

Black Man, White Justice: The Extradition of Matthew Bullock, an African-American Residing in Ontario, 1922

John C. Weaver

Follow this and additional works at: <http://digitalcommons.osgoode.yorku.ca/ohlj>
Article

Citation Information

Weaver, John C.. "Black Man, White Justice: The Extradition of Matthew Bullock, an African-American Residing in Ontario, 1922."
Osgoode Hall Law Journal 34.4 (1996) : 627-660.
<http://digitalcommons.osgoode.yorku.ca/ohlj/vol34/iss4/1>

This Article is brought to you for free and open access by the Journals at Osgoode Digital Commons. It has been accepted for inclusion in Osgoode Hall Law Journal by an authorized editor of Osgoode Digital Commons.

Black Man, White Justice: The Extradition of Matthew Bullock, an African-American Residing in Ontario, 1922

Abstract

Canadian extradition law uncomfortably combines common law precepts with compromises deemed necessary for carrying out treaty obligations. In this context, for example, the substitution of affidavits for parole evidence has been an area where international courtesy has clashed with a valued means of testing an allegation, namely the cross-examination of witnesses. To reject an application for extradition because only documentary evidence is provided can amount to a censure of judicial proceedings in the state making the request; rejection may suggest that a fair trial cannot be secured. In 1922, in a sensational but hitherto uncited case, an Ontario extradition judge denied the petition of North Carolina for the return of a black suspect on the grounds that the court needed to examine at least one witness. The lynching of the suspect's brother, racism in the southern justice system, and the rantings of North Carolina's governor undermined the credibility of affidavits produced by the state. In addition to highlighting issues in extradition law, the Matthew Bullock case reveals behind the scenes activity by interest groups, governments, and lawyers.

BLACK MAN, WHITE JUSTICE: THE EXTRADITION OF MATTHEW BULLOCK, AN AFRICAN-AMERICAN RESIDING IN ONTARIO, 1922[©]

BY JOHN C. WEAVER*

Canadian extradition law uncomfortably combines common law precepts with compromises deemed necessary for carrying out treaty obligations. In this context, for example, the substitution of affidavits for parol evidence has been an area where international courtesy has clashed with a valued means of testing an allegation, namely the cross-examination of witnesses. To reject an application for extradition because only documentary evidence is provided can amount to a censure of judicial proceedings in the state making the request; rejection may suggest that a fair trial cannot be secured. In 1922, in a sensational but hitherto uncited case, an Ontario extradition judge denied the petition of North Carolina for the return of a black suspect on the grounds that the court needed to examine at least one witness. The lynching of the suspect's brother, racism in the southern justice system, and the rantings of North Carolina's governor undermined the credibility of affidavits produced by the state. In addition to highlighting issues in extradition law, the Matthew Bullock case reveals behind the scenes activity by interest groups, governments, and lawyers.

Le droit canadien de l'extradition unit fragilement les principes de *common law* à certains compromis jugés nécessaires afin de se conformer aux engagements internationaux. Dans un tel contexte, la courtoisie internationale accueillant le remplacement d'affidavits par une preuve testimoniale se heurte aux méthodes traditionnelles de vérification d'allégations, dont le contre-interrogatoire des témoins. Le rejet d'une demande d'extradition sur le seul fondement d'une preuve documentaire produite en cour est susceptible d'engendrer un niveau de censure dans l'initiation des procédures judiciaires. Ce geste peut être interprété comme une impossibilité d'obtenir un procès juste et équitable. En 1922, dans une cause sensationnelle mais non rapportée, un juge ontarien rejeta la requête de la Caroline du Nord exigeant l'extradition d'un suspect de race noire sur le fondement que le tribunal n'avait entendu aucun témoin. Le lynchage du frère du suspect, le racisme prévalant dans le système judiciaire du sud des États-Unis ainsi que les déclarations du gouverneur de la Caroline du Nord ont entaché la crédibilité des affidavits produits par l'État. En plus des questions soulevées par le droit de l'extradition, la cause Matthew Bullock met en lumière les activités de coulisse menées par les groupes d'intérêt, le gouvernement, et les avocats.

For roughly 150 years, many fugitives and suspects, having fled to Canada, later became entangled in either deportation or extradition

© 1997, J.C. Weaver.

* Professor of History and Dean of Graduate Studies, McMaster University. I wish to thank Jon Swanger for his comments on an earlier draft, Karen Ferguson for her research on my behalf in Durham, and Peter Lawson for his assistance. The Library of Congress and National Archives of Canada facilitated my research. I am indebted to the Hamilton Law Association for permission to use its library. The comments of an anonymous reviewer helped me highlight the legal issues, though I alone am responsible for any errors.

proceedings, sometimes both. From time to time, specific extradition cases have exposed a paradox. On the one hand, the Canadian extradition process has long required a judicial hearing where common law rules of evidence seemingly apply. On the other, this very process serves a treaty.¹ Extradition, therefore, is ostensibly a judicial process, but one with a political countenance. Conflicts between judicial principles and political expediency may clash in cases where the defence can impugn the evidence of a petitioning state. If an extradition judge then feels uncomfortable with that evidence, the decision not to extradite might reflect badly on another country's courts.

