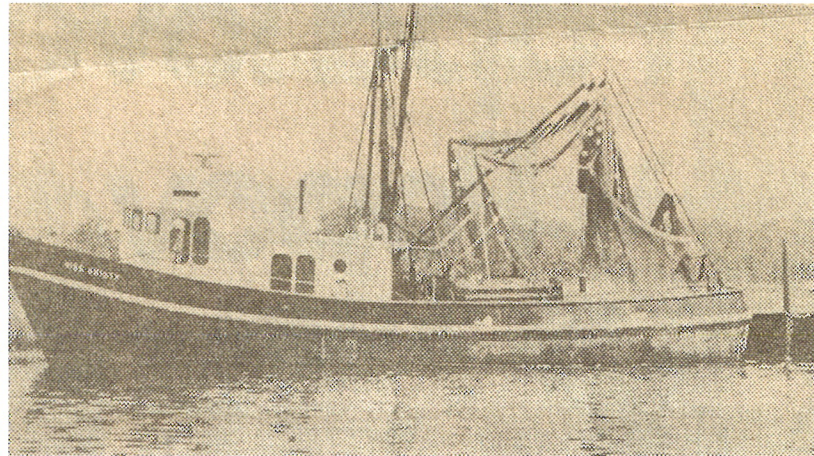
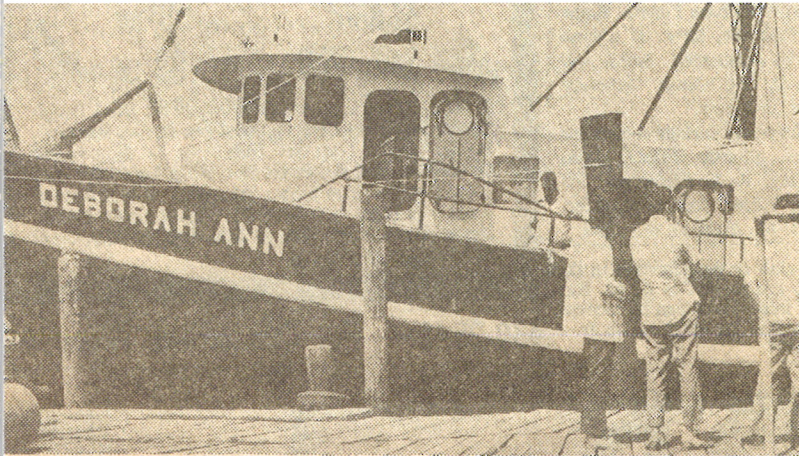


## SHRIMP BASKET OF SUNKEN TREASURE



» Intriguing news! After one of the crewmen in the case confirmed the recovery of sunken treasure to a local television station, the Mobile Register ran a front page story, along with photos of the two Bayou La Batre fishing boats involved, the DEBORAH ANN (LEFT) and the MISS KRISTY (RIGHT).

Step into attorney Alex Lankford's office in a downtown Mobile high rise, and you'll quickly discover that the man has an appreciation for the sea. A Liberty Ship's wheel and ship's lanterns are among the artifacts to be found in the office where paintings and photographs of suitably nautical subjects adorn the desk and tabletops, all of which befit a former Navy man who was honored in 2012 as the Best Lawyers® Lawyer of the Year practicing admiralty and maritime law in Mobile. In a career that has spanned more than six decades, it is fair to say that Lankford has handled hundreds upon hundreds of admiralty law cases ranging from ship sales and registration, to bills of lading, collisions at sea, death and personal injury, and damage to cargo, yet there is one case that results in an immediate grin and puts a piratical gleam in the attorney's eye when he discusses it—the case of the fishing vessel DEBORAH ANN.

Lankford has dined out on the story for years, and why not? It has all the elements of an intrigue—a mysterious Spanish galleon, recovered sunken treasure, secret agreements, wild rumors, myriad legal claims and intervention by the federal authorities. Besides, as Lankford noted recently in his office at the law firm of Hand Arendall, "How many times does a lawyer stumble upon Spanish pieces of eight and take that for his fee?"

