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## Asylum Denied: The Vigilant Incident

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# ASYLUM DENIED:

## The Vigilant Incident

*The United States has for many years had a policy of granting political asylum to deserving refugees and defectors. On 23 November 1970, however, a Lithuanian seaman, Simas Ionovich Kudirka, attempted to defect to the United States via the Coast Guard cutter "Vigilant," and his request for asylum was denied. He was forcibly returned to his ship, the "Sovietskaya Litva," within the territorial waters of the United States. An examination of the facts and events surrounding this denial, the official and public reaction thereto, and some of the applicable precedents, Navy Regulations, and law regarding asylum reveals the manner in which the decision to deny the requested asylum was reached and certain possible inadequacies. Recommendations are made by the author in an effort to ensure appropriate handling of any future cases involving asylum.*

A research paper prepared

by

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There are three classes of people in the world. The first learn from their own experience—these are wise; the second learn from the experience of others—these are the happy; the third neither learn from their own experience nor the experience of others—these are fools.

The Earl of Chesterfield<sup>1</sup>

**Introduction.** The attempt by Simas Ionovich Kudirka, a Lithuanian crewman on the *Sovietskaya Litva*, to seek asylum in the United States via the U.S. Coast Guard cutter *Vigilant* on 23 November 1970 and his forcible return to the Soviet fishing ship have been widely reported and discussed by the citizenry. The case has created such interest and controversy as to cause the

author to study the matter in detail. It is not the purpose of this article, with the benefit permitted by the clarity of hindsight, to present a learned analysis of the legal principles involved nor to fix blame nor to criticize the Coast Guard, the Department of State, or any member thereof. Rather, the purpose of this article is to attempt to exclude all who read it from the last class of people listed by Chesterfield and to place them squarely in the wise and happy classes of people who learn from their own experiences and the experiences of others. Hopefully, the readers will analyze the reported facts and events and make their own judgments concerning fault and blame, if any, after carefully considering the many significant aspects of the case. Command and control, the decisionmaking process,

international law and politics, principles of military leadership, and concern for humanity are but a few of these aspects.

Although no formal conclusions as to fault or blame are drawn by the author, some recommendations are proposed to serve as guidelines for a U.S. commander who is confronted by a similar situation in the future.

The facts and events as reported herein are based upon a memorandum prepared for the President of the United States,<sup>2</sup> reports of official investigations by the U.S. Coast Guard<sup>3</sup> and the Department of State,<sup>4</sup> congressional hearings before a subcommittee of the Committee on Foreign Affairs of the House of Representatives and the subcommittee's report thereon,<sup>5</sup> and the author's personal interview of some of the participants and eyewitnesses.<sup>6</sup> Much of the material contained in the official investigation by the U.S. Coast Guard has been incorporated in this article in *hoc verba* in summarizing the events which occurred in the *Vigilant*, at the First Coast Guard District Headquarters in Boston, and at Coast Guard Headquarters in Washington. The material so used remains unrebutted after independent investigation by the author. A chronology of events is contained in appendix I.

**The Rendezvous, Conference, Overtures of Defection, and Search for Advice.** An offshore meeting between representatives of the New Bedford, Mass. fishermen, the National Marine Fisheries Service of the Department of Commerce, and the Soviet fishing fleet operating off the New England coast was arranged through appropriate diplomatic and other official channels. The purpose of the meeting was to disperse the allegation of the New Bedford fishermen that the Soviet fishermen were taking too many yellowtail flounder and that there should be some restriction of fishing for such species. The Soviet fishermen had denied any

overfishing. Similar meetings with Soviet fishing fleets had been held in recent years off both the Atlantic and Pacific coasts. The U.S. Coast Guard cutter *Vigilant* (WMEC-617) was duly designated by the Commander, First Coast Guard District, Boston, Mass., to provide transportation for the U.S. delegation. The *Vigilant* is a medium endurance cutter, 210 feet in length, with a complement of 10 officers and 61 crewmen.

The U.S. delegation consisted of both civilian and Government officials. The fishermen were represented by Mr. Robert M. Bricze, president of the New Bedford Seafood Producers' Association; Mr. John Burt, the port agent for the New Bedford Fishermen's Union; and Mr. R.W. Nickerson, the resident director for the Seafood Association of New Bedford. The Assistant Regional Director, National Marine Fisheries Service, Department of Commerce, Mr. William C. Gordon, represented the United States. The delegation was accompanied by an interpreter, Mr. Alexis Obolensky from the National Marine Fisheries Service, Department of Commerce. In addition, Lt. Leo Morehouse from the Law Enforcement Division, Office of Operations, U.S. Coast Guard Headquarters in Washington, attended as an observer.

The U.S. delegation boarded the *Vigilant* at 8 a.m. on Monday, 23 November 1970. The ship got underway at 8:49 a.m. and at 10:30 a.m. came alongside and moored port side to the Soviet vessel *Sovietskaya Litva* which had anchored within the 3-mile limit, that is, within the territorial waters of the United States. The point of rendezvous was about 1 mile off Martha's Vineyard, Mass. The *Sovietskaya Litva* is a factory ship, a mother ship, approximately 500 feet in length, displacing about 14,000 tons, with a crew of about 150 men and 35 women. The Soviets prepared a guard boom rigged from the *Sovietskaya Litva*,

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constructed of wires and secured to a net with an old truck tire at the bottom. This wire, net, and tire device, suspended from the boom by a cable, was used to transfer personnel between the two ships.

The U.S. delegation, together with Comdr. Ralph W. Eustis, the Commanding Officer of the *Vigilant*, boarded the Soviet vessel for the conference. They had a brief luncheon in the Soviet Fishing Fleet Commander's cabin before proceeding to a conference room to begin talks. After holding discussions for an hour or more, the group from the *Vigilant* was given a tour of the Soviet ship and returned to the conference room for more food, cognac, and talk. The Soviet conferees included the commanders of Lithuanian, Zapryba, Kalivingrad, and Latvian fishing fleets operating in the Atlantic Ocean off New England; the Chief Inspector for Safety of Navigation; the Chief Technologist; the Chief Master Catcher of the Zapryba Fleet; the Captain and the First Mate of the *Sovietskaya Litva*. Some of the Soviets appeared to be political and military officials rather than usual crewmembers. No armament was visible on the Soviet ship. Mr. Brieze, the president of the New Bedford Seafood Producers Association (a 1944 refugee from Latvia) speaks Latvian and was able to engage four Latvians on the Soviet ship in conversation. It appeared to the U.S. delegation that the talks were proceeding in a relatively successful manner.

While the conferees were taking care of the business at hand, some of the *Vigilant* and *Sovietskaya Litva* personnel were standing near the rails of the two ships laughing, talking, and exchanging cigarettes and candy. Some *Vigilant* crewmembers jokingly suggested to their opposites that they should come aboard the *Vigilant*. The Soviet ship personnel responded by drawing their fingers across their necks.

It is not clear whether these gestures were in jest or otherwise. Some personnel from the *Vigilant*, officer and enlisted, visited the Soviet ship. Such personnel were permitted to view the ship's engineroom, medical facilities, mess deck, and movie theater. During one such visit, Ens. John F. Hughes from the *Vigilant* met a second mate from the Soviet ship who could understand some words of the English language.

Meanwhile, the first of several overtures by a single crewman from the Soviet ship indicating a desire to defect or to seek asylum was observed. At approximately 11:00 a.m., Lt. (jg.) Douglas A. Lundberg, the Operations Officer of the *Vigilant*, was on the port wing of the bridge when he noticed a crewman from the Soviet ship observing him closely from an upper deck about 8 feet across from him on the Soviet ship. This man was dressed in dark pants, sport shirt, and coat and was about 5 feet 6 inches tall, weighed about 140 pounds, and appeared to be very muscular. The man was later identified as Simas Ionovich Kudirka.

Kudirka made a comment which Lundberg thought suggested an intention to defect to the United States. Kudirka acted as if he did not desire to be detected by any of his shipmates. He looked over each of his shoulders and said, "gestapo, gestapo!"<sup>7</sup> Lieutenant Lundberg immediately notified the Executive Officer of the *Vigilant*, Lt. Comdr. Paul E. Pakos, of his encounter with Kudirka. The Commanding Officer of the *Vigilant*, Commander Eustis, was on board the *Sovietskaya Litva* at this time. Pakos assigned Lundberg to the forecandle and Lt. (jg.) Richard F. Burke, Jr., the Communications Officer, to the fantail of the *Vigilant* to watch for Kudirka. Pakos went to the port wing of the bridge and saw Kudirka, who stated in broken English, "I will go with you" and later, "I will check." Kudirka then left, returned a few

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minutes later, and stated, "Not too cold."<sup>8</sup> Pakos concluded that Kudirka was planning to jump into the water. By this time other members of the *Vigilant's* crew had noticed Kudirka and his apparent unusual interest in the *Vigilant*. Boatswain's Mate Third Class Richard P. Maresca saw Kudirka acting suspiciously near the rail of the Soviet ship. Ensign Hughes saw Kudirka, and the latter tried to communicate with him, but his words were not understood by Hughes.

In view of Kudirka's continued manifestations of interest in the *Vigilant*, Pakos concluded by 12 m. that Kudirka might attempt to defect to the United States at any moment. He decided to tell only the *Vigilant's* officers of Kudirka's possible defection. He instructed them not to encourage Kudirka and made sure that one of the ship's officers was always on the bridge in case Kudirka decided to communicate further with them. Lundberg was positioned on the port wing of the bridge. Pakos went below decks to draft a message to the First Coast Guard District in Boston. He decided to release the message and to attempt to get Commander Eustis back on board. The message was transmitted from the *Vigilant* at 12:43 p.m. (date time group 231743Z because the *Vigilant* was in time zone plus 5, therefore, all message communications traffic identified in Zulu time is 5 hours in advance of eastern standard time), the text of which follows:

A, MY 231558Z NOV 70

1. SITUATION: ALONGSIDE SOVIET MOTHER SHIP AS PER REF A. ESTIMATE 80 PERCENT PROBABILITY THAT ONE CREWMAN FROM SOVIET MOTHER SHIP WILL ATTEMPT DEFECTION TO VIGILANT. DEFECTION WAS NOT ENTICED. CREWMAN SPOKE IN BROKEN ENGLISH TO

OPERATIONS OFFICER THAT HE WISHED ASYLUM. SAME MAN LATER INDICATED TO EXEC OFF THAT WATER NOT TOO COLD AND THAT HE WOULD SWIM. CO AND OTHER VISITORS STILL ABOARD AND UNAWARE OF SITUATION. WILL ATTEMPT TO ADVISE CO.