The fact that many fugitives and suspects tried in Canadian extradition courts fled the United States has occasionally compounded the political aspects of extradition: Canadian police authorities cooperate with their American counterparts and deplore decisions that upset harmonious connections; American politicians, meanwhile, are sensitive about slights to the Republic. There is another complication. The opportunity to cross-examine witnesses affords a time-honoured means of testing evidence, but the inconvenience to foreign states of sending witnesses has fostered an acceptance of depositions, and even affidavits. In extradition courts, therefore, common law rules have been rendered flexible. Has extradition merely draped judicial robes over a political process? The case which follows shows that a fair answer to this question must be a complicated one. On occasion, Canadian extradition courts have insisted on parol evidence.

The fate of others gives criminal justice proceedings their safe, visceral appeal. In early 1922, a courtroom story from Ontario briefly appeared in newspapers across Canada and the United States, and the entire tale merits telling. Journalists sketched the public dramas: the lynchings, an illegal entry into Canada, deportation proceedings, an extradition hearing, the intervention of the National Association for the Advancement of Colored People (NAACP), a stubborn local judge, and a racist southern governor. Just as there is more to criminal justice history than a gallery of scarred lives, there was more to the case which follows than what reporters selected for public consumption. It illuminates a dilemma fixed between conflicting principles of extradition law; it depicts remarkably well the tensions between international relations and

¹ Treaty in force during the *Anderson* trial, *infra* note 64: *Webster-Ashburton Treaty*, reproduced in C. Parry, ed., *The Consolidated Treaty Series*, vol. 93, 1842 (Dobbs Ferry, N.Y.: Oceana, 1969) at 415 [hereinafter *Webster-Ashburton Treaty*]. Treaty in force during the Bullock trial: *Treaty for the conveyance of persons in custody for trial in Canada or the United States through the territory of the other*, 18 May 1908, B.T.S. 1908 No. 22. Treaty currently in force: *Extradition Treaty Between Canada and the United States*, 3 December 1971, Can. T.S. 1976 No. 3.

domestic judicial ideals, tensions which may have complicated many prior and subsequent extradition proceedings. Case reports, abridgements, and commentaries normally suffice to document legal issues; however, historical inquiry can vivify legal questions and, just as importantly, underscore the humanity and wisdom of judgments well-considered. Historical inquiry also can depict some of the abundant scurrying behind the scenes that occasionally affects judicial proceedings. In this instance, the deeds of many people prevented the return of a suspect to his native state and that outcome dismayed proponents of law and order. The odyssey of Matthew Bullock, who fled to Ontario after a race riot in rural North Carolina, finally recounts how racism on this continent corroded civic life and judicial procedure.

The story opens in Warren County. Close to the North Carolina-Virginia border, Warren endures as a place of pine forests, farms, and insular crossroad towns. Warrenton, the county seat, and nearby Norlina have been its major centres. Norlina had 700 residents in 1921. Tobacco, cotton, and mixed grains never provided prosperity equal to that on the coastal plain. Always among the poorest counties in a poor state, Warren had little manufacturing or retailing. Residents were under-educated. An embodiment of southern rural privation, Warren County maintained one striking demographic trait. Over half of its citizens, from at least the Civil War to the present, have had African ancestors.² The county formed part of the "black second," a rare Congressional District south of the Mason-Dixon Line which returned a black representative after the termination of Reconstruction in 1878.³

For many whites in Warren County, post-war Reconstruction delivered a political debacle by enfranchising blacks. Americans of African ancestry were sufficiently numerous to elect black local officials. In 1876-77, anti-reconstructionists controlled the state government for the first time since the end of the Civil War. They elected local governments and gerrymandered congressional districts to dilute the impact of black voters. But the political triumph of racists was never complete. Warren County, for example, was an area that white Democrats conceded as lost to an alliance of black voters and white Republicans. More generally, a spirit of progressivism endured in the

² H.G. Edmonds, *The Negro and Fusion Politics in North Carolina, 1894-1901* (Chapel Hill N.C.: University of North Carolina Press, 1951) at 17 and 225-27.