February 1973. Richard Nixon was in the White House, minimum wage was \$1.60 an hour, a gallon of gasoline cost 38 cents, and a pound of shrimp was worth about \$1.07. It

was against this background that the fishing boat DEBORAH ANN sailed from Bayou La Batre, Ala., on Feb. 13, in the command of 30-year-old Floyd Mitchell "Mike" Kittrell and carrying as crew deckhands Johnny Seward and Bill Kern. A few days later, the fishing vessel MISS KRISTY weighed anchor in the Bayou and headed toward the same Gulf of Mexico fishing grounds being trawled by the DEBORAH ANN, west of the mouth of the Mississippi River. Master of the MISS KRISTY was Ronald Gary Smith, 23. His crew consisted of Larry Bryant and Marcell Eugene "Peanut" Hill.

The MISS KRISTY was trawling for croakers and by Feb. 26 had caught 1,800 pounds of shrimp and 2,300 pounds of fish, all told worth about \$6,900, a pretty good catch for that time of year. The skies were clear, the seas like glass and the winds light and variable—a beautiful day, by all accounts. Captain Gary Smith figured they would make a couple more drags and then head for home. A mile or two away, the DEBORAH ANN was trawling for shrimp in an area known as "the Hole," moving north along the edge of the 100-fathom curve in about 46 fathoms of water when the boat "bogged," meaning the nets had become mired on the soft bottom, creating what appeared to be a huge, heavy mud ball. Although it was 10 a.m., crewmen Seward and Kern were asleep at the time. The boat had been working around the clock for almost two weeks at that point, and the crew napped when they could. When they bogged, Captain Kittrell roused his men to come on deck and pull up the net.



The net was full of mud, and Kittrell had his men wash out what they could so the ship's gear could lift it from the water. After approximately 10 minutes, they dumped the catch on the deck. According to Kittrell, "[T]here was still a lot of mud on one side... we didn't pay no attention... we had shrimp and trash and stuff in the other side, so, we set back out. We were marking a few shrimp, and I went back in [the] wheelhouse after [the nets] were set out and put it on course." Suddenly, Seward and Kern ran up to the wheelhouse, excited. Each had a double handful of coins.

Kittrell went back to the stern, and the men showed him that the lump of "mud" was actually a large mound of silver coins, some of which were loose, others stuck together, along with some mushy material that looked to Kittrell like the rotted timbers of a ship. Thinking they may have "caught" additional coins, Kittrell instructed his men to pick up the net and inspect it. The DEBORAH ANN was a new boat, and, according to later testimony, had a couple of flaws: the stay wires on the outrigger were too long, and the drum of the winch sat higher on the deck and had a longer cable guide than most. Normally, two men would operate the winch, but Kittrell had 17-year-old Kern operating the cable guide as they began picking up the net. Kern lost control of the cable guide—it hit him in the chest and knocked him down. The cable ran off the end of the drum, fouling the winch when the rig was only halfway up and snapping off the bearing cap and the incline handle used to wind the cable. Unable to retrieve their nets, Kittrell radioed the nearest boat for assistance, the MISS KRISTY.

Captain Smith already had his nets up and now motored over to the DEBORAH ANN, where Kittrell explained the situation. According to Smith, Kittrell showed him the coins from the first catch—enough to fill half a shrimp basket or a little more—and told Smith that if there were any coins in the second catch that he could have them in exchange for providing assistance. Kittrell's version of events differed slightly. He recalled that the coins were all over the deck and that Smith asked if he could have some. Kittrell said he couldn't do that. "He wanted me to give him some, kept on, kept on, kept on. I said, 'Tell you what I will do. If there [are] any in the net, you can have them.'"

Smith utilized a couple of cable clamps to secure the cable and which allowed the men to get the cable back onto the drum. Using a crow bar to guide the cable manually, the two captains eventually succeeded in raising the net. When they dumped the catch on the deck, some 789 silver coins spilled out. Meanwhile, the crew of the DEBORAH ANN had been counting the coins from their first haul. They gave up when they reached 3,000, figuring that they had counted only 50 percent or less of the coins. The men now discussed what to do next. The MISS KRISTY had all the fish and shrimp

she was going to catch, and the DEBORAH ANN's broken winch meant she couldn't trawl anymore. The salvors swore one another to secrecy as to their find, and Captain Smith suggested they consult with a lawyer he knew as to what their next steps should be.