2. IF ESCAPE IS UNDETECTED PLAN TO RECALL ENTIRE DELEGATION UNDER FALSE PRETENSE AND DEPART. IF ESCAPE DETECTED FORESEE MAJOR PROBLEMS IF DELEGATION STILL ABOARD. REQ. ADVICE.

3. PLAN NO ACTION PENDING FURTHER DEVELOPMENTS.<sup>9</sup>

This message arrived at the headquarters of the Commander, First Coast Guard District at 12:49 p.m. Capt. Fletcher W. Brown, Jr., usually the Chief of Staff, was Acting District Commander. He had been so acting since 3 November 1970 when Rear Adm. William B. Ellis, the regular District Commander had gone on sick leave. When the message from the *Vigilant* was received, Captain Brown was out of the headquarters having lunch. He returned to his office at 1:07 p.m. at which time his secretary informed him of the *Vigilant's* message. He went to the Communications Center, read the message, and directed that it be sent to the Commandant of the Coast Guard. The message was received at Coast Guard Headquarters at 1:28 p.m. As Captain Brown was leaving the Communications Center, he saw Comdr. Jerome V. Flanagan, the District Legal Officer, showed him the message, and asked for his advice. Flanagan stated that should the man defect, he should be turned over to the State Department or Immigration Service.

Captain Brown returned to his office at or about 1:18 p.m. and telephoned Rear Adm. Robert E. Hammond, Chief,

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Office of Operations, at Coast Guard Headquarters in Washington. Brown indicated that he desired help on a problem, told Hammond about the message from the *Vigilant* and that it had been readdressed to Coast Guard Headquarters and that the ships were about a mile from Martha's Vineyard within territorial waters. They discussed the issues raised by the *Vigilant's* message as they saw them and both concluded that the main issue was how forcefully the personnel of the *Vigilant* could compete with the personnel of the *Sovietskaya Litva* in retrieving the defector in the event he jumped into the water. They did not discuss possible courses of action to be taken in the event the person seeking asylum or defection actually came into Coast Guard hands by jumping from the Soviet ship to the *Vigilant* or otherwise. Hammond indicated he would seek guidance from the Department of State. At the completion of this telephone conversation, Hammond summoned Capt. Wallace C. Dahlgren, Chief, Intelligence Division at Coast Guard Headquarters, and briefed him on the conversation with Brown and the *Vigilant's* message. Dahlgren was directed to contact the State Department for guidance on the problem of getting the defector out of the water. He was not asked to inquire as to U.S. policy with respect to defectors or persons seeking asylum. When the *Vigilant* message arrived at 1:28 p.m. Hammond took a copy thereof to the office of the Commandant of the Coast Guard and discussed the message and action being taken with respect thereto with Vice Adm. Thomas R. Sargent III, Assistant Commandant of the Coast Guard. He then returned to his office. He did not contact the office of the Chief Counsel for advice.

Captain Dahlgren returned to his office, after having received instructions from Rear Admiral Hammond, at about 1:30 p.m. and placed telephone call to

the Coast Guard Liaison Officer at the State Department. Shortly thereafter the *Vigilant's* message was sent to the State Department. After some delay and several referrals, Dahlgren was, at 2:45 p.m., able to telephonically communicate with Mr. Edward K. Killham, Officer in Charge, Bilateral Political Affairs, Office of Soviet Union Affairs, Department of State, who considered himself to be the proper person to give advice on the matter. Dahlgren informed Killham that it appeared a seaman from a Soviet ship would attempt to defect to a Coast Guard cutter, that the *Vigilant's* message had been sent to the State Department, and requested guidance. Mr. Killham stated that he would wait until he studied the message before he could comment on the situation. The message was received by him at 3 p.m. and at 3:15 p.m. he telephoned Dahlgren. Both of these gentlemen recall that the main topic of the conversation was the amount of force which could properly be used by Coast Guard personnel in competing with personnel of the Soviet ship in attempting to retrieve a man from the Soviet ship from the sea. Mr. Killham advised that the Coast Guard could exercise its traditional responsibility of search and rescue if the man was in the water.<sup>10</sup> It does not appear that Killham had been informed or was otherwise aware of the fact that the *Vigilant* and the *Sovietskaya Litva* were within the territorial waters of the United States. Neither Killham nor Dahlgren discussed the possible ways, other than being retrieved from the water, in which the defector could arrive aboard the Coast Guard ship. Killham saw three issues raised by the facts known to him: The possibility that the defection was not genuine and that it was a Soviet provocation attempt; the problem of the proper amount of force the Coast Guard could use to retrieve the man from the water; and, the problem of what to do if the defector

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got in the *Vigilant* while Americans remained on board the Soviet ship. He advised Dahlgren that the Coast Guard should do nothing to entice the defector, that until the defector was on board the *Vigilant* the State Department could offer no further advice, but that once the man was on board, the State Department should be notified.

Mr. Killham later indicated that he believes his advice to Captain Dahlgren did adequately cover the possibility of what could be done if the man attempted to defect by jumping from the Soviet ship into the water but that further information was needed before the State Department could render advice relative to the problem of what to do if the defector got in the *Vigilant* while all or a portion of the U.S. delegation or *Vigilant* personnel were still on board the Soviet ship. It was for this reason that he advised Dahlgren that the State Department could give no further advice until the defector was on board and the State Department so notified. Mr. Killham later indicated that he did not specifically advise Dahlgren that the Coast Guard should retain the defector until advice was received from the State Department but that he could not imagine anyone returning a defector without first obtaining such advice.<sup>11</sup>

As soon as Captain Brown had completed his telephonic conversation with Rear Admiral Hammond, he placed a call to Rear Admiral Ellis, the regular Commander, First Coast Guard District, who was home on convalescent leave. The time was 1:20 p.m. when Brown briefed Ellis relative to the *Vigilant* message and his conversation with Hammond. Ellis indicated concern regarding the possibility of a defection because the Soviet vessel had entered U.S. territorial waters by proper invitation and a defection could disrupt the talks of considerable interest to the fishing industry. He was also concerned when he was informed that U.S.

personnel were still on the Soviet ship. It was for these reasons that he told Brown, "If we get the defector, we should give him back."<sup>12</sup> After this conversation was completed, Brown turned to an officer on the staff and stated, "We are going to return the man."<sup>13</sup> The time was 1:30 p.m. Brown then went to the Communications Center where he drafted and sent his instructions in reply to the *Vigilant's* message. The text of such message follows:

- A. YOUR 231743Z NOV 70
1. TAKE NO DIRECT OR OVERT ACTION, HOWEVER BE PREPARED TO LAUNCH SMALL BOAT IMMEDIATELY.
  2. GET CDR EUSTIS BACK ABOARD USING ANY PRE-TEXT.
  3. COMDT NOTIFIED OF SITUATION.
  4. IF MAN GOES IN WATER GIVE USSR EVERY OPPORTUNITY TO RECOVER.<sup>14</sup>

This message was not received by the *Vigilant* until 3:36 p.m., about 2 hours after it was released with an operations immediate precedence.

Meanwhile, back in the *Vigilant*, Lieutenant Commander Pakos had already taken steps to notify Commander Eustis of the possible defection. At 12:45 p.m. he had sent a messenger to the Soviet vessel with two old search and rescue messages to deliver to Eustis as a stratagem to get him back aboard the *Vigilant*. Eustis returned to the *Vigilant* at 12:52 p.m. and was met by Pakos who said nothing about the possible defection until they had reached Eustis' captain's cabin. There Pakos told Eustis all the known facts concerning the possible defection and showed him the message he had earlier sent to the First Coast Guard District. Eustis concluded that even without encouragement from anyone in the

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*Vigilant* an attempt to defect was inevitable and that such attempt would most likely occur while the ships were unmooring at the conclusion of the talks. He decided that the best course of action was to continue the talks as if no indication of a possible defection had been noted. As a precaution, he instructed Pakos to ensure there was no encouragement given to the possible defector by any member of the *Vigilant's* crew. Eustis returned to the *Sovietskaya Litva* at about 1:45 p.m., and, while looking for the conference room, he met and was engaged in conversation by the Soviet First Mate, Smilir S. Grumaurker.