³ See W.A. Mabry, *The Negro in North Carolina Politics since Reconstruction* (New York: AMS Press, 1970; reprint of 1940 edition) at 20; and E. Anderson, *Race and Politics in North Carolina, 1872-1901: The Black Second* (Baton Rouge La.: Louisiana State University Press, 1981) at 340.

tarheel state.⁴ Racial issues in politics ebbed and surged. Beginning in the early 1890s in North Carolina, black leaders and white progressives across the state struggled to regain lost political influence. The campaign collapsed in a few years.⁵ At the end of World War I, black political activity revived; in 1919, major rallies in the state celebrated Emancipation Day, and the NAACP chartered new North Carolina branches.⁶ Yet, 1919 was one of the worst years in American history for race riots.⁷ In 1920, the new secretary of the NAACP, James Weldon Johnson, and his assistant, Walter White, commenced a two-year campaign for a federal anti-lynching law. During that campaign, a young man from Warren County found himself at the intersection of both post-war ferment in American race relations and enduring legal questions in Canada.

In 1921, neither race in Warren had forsaken the vicious contests of the past. Determined to maintain a white ascendancy in a black county, a number of whites heaped verbal and physical abuse on blacks. Remembering what they had lost and stalwart enough locally to organize, some blacks resisted degradation. They could look to the recent past, also to the immediate success of Marcus Garvey's Universal Negro Improvement Association, which was fast on its way to becoming "not only the largest but the broadest mass movement in Afro-American history."⁸ Like their counterparts in a number of southern communities, some blacks in Warren County performed costly acts of defiance and resistance. Intimidated by terrorism and a revitalized Ku Klux Klan, other blacks conducted themselves cautiously. A place of racial tension, Warren County was not the bloodiest field of southern racism. It could not compare in lynchings with the violent counties of the Mississippi bottom lands where cotton was King. But the Bullock affair showed that even relatively safer regions of the South could be dangerous.⁹

⁴ Mabry, *supra* note 3 at 20.

⁵ *Ibid.* at 38.

⁶ R.L. Zangrando, *The NAACP Crusade Against Lynching, 1909-1950* (Philadelphia: Temple University Press, 1980) at 53; and J. Crowe, P. Escott & F.J. Hatty, *A History of African Americans in North Carolina* (Raleigh, N.C.: Division of Archives and History, 1992) at 125.

⁷ See L.W. Levine, "Marcus Garvey and the Politics of Revitalization" in J.H. Franklin & A. Meier, eds., *Black Leaders of the Twentieth Century* (Urbana, Ill.: University of Illinois Press, 1982) 105 at 113.

⁸ *Ibid.* at 121.

⁹ S.E. Tolnay & E.M. Beck, *A Festival of Violence: An Analysis of Southern Lynchings, 1882-1930* (Urbana and Chicago: University of Illinois Press, 1995) at 119-99.

The Airline Seaboard Railway was the main employer in Norlina, where it maintained a yard, station, and depot. In an affidavit taken in 1922—a full year after the events to which it referred—a fireman on a yard engine, L.F. Spain, alleged that between 2:00 and 3:00 a.m., on the morning of 23 January 1921, he climbed off the footplate and ambled towards the yardmen's cafe. If what he said was true, Spain had stepped into a "situation." In the railyard, illuminated by electric lights, Spain swore that he saw many blacks and encountered Rabey Traylor, a white man looking for his brother, Corbitt. Trouble simmering for five days had centred on the Traylor. According to Spain, whose report was prepared—maybe prompted and embellished—a year later, a large black man approached "out from the crowd of negroes."¹⁰ The yard conductor, W.T. Felts, also prepared a statement. He claimed that he saw fifty to seventy-five blacks. Felts and Spain swore that Matthew Bullock was that large man, and further that Bullock wore a holster holding what looked like a large army pistol.¹¹ Felts asserted that another black, Jerome Hunter, called out to Bullock, "shoot the damn white son of a bitch." Bullock then allegedly shot Rabey Traylor in the stomach.¹²

Felts swore that as many as a hundred shots were fired. Eight wounded men—five whites and three blacks—denotes a serious shoot-out.¹³ The sequence of events that pitted two gangs of armed men against one another remains nebulous, although the tinder for the racial blaze was surely assembled on Tuesday 18 January 1921 in J.P. Williams' general store. Matthew Bullock's young brother, Plummer, came there to purchase ten cents worth of apples. Clerk Rabey Traylor substituted inferior apples for those chosen by Plummer.¹⁴ More than cheating was

¹⁰ Affidavit of L.F. Spain (6 February 1922) in National Archives and Records Administration, Decimal File 242.11B87, United States Department of State, Washington, D.C. [hereinafter *State Department*] [unpublished].

¹¹ This raises the interesting possibility that Matthew Bullock had served in the army during the few months of the United States participation in World War I. If so, both his leadership role in some of the events and his possible anger would be better understood. Blacks had expected that, by serving "Uncle Sam," they would be accorded respect as citizens; instead they suffered indignities. The possibility that Bullock was in the army is being checked through the U.S. Department of Veterans Affairs.

¹² Affidavit of W.T. Felts (2 February 1922) in *State Department*, *supra* note 10.

