on rumors likely circulated by Jeremiah Robinson. Stewart "returned to find the Peruvian government had made official complaint against him and that this complaint had been seconded by American consular officials."<sup>1</sup> On 21 September 1823

Robinson wrote to the president that he must "speak with the Executive, and communicate privately, on a delicate nature." Through his extensive correspondence and private journals, Robinson had already sown the seeds of discontent against Stewart, sharing his unique perspective of the commodore's activity in South America with anyone who would listen to or read the accounts. The responses to Robinson's narratives of this period are not known,<sup>2</sup> but the charges appeared to have some corroboration in a 29 November 1823 letter to State Secretary John Quincy Adams from the envoy to Colombia. Adams recalled: "I observed that we had received a direct complaint from the Government of Peru against Captain Stewart, which we should directly answer; that we had proofs that the complaint was unfounded; and had causes of complaint against the Governments of Peru and Chili."<sup>3</sup>

On returning to the United States and after the *Franklin's* crew were paid, Stewart and his wife Delia remained in New York City to visit with acquaintances. Several months at sea seemed to have abated Stewart's anger at his wife at least temporarily. The commodore was soon called to Washington, D.C., and Delia and the children went to stay with relatives in Gardiner, Maine.

Stewart became aware that he should expect charges shortly after he arrived in Washington, charges that would receive the government's highest attention, given that another Navy captain, David Porter, had recently been charged with unauthorized activities in the Caribbean. Porter, Stewart's friend and one-time first officer, and father of one of Stewart's young officers, was facing his own court-martial. In January 1823 Porter took command of the West Indies Squadron, which was assigned to suppress pirates amongst the islands. When Spanish officials in Foxardo (Fajardo), Puerto Rico, charged the commanding officer of the *Beagle*, one of Porter's ships, for being a pirate and jailed him, Porter responded by landing a force of two hundred men and demanding an apology. The U.S. government court-martialed Porter on 11 August for not waiting for authority or instructions. Porter was found guilty and was suspended from service in the U.S. Navy for six months. Rather than accept this decision and punishment, Porter resigned from the service and found employment as the commander of the Mexican navy.

The Navy then turned its attention to Stewart's court-martial. The charges against Stewart were the subject of discussion at a cabinet meeting on 10 November 1824. In attendance were President Monroe, Secretary of State John Quincy Adams, Treasury Secretary William H. Crawford, War

Secretary John C. Calhoun, and Navy Secretary Samuel L. Southard. Southard discussed several Navy courts-martial, including that of Porter and of Lt. James Ramage, the commander of the *Porpoise*, whose charges insinuated cowardice, but the particular focus of the meeting was on Stewart's court-martial.

Southard "was uncertain whether in the charges should be included that of violating the blockade declared by the Peruvian Government," inasmuch as the U.S. government utterly denied the legality of that blockade in all its parts.<sup>4</sup> As secretary of state, Adams understood the difficulty such charges could pose in the world of diplomacy. As president-elect and with his own inauguration only weeks away, Adams recognized that these courts-martial reflected the principles of justice on which the Navy and the nation would be judged by other nascent countries, particularly in South America. On the morning of 20 December 1824, only a few weeks before his inauguration, Adams met with Stewart. Stewart had already been placed on suspension from active duty until the court-martial was resolved. On 6 January 1825, at another cabinet meeting, Crawford, Calhoun, and Southard reviewed further correspondence that accused both Stewart and Consul John Prevost of impropriety in foreign affairs. The secretaries deliberated on whether it was proper to share the correspondence with the House of Representatives, as was prescribed, with the potential of prejudicing against either side. They unanimously decided not to disclose the information and President Monroe agreed.<sup>5</sup>

Stewart prepared for the trial by selecting two counsels. The first, Joseph Hopkinson, was the son of a signer of the Declaration of Independence. In addition to being a prominent attorney, he had written the first national anthem, "Hail Columbia!" in 1798. Like Stewart, Hopkinson was a Philadelphian and owned another home in Bordentown.

