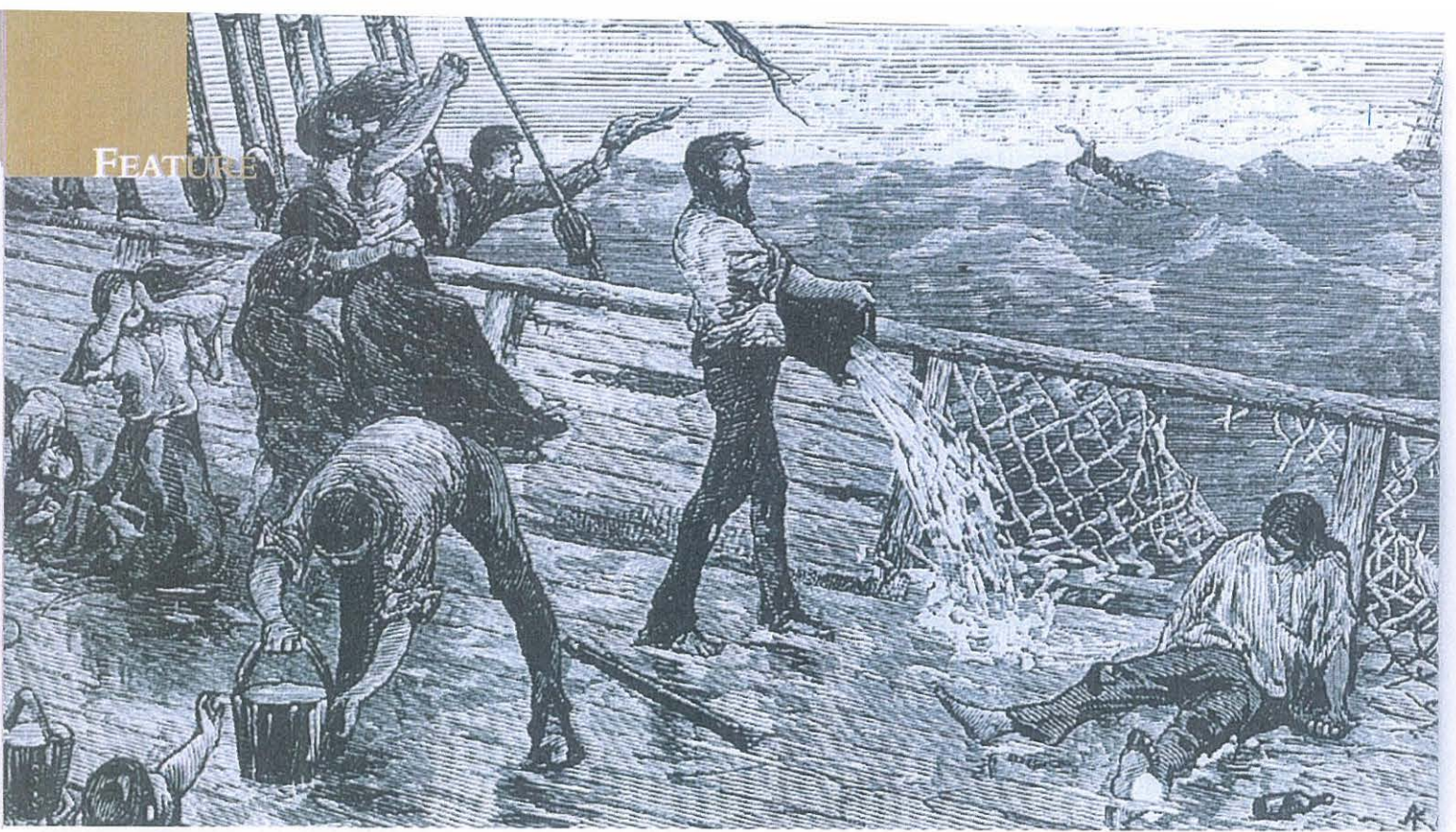


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The Last Voyage of Commander William Lewis Herndon

By Robert M. Tata '79, Esq.