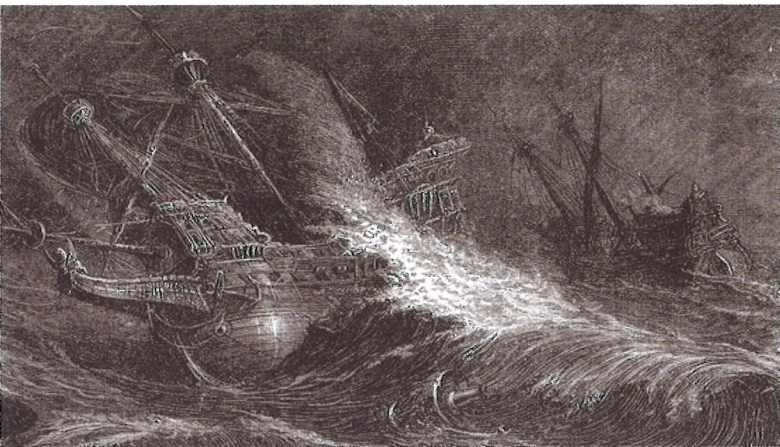
The captain and crew of the DEBORAH ANN had a written agreement with the boat's owners: the owners took 60 percent of the value of the catch, and the crew took 40 percent after deducting the cost of groceries and half the cost of ice, plus any labor for torn or lost nets. The crew of the MISS KRISTY had a similar agreement with the owners of their boat, although theirs was a verbal agreement. Despite these agreements, the men were not sure if such an agreement applied to seafood only or would include treasure. As both captains were to testify later, they wanted to ensure that they and their crews received whatever they were entitled to.

The two boats raised Bayou La Batre the next morning, with the DEBORAH ANN putting in at Quality Foods' dock to offload its catch and the MISS KRISTY tying up at Seaman Fisheries to offload. On board the DEBORAH ANN, the cache of silver all but filled a shrimp basket that normally would hold about 80 pounds of shrimp. Laden with the silver, the shrimp basket weighed closer to 300 pounds. Captain Kittrell placed the shrimp basket in the boat's shower stall. After dark, he and Johnny Seward returned to the boat and took the silver off, placing it in Kittrell's closet at home for safekeeping. The next day, all of the men went to see a Mobile attorney, taking their treasure find with them, now wrapped in burlap oyster bags. The attorney quickly agreed to take their case once he had seen the coins. He had the men place the burlap bags in a safe deposit box at a local bank and instructed them not to tell anyone about their find. Meanwhile, he said, he would learn what he could about the coins and determine their next steps. The attorney contacted the Smithsonian Institution and the National Geographic

» The majority of the coins were Spanish pieces of eight. Pictured below is one of the coins recovered by the fishing vessel DEBORAH ANN.







» The recovered coins may have been a part of the cargo transported by the annual treasure fleet that sailed from Veracruz to Havana. It has been speculated that the fleet may have been driven off course by a hurricane.

Society, among others, in an effort to determine the origin and worth of the coins.

More than 95 percent of the coins were Spanish “Bust Dollars,” eight reales or “pieces of eight” that featured the bust of King Carlos III of Spain, and 90 percent of these were minted at the Casa de Moneda in Mexico City and dated 1783. The oldest coin recovered was dated 1749, and the newest was dated 1798, meaning that the ship must have sunk sometime in the late 1790s or early 1800s. The coins likely would have been part of the annual silver shipment transported by the Spanish treasure fleet from the New World to Spain, one route of which included a convoy from Veracruz, Mexico, to Havana, Cuba, before transiting to Spain. It is possible that a hurricane pushed the fleet far north of its normal route, sinking one or more of the treasure ships along the 100 fathom curve, or it could be that one or more of the ships were pursued and set upon by pirates, sinking before the buccaneers could claim their booty.

Despite the men’s agreement to keep their find secret, rumors of recovered sunken treasure were soon on everyone’s lips in the fishing village of Bayou La Batre. Captain Kittrell maintained that he told no one but his wife, but Captain Smith, who had kept a coin for himself, gave four of the coins to his father, four more to his brother, and he sold three to another man for \$200. Larry Bryant, one of the crew of the MISS KRISTY, allegedly gave two of the coins to his mother. A few days after arriving in town, Kittrell was called in to the owners’ office, ostensibly to discuss repairs to the boat. They then informed their captain that people had been calling them about the “treasure chest” that Kittrell had caught, rumored to be “full of gold coins, diamonds, silver coins, and all kind of stuff.” Kittrell replied that he hadn’t caught a treasure chest, technically correct, but not exactly a complete answer. As stories of recovered

treasure continued to swirl around Bayou La Batre, the pressure to remain silent became too much to bear, and one of the MISS KRISTY’s crewmembers, Peanut Hill, admitted to the existence of the treasure in an interview with a local television station that aired on May 8, 1973.