As Hopkinson's cocounsel, Stewart selected Brig. Gen. Robert B. Taylor, the commanding officer of the Norfolk Military District when Stewart and the *Constellation* defended Norfolk during the War of 1812. Taylor was an experienced attorney and was also defending Captain Porter. Taylor's involvement in this case gives yet another example of the small size of the U.S. Army and Navy community at the time, when there were barely two dozen Navy captains and corresponding Army field grade officers. Taylor had also defended Capt. James Barron during his court-martial after the *Chesapeake* affair.

In the role of opposing counsel was Judge Advocate Richard Coxe, an equally experienced attorney to Hopkinson and Taylor. Like General Taylor, Coxe was involved with the Porter court-martial, but he had the role of pros-





Joseph Hopkinson, son of a signer of the Declaration of Independence, served as Stewart's attorney during the commodore's court-martial. (Charles Fenderich; courtesy of the National Portrait Gallery)

ecutor. Coxe later represented "Star-Spangled Banner" composer Francis Scott Key before the Supreme Court.

The four general charges against Stewart were unofficer-like conduct, disobedience of orders, neglect of duty, and oppression and cruelty. These charges included forty specifications, one of which required Delia Tudor Stewart's testimony concerning the Madrid affair. The commodore wrote to Delia that he was to face a court-martial for "offences of which she was really the guilty person." Emma and Robert Hallowell Gardiner in Maine advised her to go to Commodore Stewart's aid immediately, but "she was like a timid animal in presence of a powerful foe ready to devour it, against whom it has no power of resistance, and whom fear has deprived even the power of flight."<sup>6</sup> Delia could not even bring herself to reply to her husband's correspondence.

She did not remain in the new state of Maine. Instead she sought sanctuary with other family members in Boston, Newport, and Nahant, a small peninsula north of Boston near Swampscott and Lynn, where Stewart had once sailed the *Constitution* and where her brother Frederic had an estate.

Often Delia would return to Emma's mansion, Oaklands, in Maine, never finding the sanctuary she sought from her husband's desperate pleas. Rumors were whispered "about Delia accepting a bribe or of being in love with the Spanish spy."<sup>7</sup>

If Stewart could not rely on his wife through his troubles, he could certainly rely on his colleagues and friends. In early August 1825 Stewart's ties to the Adams administration were further cemented when his longtime friend Richard Rush was named treasury secretary. The Adams administration continued to follow the court-martial. On 5 August the president met with his cabinet and "remarked to Southard the difference in the indications of public sentiment upon the trials of Porter and Stewart."<sup>8</sup> On the evening of 13 August Stewart's cocounselors, Hopkinson and Taylor, visited President Adams at the White House to bring him up to date on the charges.

After a reading of the charges on Tuesday, 16 August, the court-martial convened on 18 August 1825 in a building on the corner of First Street and Maryland Avenue. The *Washington Gazette* questioned the legality of the proceedings, particularly in the aftermath of the Porter trial, in an editorial published that day, stating that courts-martial have always blended "the principles of ancient chivalry with those of the Roman courts, as altogether unfit forums, before which questions of complicated facts and laws could be safely tried."

A number of notables served on the court-martial, including Stephen Cassin and George Campbell Read, both of whom were only recently promoted to the rank of captain. Another captain, Jesse Elliot, was a longtime friend of James Barron and was allegedly an outspoken rival of both Oliver Hazard Perry and Stephen Decatur. Elliot had been the commanding officer of the USS *Niagara* during the War of 1812 and the *Ontario* with the Mediterranean Squadron. Capt. Alexander Wadsworth served as a midshipman under Barron on the *Chesapeake* and was an uncle of literary great Henry Wadsworth Longfellow. Capt. James Renshaw, until May, had served as the commanding officer of Norfolk Naval Shipyard, when Capt. James Barron succeeded him. During the War of 1812, Renshaw commanded the fourteen-gun brig *Rattlesnake*. Renshaw's ship had been captured off Nova Scotia in July 1814 by the HMS *Leander*, which had unsuccessfully pursued Stewart's *Constitution* after his battle with the *Cyane* and *Levant*. The coincidence of all these men coming together to proceed over the fate of a fellow officer was not really striking after all.