As all of the foregoing activity was taking place, Kudirka continued to attempt to communicate with Lieutenant Lundberg, by raising his eyebrows in an inquisitive manner, as if to query the propriety of the defection. Lundberg, in accordance with instructions received from Pakos, made no response and gave no signal to Kudirka. At about 2 p.m. Kudirka threw a package of Soviet cigarettes to Lundberg who was still standing on the port wing of the *Vigilant's* bridge. Lundberg felt a bulge in the cigarette pack, said "thank you," and smoked one of the cigarettes on the bridge in an effort not to arouse any Soviet suspicion. He then went into the pilot house, tore open the cigarette package, and found a handwritten note about 2 inches square with handwritten matter on both sides. One side read:

My dear Comrade I will up down of russians ship and go with you together. If it is a possible please give me signal. I keep a sharp lookout=Simas

The other side read:

I up down in the time when the conference is End, and your delegats [sic] go into your ships a

Lundberg passed this note to Pakos who immediately sent a messenger to the Soviet ship to recall Eustis to the *Vigilant* in the same manner as before. The messenger found Eustis still talking to the Soviet First Mate. The conversation was terminated, and Eustis returned to his ship where he was shown Kudirka's note. He prepared and released, at 2:23 p.m., a message (date time group 231923Z) to the First Coast Guard District, the text of which follows:

A. MY 231743Z NOV 70  
 1. VIG CO AWARE OF SITUATION.  
 2. NOTE FROM SOVIET CREW MEMBER OF SOVEFTAUA [SIC] LITVA INDICATES ESCAPE ATTEMPT PLANNED WHEN VIGILANT IS READY TO DEPART.  
 3. REQUEST GAY HEAD CG HAVE SUITABLE BOAT STANDING BY OUTSIDE JETTY COMMENCING 231530Q. BOAT SHOULD BE INSTRUCTED TO REMAIN FAR AWAY FROM VIGILANT UNTIL VIGILANT HAD DEPARTED SOVIET VESSEL. AT THAT TIME BOAT SHOULD PROCEED TO VIGILANT FOR INSTRUCTIONS AND BE PREPARED TO PICKUP MAN IN WATER.<sup>16</sup>

Due to communications difficulties or failures, the above message, with an operations immediate precedence, was not received by the First Coast Guard District until 6:38 p.m. the same day. After he released the foregoing message, Eustis went to the bridge of the *Vigilant* where he observed Kudirka who spoke to him indicating that he might try to swim to the *Vigilant*. Eustis showed no indication of understanding or encouragement to Kudirka. Eustis departed the bridge and returned to the



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Soviet vessel at 2:45 p.m. He entered the conference room where the talks were being held and quietly informed Mr. Gordon, the National Marine Fisheries Service representative, of the possible defection. He suggested that they try to conclude the conference as soon as possible. By the time all conversations and farewell toasts were completed, the time was approaching 4 p.m. The unmooring was not immediate, however, because the Soviet Fleet Commander had earlier expressed a desire to visit the *Vigilant*. Eustis felt obliged to invite a group of about a dozen Soviet officers aboard the *Vigilant*. They remained on board a few minutes and began departing shortly after 4 p.m. in groups of three or four inasmuch as the transfer net would not comfortably hold more. Eustis stopped by his cabin on the way to the bridge to make preparations for unmooring and getting underway.

Back in Boston, Captain Brown had gathered Capt. William E. Murphy, Comdr. John F. Curry, and Comdr. Jerome V. Flanagan, the Acting Chief of the Operations Division, the Chief, Intelligence and Law Enforcement Branch, and the District Legal Officer, respectively, in his office for a conference. They discussed the prospective defection in general terms and specifically discussed what to do if the defector got into the water or if he somehow got in the *Vigilant*. They talked about cases of defection and asylum they had read or heard about in the past. The consensus was that a final decision on the issue of returning the defector to the Soviet ship should be based upon guidance from the Commandant of the Coast Guard and/or the State Department. Flanagan reiterated his view that if the defector got aboard the *Vigilant*, the Coast Guard should keep him on board, take him to Boston, and turn him over to the State Department or Immigration Service. The conference terminated shortly

before 3:30 p.m. at which time Brown telephoned Rear Admiral Ellis at his home. He told him that he had heard nothing further from the *Vigilant* (as noted above, the *Vigilant* message advising him of Kudirka's note was released at 2:23 p.m. but was not received at the District Headquarters until 6:38 p.m.), and he had received no guidance from Coast Guard Headquarters in Washington. He then informed Ellis of the consensus of the opinion of his staff officers with whom he had just finished conferring. Ellis stated that his mind was not changed by such consensus of opinion of the staff officers because there were no known new facts.<sup>17</sup>

Captain Dahlgren telephoned Captain Brown in Boston at 3:45 p.m., related the advice Mr. Killham had given and that the State Department had requested to be notified when the man was on board the *Vigilant*. Shortly thereafter, Captain Dahlgren returned to Rear Admiral Hammond's office and briefed him on what had occurred since their last meeting.

Captain Brown telephoned Rear Admiral Hammond in Washington at 4:12 p.m. and stated that he had not received any further information from the *Vigilant*. The two men discussed the nature of the advice received from the State Department. Hammond told Brown to call Coast Guard Headquarters when the defector was on board the *Vigilant*. There was no discussion regarding return of the defector to the Soviets. Brown asked whether he should catch his regular commuter service to his residence. Hammond told him that there did not appear to be any reason why he should not go home. Captain Dahlgren was in Hammond's office and was also on the telephone with Brown and Hammond during the foregoing conversation.

Lt. (jg.) Wayne D. Tritbough, the duty officer in Coast Guard Headquarters Flag Plot, was briefed in Rear

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Admiral Hammond's office on this matter. If there was a defection he was to be advised by someone from the First District in Boston and he was to pass such information to the State Department. Trilbough had the impression that once the defector was in the *Vigilant* the State Department would determine what further action was to be taken. He recalls having heard nothing said concerning returning the defector to the Soviets.

At approximately 4:30 p.m. Captain Dahlgren telephoned Mr. Killham at the State Department and told him that no further information regarding the defection had been received from the First Coast Guard District. He advised Killham that the Coast Guard Flag Plot duty officer would keep the State Department informed if anything further developed. Thereafter, Killham briefed his assistant, Mr. Edward A. Mainland, Desk Officer, Bilateral Section, Office of Soviet Affairs, Department of State, who was the Soviet Desk duty officer for that evening. Neither Killham nor Mainland briefed the State Department Operations Center watch officer regarding this matter.

In Boston, Captain Brown left his office at 4:30 p.m. without further discussing the matter with his staff. Brown did not assign anyone on his staff, and no one assumed, responsibility with respect to this case. Captain Murphy and Commander Curry did, however, call the First District Headquarters later in the evening for briefings on the status of the matter.

### The Defection and Resulting Action.

Meanwhile, back in the *Vigilant*, evening colors were held at 4:08 p.m., and it was dark within a few minutes thereafter. At 4:15 p.m. only three of the Soviet officers who had been invited aboard remained on the *Vigilant*. Lieutenant Commander Pakos was on the port wing of the bridge. He noticed Kudirka was standing opposite him on

the Soviet ship. Kudirka looked down at the forecandle as if to ask whether that would be a good place to come aboard the *Vigilant*. Pakos was, however, looking down toward the boat deck. Kudirka stared at Pakos. Pakos shrugged his shoulders. Kudirka disappeared from Pakos' view. A few minutes later, at about 4:20 p.m., Kudirka surprised Pakos as he appeared on the bridge of the *Vigilant*. He had apparently jumped from the Soviet ship to a lower deck level of the *Vigilant*. Kudirka embraced Pakos and called him "comrade."<sup>18</sup> Kudirka seemed to be very happy. Pakos quickly removed Kudirka from the bridge and had him taken to the watchstander's head. Pakos assigned Lt. (jg.) Richard E. Burke, Jr., to guard the defector but had Burke relieved by a crewmember a few minutes later. Commander Eustis was still in his cabin when Pakos arrived and reported that the defector was aboard the *Vigilant*.

Commander Eustis concluded that he would have a problem if the Soviets had observed or were aware of the defection. He went to the bridge and there observed three Soviet officers still standing on the *Vigilant*'s flight deck but making no effort to return to their ship. Eustis returned to his cabin. He was not aware of the specifics of U.S. policy regarding political asylum but had heard of other defections, and he thought Kudirka would be granted asylum. He did not consider returning Kudirka to the Soviets. Lieutenant Morehouse, the observer from Coast Guard Headquarters, entered Eustis' cabin and was informed of the defection. Eustis asked his advice to which Morehouse replied that Washington should be advised. The two officers went to the bridge to contact the First Coast Guard District and report the fact that the defector was on board the *Vigilant*. Lieutenant Lundberg was interviewing Kudirka about this time. He was the first of the *Vigilant*'s officers to do so.

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Commander Eustis called the First District Headquarters, requested a telephone patch with either Captain Brown or Commander Curry, and was informed that neither one of them was available as they were en route to their homes. He then called Rear Admiral Ellis at 5:15 p.m. Eustis told Ellis that the defector was aboard but the Soviets had not yet asked for his return. Ellis replied,

In view of the nature of present arrangements with them and in the interest of not fouling up any of our arrangements as far as the fishing situation is concerned, I think they should know this and if they choose to do nothing, keep him on board, otherwise put him back.<sup>19</sup>

Eustis acknowledged these instructions and commented that if the defector jumped overboard from the Soviet ship after having been returned and as the *Vigilant* departed, he would attempt to pick him up. Ellis replied that, in that event, the Soviets should have the first opportunity to pick him up and at the same time he cautioned Eustis to make sure the *Vigilant* did not preempt the Soviets in taking that action. Eustis then stated that the *Vigilant* would get underway shortly and he would keep the District advised of the situation as it progressed.<sup>20</sup>

At the conclusion of the telephone patch, Rear Admiral Ellis told Lt. Kenneth N. Ryan, the duty officer at the Rescue Coordination Center, District Headquarters, to contact Captain Brown and inform him of the conversation with Commander Eustis. Ellis stated he realized that he had interjected himself between Brown and Eustis.

Back in the *Vigilant* the time was 5:20 p.m. and Lieutenant Morehouse had gone to Commander Eustis' cabin and found four Soviets there, including

Fleet Comdr. Ivan A. Burkal, Commander of the Lithuanian Fleet, and the Soviet interpreter, Genrikar K. Baltunar. Mr. Gordon and Mr. Obolensky were also present. The Soviets just sat quietly without making any conversation. No one said anything about Kudirka.

After talking to Rear Admiral Ellis, Commander Eustis went to see Kudirka. He spoke with him for a period in excess of one-half hour, during which time Kudirka stated he was married and his home was Klaipeda, Lithuania, a Baltic port city. Eustis was convinced that Kudirka was sincere in his desire not to return to the Soviet ship.

At 5:40 p.m. the *Vigilant* called the Coast Guard Group, Woods Hole, Mass., and requested a small craft to rendezvous with them for reasons of "utmost political importance."<sup>21</sup> At 5:44 p.m. the Woods Hole Group called Lieutenant Ryan, the duty officer at the Rescue Coordination Center, District Headquarters, to determine the reason for the request. Ryan told them to have a "44 footer" stand by to assist the *Vigilant*.