S.S. CENTRAL AMERICA and Herndon's Heroics, the Recovery of the ship's Golden Booty and the Legal Case

During my first close exposure to the legend of Commander William Lewis Herndon, USN, I had my arms tightly interlocked around his monument with several classmates on the grounds of the U.S. Naval Academy. A classmate had stepped on my grease-smudged face to try to grab the plebe dixie-cup cap off the top of the monument to mark our passage from plebes to fourth class midshipmen in 1976. My recollection is that we accomplished the Herndon climb in just less than an hour. The second time I encountered the legend of Commander Herndon was many years later. I was a first-year attorney at the international law firm of Hunton & Williams, responsible for supervising the off-load of a portion of an estimated \$400 million worth of gold recovered from Commander Herndon's ill-fated final voyage aboard S.S. CENTRAL AMERICA. This is a story about Herndon's last voyage, the recovery of the ship's treasure trove more than 130 years later and the groundbreaking legal case.

Passengers and crew struggled to save Commander Herndon's ill-fated S.S. CENTRAL AMERICA in a hurricane about 160 miles off the coast of South Carolina in September 1857. Image reprinted with permission of Recovery Limited Partnership

It all ended with the recovery of tons of gold worth millions of dollars by a group of scientists and explorers in 1989 and the groundbreaking legal case that was litigated for years to follow. But it all began on 20 August 1857, when the Pacific Mail Steamship SONORA left San Francisco with hundreds of passengers and a large cargo of gold from the California gold fields. There were many prominent passengers aboard the ship including high society members, entertainers, attorneys and, in steerage class—still expensive—there were those of more humble backgrounds that had had some measure of success in California's gold fields.

The passengers and the gold were bound for Panama to travel by train across the isthmus of Panama (there was no canal in 1857), then to be taken by S.S. CENTRAL AMERICA to the financial markets of New York. The cargo of those ships included thousands of pounds of gold bars, coins and bullion.

On 3 September 1857, SONORA landed on the Pacific coast of Panama. The passengers and cargo were transported by rail across Panama and that afternoon were loaded on CENTRAL AMERICA to head to Havana, Cuba, to drop off the non-New York bound passengers and cargo. At 4 p.m., CENTRAL AMERICA left Panama for Havana.

Commander Herndon was 43 years old when he captained S.S. CENTRAL AMERICA. This was to be his 19th voyage with the ship. Herndon previously had attained some degree of notoriety for leading the first expedition of the Amazon River Valley resulting in his book *Exploration of the Valley of the Amazon*, which Samuel L. Clemens ("Mark Twain") later credited as a major influence on his life.

CENTRAL AMERICA was a wood-hulled, three-masted sidewheel steamer, about 278 feet long.¹ In other words, while the vessel had three masts for sails, its primary means of propulsion—and this will turn out to be important—was two distinctive midships steampropelled paddlewheels about 30 feet in diameter. Its hull was sheathed with copper plates. Its keel was laid in 1852 and was considered state-of-the-art at the time. It was among the sidewheel steamers that served the Panama to New York route during this time period.

CENTRAL AMERICA was docked in Havana on Monday evening, 7 September 1857. On 8 September, Herndon and CENTRAL AMERICA left Cuba heading roughly along the East Coast of the United States bound for New York.² CENTRAL AMERICA left Cuba with about 578 crew and passengers and several tons of gold bars, coins and bullion from the gold fields of California. The weather was perfectly clear.

The next evening, the winds and seas increased. Although the passengers and crew did not know it at the time, the ship was entering the fringes of a hurricane. By Friday, 11 September, disaster had hit. The ship was in a full-fledged hurricane. A leak was discovered and the ship began taking on water. The water onboard had doused the ship's boilers which powered the pumps. The captain and his crew were in a fight for everyone's lives.

The ship was battling the hurricane more than a hundred miles off the coast of South Carolina. With the boilers flooded and no mechanical pumps, the ship began to roll and list dangerously to starboard. Commander Herndon had ordered all the men to bail and they did so for more than a day. Meanwhile, the women and children were stationed on the port side to attempt to stabilize the ship. Some women changed into men's clothes to masquerade as men and help with the bailing. The goal was to keep the ship afloat until the hurricane passed.