In another coincidence, or, more appropriately, an indication of how few senior officers were in the early Navy, Como. James Barron presided over

the court-martial proceedings. Only five years before, Stewart had presided over Barron's own court of inquiry, and both had been shipmates twenty-seven years before on the *United States*. When asked if he had any objection to any of the officers on the court, Stewart stated that he had none. And although he had the benefit of two experienced counsels, Stewart himself directed questions toward the witnesses.

Stewart's first charge of unofficer-like conduct included twenty-nine specifications, ranging from carrying specie aboard a U.S. Navy ship (also part of the second charge) to aiding and protecting U.S. commercial ships carrying contraband and violating the blockade imposed by a foreign nation.<sup>9</sup>

The second charge of disobedience of orders included an additional seven specifications. The thirty-six specifications in the first and second charges were broken into five groupings. The first group of charges stated that Stewart had interfered with the laws of neutrality, supported the transport of contraband, and assisted the ship *Canton* in those actions. The second stated that Stewart was associated with the merchant Eliphalet Smith in the engagement of private commerce. The third stated that Stewart supported the transport of specie. The fourth stated that Stewart used Navy resources to outfit schooners for his own private interests. And the fifth, the most serious grouping of charges, stated that the commodore had carried a Spanish spy on board his ship.

As to the specifications that Stewart had interfered with the laws of neutrality, the specifications most likely arose from complaints issued by the Patriot government of Peru, claiming that the *Canton* had violated the Patriot's blockade of Peru's coastline, which was still under Spanish control. The specifications stated that Stewart had interfered with a foreign government and transported contraband.

Specifically, Stewart was charged with aiding the ships *Canton* and *Pearl*, the English brig *Sarah*, and the French merchant ship *Telegraph*, all of which carried contraband in the summer of 1822. In his defense against these charges, Stewart said his primary concern was for the safety of the ships and their wares in the interest of protecting American and other commerce. According to one of the *Franklin's* Marines, Von Vuldee, on at least one occasion Stewart was concerned that the *Canton* would be boarded. The *Telegraph* had been seized previously under the pretense that it had violated the blockade, and the probability of subsequent seizure was one of the reasons Stewart gave for assessing that the *Canton* was at risk. While at anchor preparing to escort a convoy, Stewart had ordered the *Franklin's* Marines to

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be supplied with ammunition and ordered to the main deck, ready for any emergency.

Lieutenant Hunter testified that Stewart initially refused the *Pearl* as part of the convoy because she carried arms on board. The logbook of the *Franklin* shows the *Pearl* having joined the convoy, and, therefore, one could assume the ship had likely complied with Stewart's direction to dispense with the arms in return for safe passage.

Other specifications charged that Stewart purchased for the *Canton* bolts of canvas, casks of wine, and other supplies; that Stewart employed naval carpenters and other *Franklin* personnel on other ships; and that Stewart had directed musket cartridges to the *Canton*.

The logbooks of the *Franklin* and the *Dolphin* clearly show that the ship did, on several occasions and for several American ships, provide various forms of assistance. In June and July 1822 *Dolphin* carpenters were employed on board the *Mirror* and the *Magnet*. The *Magnet* received sheets of log paper in July. Later that year, the *Franklin* sent working parties aboard the *Chauncey*, *Dick*, and *Canton*. Other ships also benefited from the *Franklin*'s presence, such as the merchant schooner *Wasp*,<sup>10</sup> which received thirty-seven gallons of whiskey, and the *Constellation*, which received twenty bolts of canvas. Edward Fitzgerald, the *Franklin*'s purser, noted during the trial that he received permission to send some officers' clothes, such as white drilling pantaloons and vests, ashore. During the court-martial two former captains on Pacific Station—Downes and Biddle—stated that it was perfectly acceptable for the crews of U.S. Navy ships to provide assistance to other ships.