The Soviet officers aboard the *Vigilant* indicated to Mr. Obolensky, at about 5:45 p.m., that they knew a crewman from their ship was aboard the *Vigilant*. Mr. Obolensky mentioned this to Lieutenant Morehouse who was also in Commander Eustis' cabin. Morehouse left the cabin, located Eustis, and told him the Soviets knew the defector was on board the *Vigilant*. They discussed several courses of action relative to keeping Kudirka secure and out of sight. Eustis was reluctant to go below to his cabin as he anticipated possible Soviet demands for the defector's return. The Soviets, however, made no effort to approach Eustis for this purpose.

Lieutenant Ryan telephoned Captain Brown's residence at 5:47 p.m. in order to inform him of the earlier conversation at 5:15 p.m. between Rear Admiral Ellis and Commander Eustis. Brown had

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not as yet arrived home, but upon his arrival at about 6 p.m. he immediately called Ryan. Brown was told of the conversation between Ellis and Eustis and the instructions issued by Ellis. Ryan also told Brown of the *Vigilant's* request for the small craft from Woods Hole. Brown commented to Ryan that the preferred course of action might be to keep the defector in the *Vigilant* and take him to New Bedford. He then directed Ryan to notify Flag Plot at Coast Guard Headquarters that the defector was aboard the *Vigilant*. They decided, however, that they should first contact the *Vigilant* to ascertain if the defector was still on board. At 6:11 p.m. Ryan reached the *Vigilant* by means of a telephone patch. Eustis left the watchstander's head, where he was talking to Kudirka, to take the call. He told Ryan the defector was still on board, that Kudirka was in fear of his life, and that Kudirka had indicated that regardless of what the Coast Guard did, he would go over the side and hope for the best. Eustis requested a telephone patch be made with Brown.

The telephone patch with Brown was completed at about 6:15 p.m. Eustis told Brown that the defector and four other Soviets were aboard the *Vigilant*, that the defector was sincere in his intent to defect, and of the defector's comments regarding going over the side. He also told Brown that the Soviets knew the defector was on board the *Vigilant*, but that he thought the Soviets on board the *Vigilant* would leave if so requested. Brown, at this time, stated, "This is a situation which is going to have to be resolved by the State Department."<sup>22</sup> He instructed Eustis to request the Soviets to return to their ship. This conversation concluded with a comment by Brown that he was going to call Rear Admiral Ellis. Brown instructed Lieutenant Ryan to wait before calling Flag Plot at Coast Guard Headquarters. The time was 6:38 p.m.

Captain Brown called Rear Admiral

Ellis immediately after the foregoing conversation was terminated, apologized for interrupting his dinner, told him he had just talked with Commander Eustis and what the latter had said. Brown also told Ellis that he had instructed Eustis to keep the defector in seclusion and to ask the Soviets on board the *Vigilant* to leave in order to give the First District time to contact the Commandant of the Coast Guard for further advice. He informed Ellis that the only advice he had received from the Commandant up to that time concerned what to do in the event the defector jumped in the water. He did not tell Ellis that the Commandant wanted to be kept advised of developments in the case. Ellis told Brown that the *Vigilant* should not return the man without a request from the Soviets, but if they did make such a request the defector should be returned to them.<sup>23</sup>

Captain Brown made a telephone patch with the *Vigilant* at 6:45 p.m. and talked with Lieutenant Commander Pakos initially and later Commander Eustis. Pakos told him that Eustis was in the process of asking the Soviets to return to their ship. Brown wanted to know whether the Soviets had been asked if they desired the defector's return. He told Pakos that if the Soviets had requested the defector's return, the man was to be returned to the Soviet vessel. Pakos told him that he would pass these instructions to Eustis and would call him right back. The time was 6:47 p.m. As Brown waited for the return call, he telephoned Rear Admiral Ellis at 6:48 p.m. and reported Commander Eustis' earlier statement regarding the possibility that the defector would go over the side of the Soviet ship if he was returned. The decision to return the defector, if so requested by the Soviets, was not altered by this bit of information. At 6:54 p.m. Eustis talked to Brown, acknowledged that Pakos had passed the instructions to him, stated that the Soviets had not

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made a formal request for the defector's return, and expressed the opinion that if the defector was returned to the Soviets his life would probably be in jeopardy. At that point Brown directed Eustis to get a positive answer from the master of the Soviet vessel as to whether he wanted the defector returned to the Soviet ship. Brown again stated that if the Soviets wanted the defector back he would be returned to the Soviet vessel. At this point Eustis indicated that Mr. Gordon, the representative of the National Marine Fisheries Service, Department of Commerce, was standing by to offer his informed opinion on the matter, but Brown stated the fisheries agent had no responsibility in the case of the defector. Eustis stated that he anticipated the Soviets would make a request for the defector's return and again commented that Kudirka said he would make an attempt to jump into the water once he was back aboard the Soviet ship.

Commander Eustis was ordered by Captain Brown to take all necessary precautions to prevent an incident from occurring, particularly during the transfer of the defector from the *Vigilant* to the *Sovietskaya Litva*. Brown emphasized during this conversation that there must be a formal request from the Soviet master of the defector's ship before the defector could be returned. The conversation was terminated at 7:28 p.m.

At 7:30 p.m. Captain Brown telephoned Rear Admiral Ellis and informed him of Commander Eustis' concern for Kudirka's safety and his opinion that Kudirka's life would be in jeopardy if he was returned to the Soviets. To this Ellis responded, "I don't think we have any reason to believe that this would happen. They are not barbarians."<sup>24</sup> Ellis concluded that the information regarding Eustis' concern for Kudirka's well-being did not change the situation so as to affect his earlier decision to return Kudirka to the

Soviets. This telephone call concluded Ellis' involvement in the case for 23 November 1970. He neither received nor made any additional calls concerning the matter that date.

At 8 p.m. the Soviets presented a written document which requested Kudirka's return. The document was addressed to the Leader of the United States Delegation as well as the Captain of the *Vigilant* and was signed by the Captain of the *Sovietskaya Litva*, Vladimir M. Popov. The text of the request follows:

During our meeting on November 23, 1970, the radio operator KUDIRKA penetrated into my stateroom, forced the safe, took money from the safe in the amount of 3,000 rubles jumped over the fender and hid on your vessel. Request you conduct a search and return him to my vessel. I lodge a maritime protest on this matter.<sup>25</sup>

Commander Eustis considered the above written request to satisfy Captain Brown's requirement of a "formal request."

At 8:04 p.m. Mr. Gordon placed a telephone patch to someone he knew in the State Department but could not locate him. Mr. Obolensky and Mr. Gordon suggested that Commander Eustis carry Kudirka back to the U.S. mainland and require the Soviets to seek his return to them through diplomatic channels. Lieutenant Morehouse advised Eustis that the State Department should be contacted.

Commander Eustis called Captain Brown at 8:19 p.m., via telephone patch, informed him that he had the written request for Kudirka's return, that he intended to return the defector to the Soviet vessel, that the *Vigilant* would escort the Soviet vessel from the territorial waters of the United States, that should the defector jump into the

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water after having been returned to the *Sovietskaya Litva* the *Vigilant* would stand clear and make no attempt to rescue him unless his safety or life was in jeopardy. Such plan of action was consistent with the instructions of Rear Admiral Ellis as given in the 5:15 p.m. conversation and with those in Captain Brown's conversation at 6:45 p.m. Brown told Eustis to proceed in accordance with his total message.

Commander Eustis informed the Soviets that Kudirka would be returned to the Soviet ship. He then went to visit Kudirka and asked him to voluntarily return to the Soviet ship. After some conversation, Eustis thought he had convinced Kudirka to voluntarily return because Kudirka went with him from the watchstander's head to the commanding officer's cabin. Upon arrival at such cabin, Kudirka saw Fleet Commander Burkal, stopped, cried "no, no," turned, and ran away from the cabin.<sup>26</sup> Eustis followed him, conversed with him again, but was unable to persuade him to return to the Soviet ship. Finally, at about 9 p.m., Eustis told the Soviet officials still on board the *Vigilant* they could take Kudirka back with them. At that time the Soviet officers went to talk with Kudirka. Fleet Commander Burkal spoke with him. The conversation was heated, and Kudirka vehemently insisted that he would not return to the Soviet ship under any circumstances. At 9:30 p.m. the Soviets had also been unable to persuade Kudirka to voluntarily return to the Soviet ship. They were reluctant, however, to use force. They requested Eustis to use his crewmen to return the defector to the *Sovietskaya Litva*. Eustis' refusal of such request resulted in a Soviet request that a telephone call be placed for them to the Soviet Embassy in Washington. Eustis asked his radioman whether such a call could be made. Thinking he desired the line, the radioman placed the call at 9:45 p.m.

The telephone patch between the

*Vigilant* and the Soviet Embassy remained open for approximately 5 minutes, but no communication was passed. Eustis later indicated that he did not want the Soviets calling their Embassy from his ship until the Coast Guard and the State Department had been notified of their desire to do so.

Back in Boston, immediately after the 8:19 p.m. telephone conversation between Captain Brown and Commander Eustis, Lieutenant Ryan, who had been listening to that conversation, suggested to Brown that Coast Guard Headquarters be contacted concerning the case. Brown concurred. At 8:24 p.m. Ryan called Flag Plot at Coast Guard Headquarters and talked with Lieutenant Tritbough. He reported that the defector had gotten aboard the *Vigilant* and had asked to remain but was being returned at the request of the Soviet master and that the defector was being returned in the custody of Soviet officials. Ryan also indicated that the defector did not desire to go back to the Soviet ship, and it was anticipated that he would jump overboard therefrom if he had the chance. He informed Tritbough that the *Vigilant* was alerted to this possibility.