By Saturday, 12 September, it was becoming clear that the ship would sink. Commander Herndon led with courage and attempted to avoid widespread panic. As one survivor recalled: "Captain Herndon remained self-possessed, calm and firm throughout. I shall ever think of him with gratitude." About that time, a small brig, MARINE, had appeared and fought its way nearby. Commander Herndon was determined to save as many women and children as MARINE would hold. But that required a perilous trip in the lifeboats—two of which had already been smashed. The waves were huge and the distance between the vessels increasing.

Commander Herndon had to select the men to row the remaining lifeboats. These men must be able to be trusted to return to the sinking ship and not just save themselves. One volunteer Herndon knew well, but the other volunteer crewmember was not well known to him. Herndon asked this crewman gently, "I wonder if I can trust you?" The crewman understood what was being asked and responded, "I have hands that are hard to row, and a heart that is soft to feel." Not a boat deserted the ship.

Taking several trips, the two remaining lifeboats ferried about 100 women and children to the small brig MARINE through the angry sea. But MARINE was now sustaining damage as well and could take no more. As one of the last lifeboats left the ship, Herndon gave his pocket watch to a passenger, said a private prayer and asked that it be delivered to his wife. While Herndon had maintained calm during the rescue efforts, the men were beginning to panic as the ship's rail was nearing water level and sinking was imminent. As one survivor reported, "the

<p>redness, were not be termed or lines of the some of these, ge in order to to be offered, over. One of ers to resume it of their so-), and gave a coming Legis- present sys- its read ceased others speak, expansions and workshops.</p> <p>OSTON, Oct. 5, 1857. it is concerned, discounts to- being restored.</p>	<h2 style="margin: 0;">THE GREAT WRECK.</h2> <hr/> <h3 style="margin: 0;">Three more Survivors.</h3> <hr/> <p style="margin: 0;">Rescue of Messrs. John Tice, Alex. Grant, and J. W. Dawson by the British brig Mary.</p> <hr/> <h3 style="margin: 0;">STATEMENTS OF THEIR SUFFERINGS.</h3> <hr/> <p style="margin: 0;">Eight Days and Twenty Hours without Food or Drink.</p> <hr/> <p style="margin: 0;">"Three more saved from the Central America," was the announcement that was made by the ship news reporter at 9 o'clock yesterday morning, as he stepped from the Staten Island ferry-boat at White-</p>	<p>to occur but she was below the sun alone came pour nature. D resolved to for another heavy way too much night his h involuntar, his hands alone bore sufferings f thirst and situation tiger were a tion was a</p> <p style="text-align: right;">Monday anything to</p>
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Of the reported 578 passengers and crew aboard the sinking ship, about 153 were ultimately rescued—and the substantial loss of gold shook the New York financial markets. Image reprinted with permission of Recovery Limited Partnership

love of gold was forgotten” and heavy gold belts were discarded on deck.

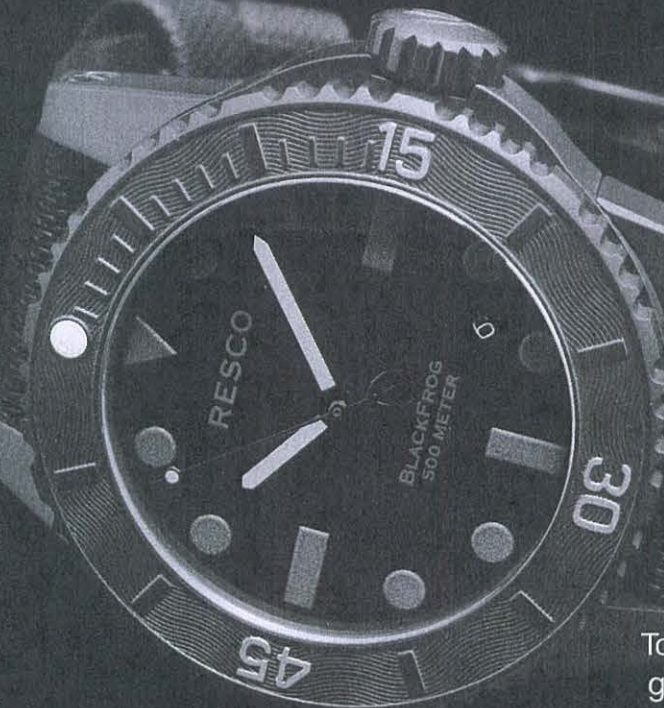
Having done all he could to save the ship and its crew and passengers, and with nightfall approaching, Herndon donned his full dress uniform, took his trumpet in hand and manned the wheelhouse with his second officer. Commander Herndon fired two rockets, the signal for a sinking ship. At about 8 p.m., the vessel lurched three times and slipped beneath the waves, all within sight of the rescued passengers on MARINE. Many, including Commander Herndon, went down with the ship. Several dozen lucky souls were not sucked underneath with the ship and clung to debris and were saved in the days that followed.