The next morning, a Wednesday, the owners of the DEBORAH ANN, Roy Nicaud and D.J. Ficarino, were in attorney Alex Lankford’s office. Lankford recalled, “I thought it would be a fun case,” adding that it was “not so much the value as the fun of the experience” that attracted him. The case raised several intriguing legal questions: were the coins the proper subject of salvage and, if so, who was entitled to what? Were the owner and crew of the MISS KRISTY entitled to any of the 789 coins caught by the DEBORAH ANN during her second drag? Did the captain of the DEBORAH ANN have the authority to make the agreement with the captain of the MISS KRISTY? Was the agreement obtained under duress? Did the captains and crew forfeit their salvage rights due to bad faith since they had tried to keep the find secret?

The owners told Lankford that they didn’t have enough money to pay legal fees, but, if they were successful in recovering the treasure, they could pay in silver coins. The idea appealed to the attorney, and he agreed to accept a fee in kind—namely, pieces of eight. Rumors at the time estimated the value of the treasure at upwards of \$30,000, this at a time when the annual median household income in the United States was a little over \$9,000—and considerably less in Bayou La Batre.

Lankford and partner Hamp Uzelle filed an admiralty salvage action against the coins on May 10; they also filed suit against the captains and crews of the two fishing vessels, contending bad faith. U.S. Marshal H. Stanley Fountain ordered the seizure of the coins that had been deposited in a safe deposit box at First Federal Towers. According to Lankford, when the marshals went to seize the coins, the face of the box came off in the banker’s hand—oxidation of the coins had caused the box to corrode. A second lawsuit was filed by the owners of the MISS KRISTY the next day, Friday, May 11.

With the approval of U.S. District Court Judge Virgil Pittman, the treasure was turned over to the University of South Alabama’s Department of Sociology and Anthropology for separation, cleaning and conservation. The coins were soaked in a cleaning solution, put through an electrolytic reduction phase, boiled in distilled water a number of times, placed in a vacuum, polished, and finally placed in silica to ensure removal of all moisture.

In late September, the State of Louisiana filed suit via the offices of the Attorney General, contending that a 1970



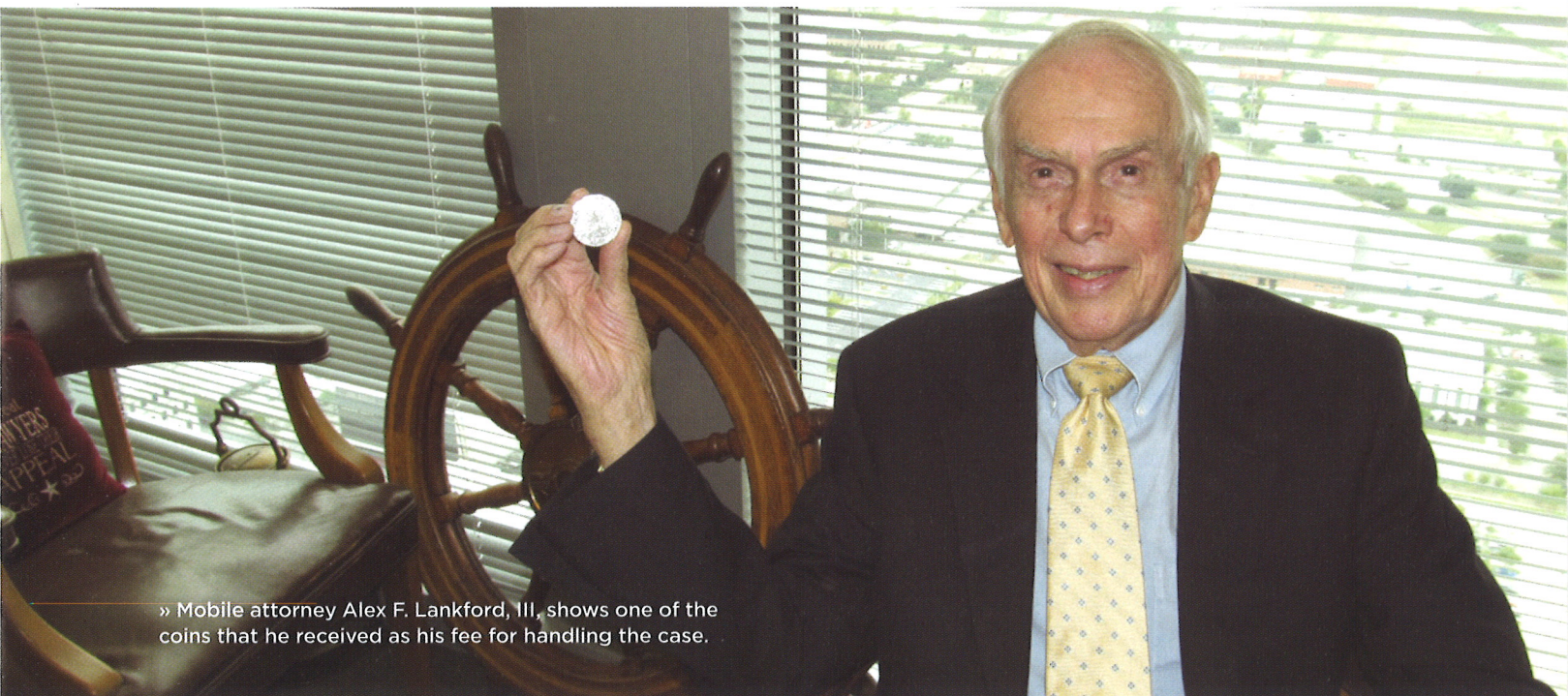
law making any treasure found in Louisiana or its territorial waters the property of the state. On Oct. 2, defendants Mike Kittrell, Johnny Seward, Bill Kern and Peanut Hill filed a motion claiming that the coins were found some 43 miles off the coast of Louisiana, well outside the state's territorial waters. The State of Louisiana subsequently withdrew its claim.