Lieutenant Tritbough had been briefed on this matter earlier in the day and had expected the telephone call from Ryan. He logged the telephone call in the Flag Plot Log at 8:30 p.m. He had taken notes of what he considered to be the important points of the conversation in order to telephonically brief Rear Admiral Hammond, the Chief of Staff, the Assistant Commandant, and the Commandant of the Coast Guard. All the foregoing telephone calls were made within 15 minutes after the telephone call was received from Boston. After receiving the call from Tritbough, Hammond concluded that the information Tritbough was passing meant that the return of the defector was in the process of taking place, or had already taken place by that time,

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and the case was closed. In fact, however, the return of the defector did not take place until more than 3 hours later, as will be subsequently reported in this article. Hammond also concluded that the defector had voluntarily returned to the Soviet ship. This conclusion was also erroneous.

Lieutenant Tritbough telephoned the State Department Operations Center at 8:45 p.m. and talked with Mr. Kevin J. McGuire, the assistant watch officer. Neither the senior nor the assistant watch officer at the Operations Center had received any specific instructions concerning this case, but a copy of the *Vigilant's* 12:43 p.m. message was posted on the Operations Center reading board. Although there were tape recorders present in both the Flag Plot duty office and the State Department Operations Center, neither of these machines were functioning. There is no transcript or recording of the conversation between Tritbough and McGuire. This is unfortunate because the evidence is in dispute as to what was said concerning certain matters. Lieutenant Tritbough claims to have used his notes to relate the substance of the message he had received from Lieutenant Ryan in Boston to McGuire. He states that he said the defector "is being returned" and that the *Vigilant* would escort the Soviet ship to international waters. He further states that he used no words which, in his opinion, suggested that the matter had been finally resolved.<sup>27</sup> Tritbough requested that his report be passed to the Soviet Desk within the State Department. McGuire, on the other hand, states that Tritbough told him the case had been resolved. As earlier noted, Lieutenant Tritbough denies using any words which suggested the matter had been finally resolved. Mr. McGuire also claims that he read a summary of their conversation to Lieutenant Trithough and the latter approved it before the conversation ended. Lieutenant Tritbough does not

recall any such reading or giving his approval of any such summary.<sup>28</sup>

Mr. McGuire, at the suggestion of the senior watch officer, notified the European Area duty officer that evening and Mr. Mainland, the Soviet Desk duty officer. Mainland telephoned Flag Plot at Coast Guard Headquarters, awakened Lieutenant Trithough at 11:30 p.m., and asked if there were any new developments in the case. Trithough informed Mainland that he had received no new information since his last report to the State Department, but a situation report was expected the next morning.

As the foregoing activity was taking place in Washington, the problems in the *Vigilant* had not subsided. Commander Eustis and Lieutenant Commander Pakos discussed the situation, and Pakos had drafted a message which he proposed be sent to the First District and an information copy be sent to the Commandant of the Coast Guard. The message recommended that the *Vigilant* depart the Soviet vessel with the defector on board and that the State Department decide what to do with him as an alternative to the instructions issued to the *Vigilant* thus far in the case. Eustis decided not to use the message because he considered that sending an information copy to the Commandant would not be following the chain of command. He assumed that Coast Guard Headquarters had been kept properly informed. Instead of sending the message, its important points were summarized as a note for Eustis to refer to in a telephone conversation with Captain Brown. The three important points of the note were that the Soviets were reluctant to use their own men to forcibly return the defector to the Soviet ship, that the Soviets desired to consult with their Embassy in Washington, and that Eustis recommended an alternate solution of the problem by retaining Kudirka on board the *Vigilant* and requiring the Soviets to request his return through

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diplomatic channels. Eustis called Brown at 10:14 p.m. advised him that the situation aboard the *Vigilant* was tense, and that force would be necessary to return the defector to the Soviet ship. Eustis does not recall whether he communicated all three of the above enumerated points to Brown because during the conversation Brown said, "You have your orders. You have no discretion. Use whatever force is necessary. Do not let an incident occur."<sup>29</sup> Brown's attitude was formal and firm at the time. Eustis concluded that he had received a direct order and that he must comply therewith.

**The Return.** After his last conversation with Captain Brown, Commander Eustis returned to his cabin and reluctantly told the Soviets, "He's all yours."<sup>30</sup> The Soviets told Eustis they wanted to use six men to return Kudirka. Eustis suggested that the Soviets then present take Kudirka themselves, but they declined to do so. He then realized that they considered that it would not be proper for them as officers to struggle with one of their crew. For that reason, Eustis decided that they would be permitted to bring three crewmen aboard the *Vigilant* in order to return Kudirka to the Soviet ship. Eustis has later stated that he decided to permit the Soviets to come aboard the *Vigilant* to remove Kudirka for three reasons: He felt that adverse publicity could result from the use of Coast Guardsmen to forcibly return a defector to the Soviets; if the defector went overboard and was lost while Coast Guardsmen were attempting to return him, they might be accused of letting him escape; and, he was concerned with the possible effect personnel participation in the forcible return of the defector would have on the morale of his own crew.

Five Soviet crewmen were transferred to the *Vigilant* by means of the personnel net instead of three as

authorized by Eustis. These Soviet crewmen brought a blanket, rope, and a ball of material which appeared to be socks. A Soviet crewman indicated the ball of material was to be placed in the defector's mouth. One of the Soviet crewmen was the second mate with whom Ensign Hughes had been able to converse earlier in the day. At about 10:45 p.m. Eustis escorted the Soviets to Kudirka where he again talked with Kudirka and the Soviet Fleet Commander. Kudirka persisted in his refusal to return to the Soviet ship. He asked for a knife for the stated purpose of killing himself. The request was, of course, denied. Kudirka told Eustis he would fight anyone who tried to take him off the *Vigilant*. At this point, Eustis turned Kudirka over to the Soviets. Before starting to move to a lower deck of the ship with the Soviets, Kudirka removed his shirt, emptied his pockets, and gave all his personal possessions, including some notes, books, and papers, to Eustis. It is noted that none of the rubles which the Soviets alleged Kudirka had stolen were in his possession at this time.

The Soviet party started down to the lower decks with Kudirka. As they neared the captain's cabin, where the civilians in the U.S. delegation were located, Kudirka broke away and attempted to enter the cabin. He managed to open the cabin door before he was grabbed by the Soviets who tried to break the grip he had on the cabin doorknob. As this occurred, Mr. Brieze attempted to push the Soviets away from Kudirka, but Mr. Gordon informed him that there had been orders to return Kudirka and that they must not interfere. The Soviets then took Kudirka to the port boat deck. The time was about 10:50 p.m. Eustis returned to his cabin as mooring stations were piped, and the word was passed to prepare to get underway. Upon arrival on the port boat deck, Kudirka broke loose from the Soviet party hut was



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partially restrained by the Soviets underneath the port motor lifeboat where the struggle continued. Kudirka then broke loose, went over the side of the port boat deck, and personnel in the *Vigilant* thought he went overboard into the water between the two ships. Actually, however, he had swung down to the main deck. "Man overboard" was sounded throughout the *Vigilant*. While this action was taking place, a large number of Soviet crewmen had gathered at the rail of the Soviet ship. As they followed the struggle between the Soviets and Kudirka a few feet away on board the *Vigilant*, they screamed, yelled, and pointed, creating a substantial commotion. These crewmen on the *Sovietskaya Litva* had seen that Kudirka had not gone overboard, and they tried to point him out to his Soviet pursuers.

The time was about 11:00 p.m. The ships were moored about 3 feet apart. Thinking that the defector might be crushed between the ships and recognizing the potential for trouble in this tense situation, Eustis gave the order to unmoor the *Vigilant* and to get underway immediately. Inasmuch as the mooring lines were belayed or turned around cleats aboard the Soviet vessel, all but two lines were let go by their bitter or inboard ends. The two other lines were cut with axes. During the unmooring, Eustis was on the bridge and had control of the ship. In backing straight down and standing clear of the Soviet vessel, the yard boom net rigged from the Soviet ship knocked down the *Vigilant's* antennas, carried away the forward port life lines and a port running light, and damaged three or four stanchions.

As noted above, Kudirka did not go overboard as many thought when he broke away from the Soviets and went over the side of the port boat deck. He swung from the port boat deck to the main deck and ran aft on the port side onto the fantail of the *Vigilant*. Once on the fantail, he ran about as if he did not

know what to do or where to go. Two pursuing Soviets arrived on the fantail. When Kudirka saw them he attempted to climb over the starboard taffrail hut was grabbed by two Coast Guardsmen who acted spontaneously in order to prevent a person from going overboard. Within seconds the two pursuing Soviets took custody of Kudirka after having taken him away from the two men who prevented him from going overboard. Two more Soviets arrived and joined in the struggle to subdue Kudirka. As they dragged him toward the ladder leading up to the flight deck, Kudirka was trying very hard to escape from their grasps. He was carried up the ladder to the flight deck. In the process of doing so, one Soviet repeatedly struck Kudirka's head against the steel handrail of the ladder. Coast Guard crewmen on the fantail saw no blood or other visible signs of injury on Kudirka. The commotion on the fantail was not reported to the bridge by the crewman manning the mooring station sound-powered telephone.

Earlier when "Man overboard" was sounded, Ensign Hughes went to the port side of the flight deck to look for the man in the water. Subsequently he saw Kudirka being brought up the ladder from the fantail to the flight deck by the four Soviets. As the Soviets took Kudirka to the forward end of the flight deck, Hughes was able to stop one of the Soviets from beating Kudirka by talking to the Soviet second mate who understood some English and with whom he had talked earlier in the day. The second mate passed directions from Hughes to the rest of the Soviets attempting to control Kudirka. Hughes reported to the bridge that the Soviets were having difficulty restraining Kudirka. He returned to the flight deck, and upon his arrival he stopped the Soviets from beating Kudirka and tying him to a winch. The Soviets had tied a line around Kudirka's neck. Hughes returned to the bridge and reported that

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the Soviets appeared to be trying to seriously injure Kudirka. Lieutenant Commander Pakos directed him to prevent the Soviets from hurting the defector.