Regarding the issue of giving musket cartridges to the *Canton*, John Blight, a gunner on the *Franklin*, noted one discrepancy. Lieutenant Hunter testified that he had no knowledge of musket cartridges being exchanged, yet Blight noted that in 1822 over 370 cartridges were drawn on Hunter's verbal requisition specifically for the *Canton*.

On these specifications, the court found that the charges were proved, but that the assistance provided by the *Franklin* was proper and correct and that there was no impropriety. Stewart and the ship had performed in fulfillment of public duties to render assistance when necessary to other ships.

The second group of specifications involved the merchant Eliphalet Smith, the subject of Jeremy Robinson's suspicions, innuendos, and gossip. Robinson linked Smith and Stewart together as conspirators in the illicit traffic of goods in the South Pacific. One specification charged that Stewart offered protection and aid to only those ships with which they were tied

but ignored other vessels, which were engaged in legal commerce. Another specification claimed that Stewart employed Smith to carry dispatches to help the former benefit from private commerce. The court accepted that Smith was employed in carrying dispatches, but it was proved that they were in the aid of the public interest and common good and not in the engagement of private commerce.

Smith testified that Commodore Stewart had no interest in the cargo of the *Canton*, a quarter of which Smith owned, and did not participate in trade. He had offered Stewart an interest in a number of speculations, especially in wool, but Stewart had rejected the offers, stating he "legally could but morally speaking he could not free" himself to accept the offer. The court found Stewart had in no way profited from his association with Smith.

The third group of specifications centered on the practice of carrying specie on U.S. Navy ships. Ship captains could earn a fee amounting to a percentage of the specie carried on board, and this could be a lucrative venture. Stewart was charged with permitting specie in violation of the law and of defending and protecting persons and property smuggling specie bullion.

The U.S. Navy officially sanctioned the practice of carrying specie in October 1818 "when acting Secretary of the Navy gave Commodore Daniel T. Patterson, stationed at New Orleans, permission for ships under his command to transport specie belonging to U.S. merchants."<sup>11</sup> More than one Navy officer who commanded ships on Pacific Station prior to Stewart supported carrying specie. Capt. Charles Ridgely noted that it was part of his duty to take specie. In fact, he had carried some \$200,000 of specie back to the United States on behalf of Eliphalet Smith. Capt. John Downes of the *Macedonian* also stated that it was customary to have specie so long as it did not belong to belligerents. Capt. James Biddle of the *Ontario* suggested that the charge of shipping specie was simply another in a series of charges against Stewart by the Peruvian government. "I believe it is impossible," he said, "for any commanding officer to be in the Pacific without giving offense to the one side or to the other. The Royal party of Peru, knowing the general feeling of our country, is jealous of them. The Patriots on the other hand expecting too much are dissatisfied."<sup>12</sup>

Some U.S. government officials believed that no U.S. ship should carry specie regardless of whether it belonged to neutral or warring parties. In 1821, prior to Stewart's arrival, U.S. Consul John Prevost wrote to the U.S. government that the conduct of Captain Downes during his cruise in the Pacific Ocean in carrying money was disgraceful to him as an officer. Prevost

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noted that he was opposed to the practice in principle because it was neutral money.

Members of Stewart's own crew knew that trading specie on behalf of neutrals was legal, but some nevertheless suspected their own captain was participating in an illegal practice. Von Vuldee wrote in his journal that he saw money carried to the *Franklin* that belonged to American citizens. He believed that Smith and a local merchant named Gotera engaged in the contraband trade of evading the duties on the exportation of specie.