There were a total of 578 passengers and crew aboard the ill-fated ship. Approximately 100 were rescued by MARINE, and about another 53 were later rescued. In addition to the human carnage, the loss of gold was so significant that the financial markets in New York suffered turmoil. Commander Herndon’s

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To all those who have gone downrange, we salute you!

heroism was perhaps best summed up by passenger Thomas McNeish's account as reported in *The New York Times*:

The Captain, throughout the whole emergency, behaved nobly and bravely. He deserved a better fate. I believe there was not a man left on board the ship but would have given his life if it could have saved the Captain.

As Commander Herndon's brother-in-law Lieutenant Matthew Fontaine Maury later wrote in tribute: "forgetful of self, mindful of others, his life was beautiful to the last, and in his death he has added a new glory to the annals of the sea."

Finding the Lost Ship and Recovering the Gold

Fast forward 131 years to 1988. People had been searching for the wreck of CENTRAL AMERICA for more than 100 years. But no one knew where it was. Was it off the coast of Florida, Virginia or somewhere in between? Some young scientists from Ohio thought they could find what no one else could. Tommy Thompson, an ocean engineer, created Columbus-America Discovery Group (CADG) and led this venture.

The effort began by collecting hundreds of newspaper accounts from maritime museums all over the country in order to find clues to the vessel's location. Many of these newspaper accounts are collected in the fascinating paperback *Story of An American Tragedy*. The group became experts in mathematical search theory, sonar and seamanship. Ultimately, they outfitted a 30-year-old ice breaker, ARCTIC DISCOVERER, with sophisticated geo-positioning, communications, side-scanning sonar equipment and robotic controls for "Nemo," an undersea robot video and recovery system. CADG searched during a narrow weather window for two years. No joy.

Finally, on 11 September 1988, the team began its third year of exploration. It had lowered its sonar system deep into the Atlantic Ocean to begin several weeks of searching. As Thompson would later write:

The empty [sonar] screen began to fill with dark shadows. Slowly, a definable image took shape, drifting eerily up from the bottom of the video screens. Then another voice—I can't remember whose—chimed in with "Oh, my God ..." As Nemo's cameras slid over the site, an unbelievable image scrolled by on the monitors: a rusting sidewheel lying flat in the eons-old mud. It was the one exceptionally distinguishing feature of CENTRAL AMERICA. I was in awe.

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Lost for 131 years, CENTRAL AMERICA's sidewheel had revealed its watery grave. It was approximately 160 miles due east of Charleston, SC, under 8,000 feet of water.

Shortly thereafter, CADG would find CENTRAL AMERICA's golden booty. Large ingots—some weighing over 750 ounces—and towers of gold coins, all in near-mint condition, lay on the ocean floor among the rotting timbers of CENTRAL AMERICA. Some of the coins appeared neatly stacked, as their wooden chest had rotted away leaving the gleaming coins arranged like poker chips. That season, and for several years to come, CADG undertook a meticulous recovery to safely harvest bars, coins, gold bullion and various historical artifacts (trunks, jewelry, guns and much more) from the ocean floor. Some estimated the cargo as worth more than \$400 million. *America's Lost Treasure* provides rich detail about the venture including the gold and artifacts and the ancillary scientific discoveries associated with the recovery.

The Legal Case: "Finders Keepers, Losers Weepers?"