Hughes returned and moved the Soviets and Kudirka further forward on the flight deck. He received instructions from Pakos to take them to the mess deck. When the Soviets refused to go to the mess deck, Pakos ordered Hughes to take them to the helicopter shack on the forward end of the flight deck. The Soviets took Kudirka inside the helicopter shack as directed. Hughes stationed two Coast Guard gunners mates outside the area where the Soviets and Kudirka were located. Hughes departed briefly, and upon his return the Soviets were again roughing up Kudirka. Hughes was again able to stop the Soviets by talking to the second mate. As indicated, Hughes was able to stop the Soviet brutality several times, but whenever he was momentarily away from the Soviets they resumed mistreating Kudirka.<sup>31</sup>

Orders for the *Vigilant's* crew to lay below were passed via the ship's public address system. Hughes and the two gunners mates had kept the ship's crew off the flight deck, directing them not to get involved.

While Kudirka was in the helicopter shack, the Soviets wrapped him in the blanket and tied him up with the line they had brought with them from the Soviet ship. The Soviets attempted to put the blanket over his head, but he successfully resisted their efforts to do so. Kudirka had fought vigorously until he was completely bound, except for his head, in the blanket. Finally, at 11:15 p.m. the Soviets had Kudirka under control.

Commander Eustis then went to the boat deck where Kudirka had been taken, observed him bound in the blanket, and expressed to Kudirka his sympathy and personal concern. Al-

though Kudirka said nothing, Eustis thought he had been understood. Eustis has stated that he saw no indication that Kudirka had received physical injury at that time.<sup>32</sup> Eustis decided to use one of his small boats to return all the Soviets and Kudirka to the *Sovietskaya Litva*. He instructed Lieutenant Commander Pakos to contact Captain Brown in order to get his permission to do so.

Pakos reached Brown at 11:30 p.m., informed him of the situation, and requested permission to utilize the *Vigilant's* boat to return all the Soviets and Kudirka to the Soviet ship. After receiving assurance that the weather and sea were satisfactory, Brown authorized the use of the *Vigilant's* boat.

Ensign Hughes was in charge of the unarmed boat detail. At 11:40 p.m. two or three Soviets threw Kudirka, still bound in the blanket, a distance of 2 or 3 feet into the boat. He was face down in the bottom of the boat with one Soviet sitting on his head. The *Vigilant's* boat crew did not know whether Kudirka was conscious at this time. After all hands were in the boat, it was lowered into the water at 11:41 p.m. One Soviet struck Kudirka during the trip between the two ships. When the boat reached the Soviet ship, a net was lowered and the Soviets threw Kudirka into the net which was raised to the deck of the *Sovietskaya Litva*. From that time on it was not possible for the *Vigilant's* boat crew to observe what, if anything, was happening to Kudirka. After the rest of the Soviets hoarded their ship, the small boat crew retrieved the lines that were carried away by the Soviet ship when the *Vigilant* got underway. They also recovered the *Vigilant's* broken whip antenna. The small boat safely returned to the *Vigilant* at 11:55 p.m. The *Vigilant* escorted the Soviet vessel to international waters. At 1:05 a.m. on 24 November 1970, the *Vigilant* sent a message to the First Coast Guard

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District reporting the transfer of Kudirka had been accomplished at 11:55 p.m. Sometime after Kudirka was returned to the Soviet vessel, Commander Eustis indicated to the civilians aboard the *Vigilant* that he felt badly about what had happened and hoped the incident would soon be forgotten. The *Vigilant* returned to New Bedford at 3:30 a.m. on 24 November 1970.<sup>33</sup>

**Official and Public Reaction.** Television news programs reported the President of the United States was outraged when he learned of Kudirka's return to the Soviets. Secretary of State William P. Rogers was reported to have said, according to a United Press International report, that it was unbelievable to him that the commander of a Coast Guard vessel permitted Soviet crewmen of a fishing boat to board his ship and forcibly take off a Lithuanian defector.<sup>34</sup> Demonstrations to protest the denial of political asylum to Kudirka occurred in New York, Boston, Philadelphia, Cleveland, and Chicago.<sup>35</sup> A subcommittee of the Foreign Affairs Committee of the House of Representatives initiated a congressional investigation of the case and made periodic releases to the news media of news concerning its proceedings.<sup>36</sup> Both the Coast Guard and the State Department also initiated investigations of their own.

After receiving and reviewing the report of the Board of Investigation in the case, the Commandant of the Coast Guard approved the recommendation of the board concerning establishing better liaison with the State Department and initiation of a review of the communications difficulties experienced by the *Vigilant* and the First Coast Guard District to determine what changes, if any, may be necessary. With regard to the personnel aspects of the case, the Commandant reviewed the recommendations of the board and took action as indicated below:

Recommendation 1. That CAPT BROWN be awarded a General Court-Martial for trial on charges of Dereliction of Duty for his failure to inform the Commandant of the progress of the case and for his failure to retain the defector aboard the *Vigilant* until having advice from proper authority. . . .

Recommendation No. 1 is concurred in. In spite of the fact that CAPT BROWN should have exercised independently his authority as Acting District Commander, I am convinced that he was markedly influenced in his course of action by the forceful advice he had received from RADM ELLIS. There is little doubt that regardless of the results of a trial CAPT BROWN's performance during this entire incident has seriously impaired his effectiveness as a senior captain on active duty. For these reasons, if CAPT BROWN immediately submits a request for retirement, I shall accept it and not refer the charge for trial, but rather will issue a Punitive Letter of Reprimand under Article 15 of the Uniform Code of Military Justice.

Recommendation 2. That RADM ELLIS be issued a Punitive Letter of Reprimand from the Commandant for offering instruction or advice without having informed himself of the facts and policy necessary for a proper decision, all to the prejudice of good order and discipline in the service; that he be removed from command and asked to retire as soon as his health permits but not later than 31 January 1971; and that in the interim he be assigned to a position of minimal responsibilities.

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Recommendation No. 2 is not concurred in. It is true that RADM ELLIS disobeyed no orders; he was not, in fact, in the chain of command at the time of the incident. Nevertheless, he gave advice having the force of orders and adhered to his position firmly and even stubbornly in spite of the fact that he was informed that principal staff officers were not in agreement with his position and in spite of the fact that he knew that advice had been sought from the Commandant. His actions prompting the recommendation for a Punitive Letter of Reprimand were such as to make him no less responsible in the matter than CAPT BROWN. Accordingly, I direct the Board to embody the misconduct it found to exist in an appropriate charge or charges and specifications. I find such charges should be referred for trial by court-martial. In this instance however, as in the instance of CAPT BROWN, there is little doubt that regardless of the results of a trial, RADM ELLIS' performance during the incident has seriously impaired his effectiveness as a flag officer on active duty. For this reason, if RADM ELLIS immediately submits a request for retirement, I shall accept it and not refer the charge or charges for trial, but rather will issue a Punitive Letter of Reprimand under Article 15 of the Uniform Code of Military Justice.

Recommendation 3. That CDR EUSTIS be issued an Administrative Letter of Reprimand from the Commandant for allowing Soviet crewmembers aboard his vessel to remove a Soviet defector without exercising upon the (sic) proper restraints; and that he be

immediately reassigned from the *Vigilant*.

Recommendation 3 is concurred in to the extent that CDR EUSTIS be issued an Administrative Letter of Reprimand (non-punitive). I do not concur in the stated reason for the issuance of this letter. I recognize that CDR EUSTIS found himself in a difficult and trying situation. He had been told to use whatever force was necessary to return the defector to his vessel. It is apparent that he had become emotionally affected by the unhappy predicament in which the defector had been placed. While I can sympathize with his position, I cannot conceive of any commanding officer interpreting orders authorizing the use of necessary force so as to permit foreign nationals to exercise authority on board a Coast Guard vessel, whether or not proper restraints were imposed. CDR EUSTIS erred in allowing the Soviet vessel's crewmen to exercise any control of the defector while on board the *Vigilant*. His error in judgment reflects an inadequate understanding of the underlying principle of the sovereignty of a United States naval vessel. Although his reprimand is not to be punitive, I concur that he can no longer serve effectively as Commanding Officer of the *Vigilant* and must be transferred to other duty.<sup>37</sup>

The Commandant of the Coast Guard also noted in his action on the investigation of this case:

Although not mentioned in the opinions or recommendations, hindsight indicates that more

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aggressive actions on the part of Coast Guard Headquarters might have altered the prosecution of this incident. Specifically, Coast Guard Headquarters might well have insisted on more definite guidance from State Department.<sup>38</sup>

The Secretary of Transportation, John A. Volpe, reviewed this matter and stated:

I do not concur in the award of court-martial in the case of Rear Admiral William B. Ellis, USCG, and Captain Fletcher W. Brown, Jr., USCG. It is my considered view that no purpose would be served by subjecting either RADM Ellis or Captain Brown to a court-martial. There is no doubt that both of these officers now appreciate fully their serious error of judgment in this case. It is also clear that they have been subjected to most extreme castigation from many quarters in this nation. This, indeed, is a severe indictment for which both they and their families have already suffered.

For these reasons, you are directed to withdraw court-martial charges of any sort against RADM Ellis and Captain Brown. However, I do fully concur in the issuance of Punitive Letters of Reprimand to both officers. In taking this action, I have taken note of the fact that both officers are submitting requests for immediate retirement and that these requests will be accepted.