Two months later, on the morning that the case was to go to trial in Federal Court, a settlement was reached and reported to the judge. Of the approximately 3,850 coins caught in the first drag by the DEBORAH ANN, 60 percent went to the owners and 40 percent to her crew. Of the 789 coins caught in the second drag and taken by the captain of the MISS KRISTY, 50 percent went to the owners of the DEBORAH ANN, nine percent went to the owners of the MISS KRISTY, and 41 percent went to the crew of the MISS KRISTY. And, as per their agreement, the owners of the DEBORAH ANN paid their attorneys 33 1/3 percent of the coins they recovered, or a little more than 800 pieces of eight, as their fee.

The defendants in the case testified that they never dragged for more coins at the site of the discovery. However, more than 10 years later, coins from the same mint and era turned up for sale in the pages of USA Today. In August 1993, the fishing vessel MISTAKE out of Pascagoula, Miss., bogged in about 50 fathoms of water some 50 miles south of Grand Isle, La., in a spot tantalizingly close to where the DEBORAH ANN made her discovery. Captain Jerry Murphy hauled up his net to find it torn and full of rocks, which turned out to be clumps of silver pieces of eight bearing the bust of King Carlos III of Spain and all dated 1783. The wreck in that case

was identified as EL CAZADOR, a Spanish brig of war that sailed from Veracruz bound for New Orleans on Jan. 11, 1784, and carrying 400,000 silver pesos plus another 50,000 pesos worth of smaller change, of various dates, meant to pay troops and government officials. The ship never arrived. The recovered coins, which eventually were sold through the Franklin Mint, were stored temporarily in the old Grand Bay State Bank Building in Grand Bay, Ala., just a few miles from Bayou La Batre. The identity of the wreck discovered by the DEBORAH ANN still remains a mystery. Despite the proximity of the wreck sites, some of the coins recovered by the DEBORAH ANN were newer than 1784, so they could not have come from the CAZADOR.

Bust Dollars from 1783 recently have been offered for sale for as much as \$495 each, depending upon the grade of the coin, meaning in today's market, that shrimp basket of silver coins first hauled up by the DEBORAH ANN could be worth nearly \$2 million—enough that even the most civilized of attorneys might be forgiven a piratical thought or two. Was the ship that originally transported these coins set upon by pirates, perhaps burned and sunk before her cargo could be gotten off, or was she driven off course and destroyed by a hurricane? No one likely will ever know. As Alex Lankford noted, it is intriguing that, after more than 200 years, the Gulf returned these coins in remarkably good condition in the nets of a modern shrimper, ultimately becoming the subject of a traditional, albeit somewhat sensational, admiralty salvage case. "One thing is for sure," Lankford mused recently, "no shrimper out of Bayou La Batre or any other port will ever find a more interesting catch in his net!"



» Mobile attorney Alex F. Lankford, III, shows one of the coins that he received as his fee for handling the case.