A newly minted lawyer at Hunton & Williams representing CADG during this period, I was on the dock in Norfolk, VA, on 6 October 1989 with a crush of news media when ARCTIC DISCOVERER pulled up to much celebration. The ship had aboard it the CADG salvors and thousands of salvaged gold bars and coins which would make up the richest American treasure find ever. Even the Herndon, VA, high school band was there in tribute to CENTRAL AMERICA's heroic captain, Commander



In what may be the richest shipwreck recovery ever, CADG harvested towers of near-mint gold coins, hundreds of large gold bars and ingots, and numerous historical artifacts from the wreck site. Image reprinted with permission of Recovery Limited Partnership

William Lewis Herndon. U.S. Marshals and a Brinks armored car were there to safely transport the gold to a secure location.

The discovery and recovery of the treasure was only the beginning of the legal adventure. Lawyers representing CADG had filed an admiralty *in rem* action seeking to lay claim to the wreck and its cargo. In short, CADG claimed that the wreck was derelict, long abandoned, and that by finding it and properly bringing it before the court, CADG was entitled to exclusive possession of the wreck and its cargo. Under maritime law, the wreck was "arrested" and an injunction order was issued securing the wreck site and protecting it from competing salvors now attempting to exploit the recently discovered wreck themselves. So who would claim an interest in the long-lost wreck besides the CADG? Representatives from 39 former insurance company claimants, that's who. The insurance company claimants' theory of the case was that—although they had scant records to prove it—they had insured portions of the losses and, therefore, by way of subrogation they were entitled to ownership of the gold. Under this theory, CADG would only recover a finder's fee—usually less than 50 percent of the value of the salvaged property—under the maritime law of salvage. Twenty-one of the insurance company claimants were dismissed before trial for being unable to show a proper chain-of-title to an insurance company that existed at the time of the sinking.

Assuming that the claimants could show that their predecessors-in-interest insured any of the lost gold, a key issue was whether to apply "salvage law" or the "law of finds." Under "salvage law" the original owner (here allegedly the insurance companies) kept the property less a salvage fee which was awarded to the finder (CADG). Under the "law of finds," the entire wreck could be awarded to CADG if the court believed it was a long-lost and abandoned wreck. Many of the gold bars that CADG found had identifying marks such as weight, percent fineness and name of the smelter. The claimants were unable to show any significant records of prior ownership by payment on claims for specific gold bars or coins. In any case, as the court pointed out, much of the gold was passengers' gold which was uninsured (so the claimants would have no claim to that).

The district court in Norfolk's "Rocket Docket" ultimately determined that the insurance companies, even if they had paid any claims to obtain ownership, had abandoned any such claims over the ensuing 100-plus years. It awarded full title to the wreck—100 percent—to CADG under the maritime "law of finds." But later the appellate court determined that the "law of salvage" should have been applied instead of the "law of finds"

and sent the case back to the district court where the judge awarded 90 percent to CADG due to the remarkable nature of the salvage. Although there were many related motions and even cases, CADG had ultimately won 90 percent of the richest shipwreck in American history.

The Rest of the Story

Despite Commander Herndon's heroics, *CENTRAL AMERICA* was lost at sea on 12 September 1857. But it—and its stunning treasure of gold and artifacts—was found 131 years later by a remarkable group of engineers and scientists led by Tommy Thompson. Then, after a bitter but successful legal battle, CADG won the rights to 90 percent of the wreck and its cargo. And the harvesting of the gold from the wreck continues to this day.

But the mysteries associated with the ancient shipwreck continue. In 2012, as some investors were claiming he bilked them out of their investments, Thompson became a fugitive from justice. At his abandoned Florida home a book was found, *How to Live Your Life Invisible*. Then, on 27 January 2015, after an intensive manhunt, Thompson—"one of the most intelligent fugitives ever sought" according to U.S. Marshals—and his long-time girlfriend were found in the Hilton Hotel in Boca Raton, FL. He was extradited to Ohio and pled guilty to contempt on 8 April 2015. But much of the gold appears to be long-lost once again. †

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¹ See Tommy Thompson, *America's Lost Treasure, A Pictorial Chronicle of the Sinking and Recovery of the United States Mail Steamship Central America: The Ship of Gold* (1998), pp. 48-49.

² See generally *America's Lost Treasure* (above); Judy Conrad, *Story of an American Tragedy: Survivors' Accounts of the Sinking of the Steamship Central America* (1988), and Gary Kinder, *Ship of Gold in the Deep Blue Sea* (1998), all of which are relied on throughout this article.

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