Lieutenant Henry stated that he had no knowledge of goods or specie on board the ship but that the commodore had given orders to receive "none but only neutral property." Hunter did acknowledge that the director of the mint in Peru, a Spaniard, wanted to deposit bullion, but Stewart refused because the Spaniard was a belligerent in the regional crisis. Lieutenant Ogden recalled that the Baron de Macau of the French *Chlorinde* requested to transship money via the *Franklin*. Commodore Stewart had no objection if it was neutral money, which the Baron assumed since one merchant was an American and the other a Prussian.

Stewart, however, did not appear to be interested in benefiting from the transport of specie. Lieutenant Henry noted that the *Peruviano*, owned by Commodore Stewart, was treated as a public vessel like the other schooners. Stewart told Henry that it was not the object to make money but that money received for deposition of freight and specie would be paid to Henry. "You have taken all the responsibility and are consequently entitled to it all," Stewart had told Henry.

By all accounts provided during the court-martial, the transport of specie was acknowledged but nowhere could it be proved that it belonged to anyone other than neutral parties. Therefore, the court determined that the charges were partially proved but unobjectionable since Stewart had carried out a standard and sanctioned practice.

The fourth major grouping of specifications in the first two charges concerned Stewart's decision to buy the frames of three schooners and construct them. Stewart was charged with employing two of the schooners in the merchant trade and with using naval assets to construct the three schooners. After a thorough review, the court determined that the squadron commander used the schooners in the faithful exercise of an unquestioned right to carry out his mission.

If any issue affected Stewart and his reputation the most, it was the sixth specification of the second charge. The specification noted that Stewart received spies and officers in the Royalist Army on board the *Franklin*, specifi-

cally a man named Madrid who was a spy in Lima. There was no debate about whether the *Franklin* did indeed transport the officer, one "Madrid," from Peru during a three-week transit from Lima's port of Callao to the port of Quilca. The charge focused instead on what Stewart knew, when he knew it, and how involved he was in its prosecution.

The charge was discussed a few weeks before Stewart's court-martial, during the trial of First Lt. William Hunter, which began on 10 August. Commodore Stewart brought Hunter up on a single charge—neglect of duty. Specifically, Stewart charged that Hunter had permitted Madrid on board without informing his commanding officer as he had been required to do. Testimony during Hunter's court-martial was vital to Stewart's. Delia had refused to respond to her husband's pleas to come to Washington to testify on his behalf. Her only response came via an attorney in Boston, not in response to her husband's court-martial, but in response to a request from Hunter's court-martial. Her response was in the presence of and signed by Justice of the Peace Elijah Downing in Boston on 9 August, only the day before the trial began several hundred miles to the south.

The first interrogatory asked if Delia knew whether a certain Spaniard named Madrid had come on board the *Franklin* and if so, under what circumstances. Delia denied much involvement, claiming that he was an entire stranger to her. She testified that she had no authority to allow him to remain, but finally she "yielded to the recommendation of the two friends . . . to his own innocence and to his impressive appeal to my humanity."<sup>15</sup> Believing that his story appeared to be lamentable, she did not believe she could "summon sufficient resolution to request him to depart."

The second series of questions asked were, who helped him get on board, how long did he remain on board, and where did he stay? Delia claimed that she did not know who helped him on board. All she knew was that Madrid lived in the pantry with the steward and that she had ordered the steward, Peter Birch, to take care of Madrid and give him something to eat. According to Delia, she spoke with him for only about ten minutes and never spoke with him again while he was on board. She testified that she did not know how he left the ship or with whose help.

While Madrid was on board, Delia "did not inform [Commodore Stewart] of it supposing that if he were entirely ignorant of the said Madrid being on board no censure could probably be attached to him." In addition, she realized that if Stewart had been aware of Madrid's presence, the commodore would have found himself "under painful obligation of surrendering an unfortunate human being."

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