I approve of your action in the case of Commander Ralph W. Eustis, USCG.<sup>39</sup>

### Some Precedent, Current Policy, and

### Law Regarding Asylum. On 5 June

<https://digital-commons.usnwc.edu/nwc-review/vol24/iss5/3>

1894 the Commanding Officer of the U.S.S. *Bennington* permitted 17 persons who sought asylum as political refugees to board his ship while lying in the port of La Libertad in El Salvador. When the Commanding Officer was initially requested to grant the refugees asylum, he refused to do so. He later granted them asylum after he was assured that they would be summarily shot if they were caught by the forces of the revolution which had just seized control and proclaimed a provisional government of El Salvador. It was his expectation that the asylum on board the *Bennington* would last only a few days until the refugees could be transferred to a steamer bound for Panama. On the day the steamer arrived in port, however, the consul of the United States at El Salvador and two commissioners from the provisional government boarded the *Bennington*, and the latter requested the surrender of the refugees as common criminals. The Commanding Officer of the *Bennington* refused to surrender the refugees without orders from the Secretary of the Navy. The commissioners then appealed to him not to transfer the refugees to the steamer but to hold them until extradition could be demanded of the United States through proper channels. The Commanding Officer acceded to this request, subject to future instructions of the Secretary of the Navy. The conduct of the Commanding Officer of the *Bennington* on this occasion was characterized as eminently judicious and proper.<sup>40</sup>

President Cleveland is quoted, with reference to the Salvadorean refugees case, as stating:

The Government of Salvador having been overthrown by an abrupt popular outbreak, certain of its military and civil officers, while hotly pursued by infuriated insurgents, sought refuge on board the United States war ship *Bennington*, then lying in a Salva-

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dorean port. Although the practice of asylum is not favored by this Government, yet in view of the imminent peril which threatened the fugitives, and solely from considerations of humanity, they were afforded shelter by our naval commander, and when afterwards demanded under our treaty of extradition with Salvador for trial on charges of murder, arson, and robbery, I directed that such of them as had not voluntarily left the ship be conveyed to one of our nearest ports where a hearing could be had before a judicial officer in compliance with the terms of the treaty. On their arrival at San Francisco such a proceeding was promptly instituted before the United States district judge, who held that the acts constituting the alleged offenses were political, and discharged all the accused except one Cienfuegos, who was held for an attempt to murder. Thereupon I was constrained to direct his release, for the reason that an attempt to murder was not one of the crimes charged against him and upon which his surrender to the Salvadorean authorities had been demanded.<sup>41</sup>

One of the results of the Salvadorean refugees case was that the Secretary of the Navy issued a regulation substantially as it appears today in Navy Regulations.<sup>42</sup>

## 0621. Granting of Asylum.

The right of asylum for political or other refugees has no foundation in international law. In countries, however, where frequent insurrections occur, and constant instability of government exists, usage sanctions the granting of asylum; but even in waters of such countries, officers should

refuse all applications for asylum except when required by the interests of humanity in extreme or exceptional cases, such as the pursuit of a refugee by a mob. Officers shall neither directly nor indirectly invite refugees to accept asylum.<sup>43</sup>

On 23 November 1970, the date of the attempted defection by Kudirka, there was no similar Coast Guard regulation in force concerning asylum.

Subsequent to the issuance of the foregoing Navy Regulation before the turn of this century, other obligations to grant asylum have been assumed by the United States. The plaque inside the pedestal of the Statue of Liberty reflects U.S. policy and includes the following:

Give me your tired, your poor,  
Your huddled masses yearning  
to breathe free,  
The wretched refuse of your  
teeming shores,  
Send these, the homeless,  
tempest-tossed to me:  
I lift my lamp beside the  
golden door!<sup>44</sup>

On 11 December 1952 Mrs. Franklin D. Roosevelt, U.S. delegate to the Seventh Regular Session of the General Assembly of the United Nations, stated that the United States "... would never force a refugee to return to his country of origin against his will."<sup>45</sup> The U.S. Representative to the United Nations, Ambassador Adlai Stevenson, made the following statement on 20 April 1961 in the Political and Security Committee of the General Assembly of the United Nations:

So long as Americans remain a free people, just so long will they uphold the right of asylum as a fundamental human right. This will not change. Nor, I profoundly

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believe, will the pressure to be free stop. I do not deny that since the war the area of tyranny has widened in some parts of the world. In these areas people cannot protest their position publicly or make clear their profound desire for liberty. But it remains a fact that thousands upon thousands have registered their protest in the only way open to them. They have escaped.<sup>45</sup>

Article 14 of the Universal Declaration of Human Rights, adopted by the General Assembly of the United Nations at its Third Session, states that every person has a right to seek and to enjoy in other countries asylum from persecution.<sup>47</sup> A statement on U.S. refugee policy was made by Mr. Robert McCloskey, Department of State press spokesman, on 1 December 1970, as follows:

There has been no change in American policy regarding the admission of refugees into the United States. Since the end of World War II well over one million refugees from countries around the world have, within the scope of our laws, been admitted to the United States for permanent residence. That, in our judgment, is an impressive record. And I just wanted to make it clear that there has been no change in that policy.<sup>48</sup>

In addition to the above indications of an open arms policy for political asylum seekers, the United States is a signatory to the Protocol Relating to the Status of Refugees to which the Senate advised and consented on 4 October 1968, the President approved on 15 October 1968, and which became effective on 1 November 1968.<sup>49</sup> Article 33 of the Convention Relating to the Status of Refugees, which is

applicable to the United States through the Protocol Relating to the Status of Refugees, provides in paragraph 1 as follows:

### Prohibition of Expulsion or Return

1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

Article 1A (2) of the Convention, as modified by article I, paragraph 2 of the Protocol, defines a refugee as a

person who . . . owing to well founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable or, owing to such fear, is unwilling to avail himself of the protection of that country.

Finally, article 1F of the Convention states the provisions of the Convention shall not apply to any person with respect to whom there are serious reasons for considering that he has committed a serious nonpolitical crime outside the country of refuge prior to admission to that country as a refugee. The Soviets have frequently cited the foregoing provision and at the same time have falsely alleged that the refugee had committed some nonpolitical crime as a stratagem to cause the country of refuge to refuse to grant asylum to escapees. Accordingly, any such claim by the Soviets must be examined with care. Such an examination is a proper function of the Department of State as is indicated in the subsequent recommendations.

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**Resultant Effect of Incident on Certain Persons.** It has been ascertained by the author that Rear Admiral Ellis and Captain Brown received letters of reprimand and retired from active service in the Coast Guard on 31 January 1971 as contemplated by the Commandant of the Coast Guard. Commander Eustis received a non-punitive reprimand and has been transferred to new duties ashore. One Congressman is reported to have stated with regard to Eustis, "I don't think, the way the system works, his future in the Coast Guard is very rosy."<sup>50</sup> Kudirka is reported in good health, living in a new apartment in his home city of Klaipeda, Lithuania, and as yet has not been arrested by the Soviets for his attempted defection. The captain of the *Sovietskaya Litva*, Vladimir M. Popov, is reported to have been court-martialed and sent to a Soviet labor camp apparently for failing to prevent the attempted defection by Kudirka. The reported status of Kudirka may be a surprise to many readers. The Soviets have in the past, however, staged news conferences to denounce the West, using defectors who have returned or persons such as Kudirka whose attempt to defect was not successful. Some such persons have been arrested, tried, and punished after they have been used in such propaganda efforts. This may be the reason for Kudirka's reported freedom and new apartment. His fate may be determined after a propaganda effort in which the Soviets now seek his cooperation.<sup>51</sup>

It has also been ascertained that the Department of State has, subsequent to 23 November 1970, issued to the Coast Guard, and all U.S. departments and agencies which have, prior to this incident, not been involved in refugee and defector affairs, procedures for handling requests for political asylum from foreign nationals.<sup>52</sup>

**Recommendations.** The issue of granting or denying political asylum

involves the application of international and domestic laws and domestic policies to specific facts and circumstances in each refugee's case. The decision to grant or deny asylum also involves political considerations and possibly foreign relations with other nations. Such matters are not normally under the cognizance of the Coast Guard, Navy, Army, Air Force, or the Marine Corps but are properly matters administered by the Department of State. The ultimate decision to grant or deny political asylum to a refugee is, therefore, a matter for the Department of State to handle. This is not to say, however, that every decision concerning a refugee seeking asylum must be made by the State Department. The commander of any U.S. ship, camp, or aircraft who is confronted by a refugee who has presented himself on board such ship, camp, or aircraft and who has requested asylum, must make the initial decision to grant or deny temporary asylum to the refugee. It is submitted that the above-mentioned Convention and Protocol are implicit in requiring a reasonable inquiry to be made to determine whether the refugee or

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### BIOGRAPHIC SUMMARY



Col. Clyde R. Mann, U.S. Marine Corps, did his undergraduate work in business administration at East Carolina University and earned a Juris Doctor from The George Washington University in 1953.

Colonel Mann served as an infantry officer early in his career and subsequently has been assigned billets involving legal duties. Some of the more recent of these latter duties are Deputy Head, Discipline, at the Headquarters Marine Corps; Division Judge Advocate of the First Marine Division in Vietnam; and Depot Judge Advocate, Marine Corps Recruit Depot at Parris Island, South Carolina. Colonel Mann is currently assigned as a student at the Naval War College, School of Naval Warfare.

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defector is entitled to refugee status under such Convention and Protocol. Accordingly, a commander may grant temporary asylum and retain the person in U.S. custody for a sufficient time to permit his status to be determined and the ultimate decision to be made on the issue of asylum.

It is recommended that a U.S. commander who is confronted by a person who seeks political asylum take action by:

1. Granting such person temporary asylum and retaining him in U.S. custody;
2. Ascertaining as many facts and circumstances concerning the possible basis for the requested asylum and the *bona fide* nature thereof as may be expeditiously obtained;
3. Immediately reporting all known and reported facts and circumstances concerning the matter to superior authority via the most expeditious means,<sup>53</sup> and,
4. Retaining the person in U.S. custody pending the receipt of

directives from competent superior authority.

Under no circumstances should the person seeking asylum be arbitrarily or summarily expelled from a U.S. ship, camp, or aircraft pending determination of his status. To the extent circumstances permit, persons seeking asylum should be afforded reasonable care and protection.

It is further recommended that Article 0621, U.S. Navy Regulations, 1948, be revised to reflect current policy and procedures for granting asylum within the Navy and the Marine Corps.



The sphere of the Navy is international solely. It is this which allies it so closely to that of the statesman. Aim to be yourselves statesmen as well as seamen. The biography and history of our profession will give you glorious names who have been both. I trust the future may show many such among the sons of this College.

Alfred T. Mahan:  
To Naval War College Class  
of 1909

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### FOOTNOTES

1. Tryon Edwards, et al., *The New Dictionary of Thoughts* (New York: Standard Book, 1955), p. 331.

2. Memorandum from the Secretary of Transportation for the President of the United States, "Attempted Defection by a Crew Member of the *Sovetskaya* [Sic] *Litva*," Washington: 2 December 1970.

3. Letter Report of Investigation from Vice Adm. Thomas R. Sargent III, U.S. Coast Guard, to Commandant, U.S. Coast Guard, "Formal Board of Investigation into Allegations of Improper Conduct in Connection with Recent Defection Attempt of Soviet Crewman to CGC *Vigilant* near Martha's Vineyard, Massachusetts, on 23 November 1970," file 5830, Washington: 17 December 1970.

4. Memorandum Report of Investigation from the Under Secretary of State for Political Affairs for the President of the United States, "Attempted Defection by a Crew Member of the *Sovetskaya* [Sic] *Litva*," Washington: 6 December 1970.

5. U.S. Congress, House, Subcommittee on State Department Organization and Foreign Operations of the Committee on Foreign Affairs, *Attempted Defection by Lithuanian Seaman Simas Kudirka*, Hearings (Washington: U.S. Govt. Print. Off., 1971); U.S. Congress, House, Subcommittee on State Department Organization and Foreign Operations of the Committee on Foreign Affairs, *Attempted Defection by Lithuanian Seaman Simas Kudirka*, Report (Washington: U.S. Govt. Print. Off., 1971).

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6. Interview with Lt. (jg.) Douglas A. Lundberg, Operations Officer, and Ens. John F. Hughes, Gunnery Officer, U.S. Coast Guard cutter *Vigilant*, New Bedford, Mass.: 11 February 1971.
7. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 21.
8. *Ibid.*
9. *Ibid.*, p. 23.
10. Memorandum Report of Investigation from the Under Secretary of State for Political Affairs, p. 3.
11. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 35.
12. *Ibid.*, p. 25.
13. *Ibid.*
14. *Ibid.*, p. 26.
15. *Ibid.*, p. 28.
16. Memorandum from the Secretary of Transportation, Annex C.
17. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 36.
18. *Ibid.*, p. 40.
19. Memorandum from the Secretary of Transportation, Annex G, transcription of 231715R conversation between Rear Admiral Ellis and Commander Eustis.
20. *Ibid.*
21. The message released by the *Vigilant* at 2:23 p.m. requested similar small boat assistance, but, as noted above, it was not received by the First Coast Guard District until 6:38 p.m. due to communication difficulties or failures.
22. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 46.
23. *Ibid.*, p. 47.
24. *Ibid.*, p. 49.
25. *Ibid.*, p. 51.
26. *Ibid.*, p. 52.
27. *Ibid.*, p. 55.
28. *Ibid.*, p. 56; Memorandum Report of Investigation from the Under Secretary of State for Political Affairs, p. 51 and enclosure 3.
29. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 60.
30. *Ibid.*
31. Interview with Ens. John F. Hughes.
32. Interview with several officers and crewmen of the *Vigilant* on 11 February 1971 failed to disclose a single witness who stated he had seen any evidence of blood or residual injury to Kudirka. Mr. Bricze stated, however, during his appearance before the congressional subcommittee investigating this matter, that he had seen blood on Kudirka's face.
33. Letter Report of Investigation from Vice Adm. Thomas R. Sargent, p. 69.
34. "Rogers Calls *Vigilant* Case Unbelievable," *The Providence Journal*, 24 December 1970, p. 21:2.
35. "U.S. Admits Seaman Forced Back," *The Providence Sunday Journal*, 29 November 1970, p. N-29:1.
36. "Too Tough, Says Solon," *Newport (R.I.) Daily News*, 5 February 1971, p. 11:1.
37. Action of the Convening Authority on the Formal Board of Investigation into Allegations of Improper Conduet in Connection with Recent Defection Attempt of Soviet Crewman to *Vigilant* near Martha's Vineyard, Massachusetts, on 23 November 1970, file 5830, Washington: 18 December 1970, p. 3-4.
38. *Ibid.*, p. 5.
39. Letter from the Secretary of Transportation to Commandant, U.S. Coast Guard, "Direction on Your Action on the Formal Board of Investigation, Coast Guard Cutter *Vigilant* Case," Washington: 21 December 1970.
40. John B. Moore, "The Case of the Salvadorean Refugees," *The American Law Review*, January-February 1895, p. 1-20.
41. John B. Moore, *A Digest of International Law* (Washington: U.S. Govt. Print. Off., 1906), v. 11, p. 852-853.
42. U.S. Department of State, *Digest of International Law* (Washington: U.S. Govt. Print. Off., 1967), v. 6, p. 501.
43. U.S. Department of the Navy, *U.S. Navy Regulations, 1948* (Washington: U.S. Govt. Print. Off., 1948), p. 74.
44. "Liberty, Statue of," *Encyclopaedia Britannica*, 1970, v. 13, p. 1030.
45. United Nations, General Assembly, Official Record, Seventh Session, Third Committee, A/C.3/SR.472.1952 (New York: 1952), p. 331.

46. U.S. Department of State, v. 8, p. 671.

47. *Ibid.*, p. 680.

48. Memorandum from the Under Secretary of State for Political Affairs for the President, enclosure 13.

49. U.S. Department of State, *United States Treaties and Other International Agreements, 1968* (Washington: U.S. Govt. Print. Off., 1969), v. 19, p. 6223-6288.

50. Wayne L. Hayes, quoted in "Too Tough, Says Solon," p. 11:1.

51. "Skipper Court-Martialed—Rejected Defector Reported Alive, Well," *The Providence Journal*, 12 February 1971, p. 1:4; Columbia Broadcasting System Networks Television News, at 1830 on 11 February 1971.

52. Subcommittee on State Department Organization and Foreign Operations of the Committee on Foreign Affairs, Hearings, p. 245.

53. If the confrontation and request for political asylum occur in the territory or territorial waters of another country, the U.S. Department of State representative in such country should be notified in like manner.

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## APPENDIX I

## CHRONOLOGY OF EVENTS

## Monday, 23 November 1970

- 8:00 a.m. U.S. delegation boards *Vigilant*
- 8:49 a.m. *Vigilant* underway
- 10:30 a.m. *Vigilant* moored to Soviet ship
- 11:00 a.m. First overture of defection noted
- 12:43 p.m. *Vigilant* sends message to First Coast Guard District
- 12:49 p.m. Message received
- 1:18 p.m. Captain Brown calls Rear Admiral Hammond
- 1:20 p.m. Captain Brown calls Rear Admiral Ellis
- 1:26 p.m. *Vigilant* message doubleheaded to Coast Guard Headquarters
- 1:28 p.m. *Vigilant* message received at headquarters
- 1:30 p.m. First Coast Guard District sends message to *Vigilant*
- 1:38 p.m. *Vigilant* 12:43 message sent to State Department
- 2:00 p.m. Kudirka passes cigarettes and note to Lieutenant Lundberg
- 2:23 p.m. *Vigilant* sends message to First Coast Guard District
- 2:30 p.m. Conference in Captain Brown's office
- 2:45 p.m. Captain Dahlgren contacts Mr. Killham, State Department
- 3:15 p.m. Mr. Killham calls Captain Dahlgren
- 3:36 p.m. *Vigilant* receives First Coast Guard District instructions
- 3:30 p.m. Captain Brown calls Rear Admiral Ellis
- 3:45 p.m. Captain Dahlgren calls Captain Brown
- 4:12 p.m. Captain Brown calls Rear Admiral Hammoud
- 4:20 p.m. Kudirka jumps aboard *Vigilant*
- 4:30 p.m. Captain Dahlgren calls Mr. Killham
- 4:30 p.m. Captain Brown left office for home
- 5:15 p.m. Commander Eustis calls Rear Admiral Ellis
- 5:40 p.m. *Vigilant* calls Woods Hole
- 5:44 p.m. Woods Hole calls RCC
- 5:47 p.m. Lieutenant Ryan tries to call Captain Brown
- 6:00 p.m. Captain Brown calls Lieutenant Ryan
- 6:15 p.m. Commander Eustis calls Captain Brown
- 6:38 p.m. First Coast Guard District receives *Vigilant*'s 2:23 message
- 6:38 p.m. Captain Brown calls Rear Admiral Ellis
- 6:45 p.m. Captain Brown calls Lieutenant Commander Pakos
- 6:48 p.m. Captain Brown calls Rear Admiral Ellis
- 6:54 p.m. Commander Eustis calls Captain Brown
- 7:30 p.m. Captain Brown calls Rear Admiral Ellis
- 8:00 p.m. Formal request for return of Kudirka
- 8:04 p.m. Mr. Gordon tries to call his friend in State Department

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- 8:19 p.m. Commander Eustis calls Captain Brown  
8:24 p.m. Lieutenant Ryan calls Lieutenant (junior grade) Tritbough  
8:30 p.m. Lieutenant (junior grade) Tritbough calls Rear Admiral Hammond and other Coast Guard officers in Washington  
8:45 p.m. Lieutenant (junior grade) Tritbough calls Mr. McGuire, State Department  
9:45 p.m. Call placed to Soviet Embassy from *Vigilant*  
10:14 p.m. Commander Eustis calls Captain Brown  
10:30 p.m. Soviet crewmen board *Vigilant*  
11:00 p.m. *Vigilant* unmoors from Soviet ship  
11:15 p.m. Kudirka subdued by Soviet crewmen  
11:30 p.m. Mr. Mainland talks with Lieutenant (junior grade) Tritbough  
11:30 p.m. Lieutenant Commander Pakos calls Captain Brown  
11:40 p.m. Kudirka loaded in small boat  
11:50 p.m. Kudirka returned to Soviet ship  
11:55 p.m. Small boat returns to *Vigilant*  
12:00 p.m. *Vigilant* escorts Soviet vessel into international waters

### Tuesday, 24 November 1970

- 3:30 a.m. *Vigilant* moors at New Bedford



The problem is to grasp, in innumerable special cases, the actual situation which is covered by the mist of uncertainty, to appraise the facts correctly and to guess the unknown elements, to reach a decision quickly and then to carry it out forcefully and relentlessly.

*Helmuth von Moltke ("The Elder"), 1800-1891*