¹³ "Mob Storms Jail to Lynch Race Rioters; Blacks Bent on Freeing Negro Prisoners" (newspaper unidentified and undated) in G-147, Branch Files, Durham, North Carolina, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *Durham file*] [unpublished].

¹⁴ *Ibid.*

involved. Traylor sought to humiliate young Bullock, to show him which race ordained the minutiae of life in a bitter, petty world. Traylor's sport exposed the black youth's vulnerability. This trick was no innocent bit of fun; it came barbed with hatred, ridicule, and an affirmation of power. The lives of men would turn on those rotten apples.

Establishing what really happened is an impossibility, because whites and blacks fashioned exculpatory tales. It was alleged that "the Negro cursed Traylor ... and threatened him." The white press conceded that Plummer Bullock "expressed dissatisfaction with his purchase and wanted his money back."¹⁵ It also reported that a mob lynched a black youth days later. The coded message of such reports—reports which faithfully mentioned Plummer's anger but neglected to condemn his murder by a mob—virtually blamed him for his own terrible end. He had cursed and threatened a white man; he was lynched. The white press circulated further reports about Norlina's "negroes ... organizing to make good Plummer Bullock's threat."¹⁶ Unquestionably, blacks had organized between the time of the incident at the general store and the showdown at the yard early on Sunday morning, 23 January. They may have gathered to plan self-defensive measures. A recent rash of race riots in America made that a prudent move; however, the idea of armed and organized blacks was an enduring nightmare for white southerners.

Accounts sympathetic to Bullock were confused and suspect. Friends looked for help from the NAACP, so their descriptions of what happened minimized his culpability. They provided the NAACP with a story which said that, following the incident at the general store, Matthew Bullock and another of Plummer's brothers returned to Norlina from an adjoining town. Matthew Bullock learned that white men at the store threatened to lynch Plummer. The narrative continued and presented the brothers as intent on protecting Plummer at the family house. On the night of 22 January 1921, however, it was not guarded by the brothers but "by race men."¹⁷ According to Mildred Dawson, the family friend who penned this account, Bullock quit the house assuming all was relatively safe. He later claimed that he was

¹⁵ *Ibid.*

¹⁶ *Ibid.*

¹⁷ See Letter of M. Dawson to J. Weldon Johnson (6 February 1921) in C-363, Administration Files, sub-file, Lynching, Norlina, 1921, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *Lynching file*] [unpublished]. See also letter of J. de Olivares to H. Fletcher, acting Secretary of State (24 February 1922) and enclosed clippings, *Hamilton Herald* (24 February 1922) in *State Department, supra* note 10.

thirteen miles away at the time of the riot.¹⁸ A story which placed him far from the shooting satisfied an expectation that the NAACP, which included many liberal white supporters, would have preferred to aid “untarnished” black victims.

Mildred Dawson’s narrative, prepared in early February 1921 in conjunction with her plea to the NAACP to help the Bullock family, maintained unconditional victimization. Matthew Bullock, she recounted, found the house protected and left; the police arrived and took Plummer into custody. “That night a mob formed and taken [*sic*] this boy and another man, who was the father of ten children taken a mile outside town and their bodies riddled with bullets. This affair caused a race riot.”¹⁹ Published versions appeared a year afterward, during Bullock’s extradition hearing. It was useful for Bullock and the NAACP’s cresting publicity campaign against lynching that he figure as a blameless casualty of circumstances. In a propaganda piece that he wrote for the NAACP journal *The Crisis*, Walter White collapsed the time between the rotten apples incident and the lynching into the space of a day, and placed the shoot-out at a jail.²⁰ Whether he fabricated this version or wrote what others told him had happened, White’s narrative accented redneck rage and black defensive courage. Many people then, found convenient renditions of the events in Norlina. About all that can be said with assurance is that there were shootings, and at some point a mob overpowered a jailer, dragged away Plummer and another man, and murdered them.²¹ Perhaps only a proper criminal trial, including cross-examination of witnesses, could have helped determine the truth. But that could never have happened. The impossibility of determining the truth in a racist climate would become the critical issue in Bullock’s extradition hearing. No matter where he was in the early hours of 23 January, Matthew Bullock soon was fleeing northward.

At the time of the Norlina lynchings, the NAACP had been in existence for twelve years. It could not investigate incidents openly in the southern states because of the likelihood of attacks upon its personnel. In early 1921, the organization was further hindered by its preoccupation with the defence of men accused of murder during a race war in Phillips County, Arkansas, where as many as 200 blacks had been

¹⁸ *Ibid.*

¹⁹ Letter of M. Dawson to J.W. Johnson (6 February 1921) in *Lynching File*, *supra* note 17.

²⁰ *The Crisis* (April 1922) 23:6 at 263-64.

²¹ “Lynch 2 Negroes After Race Riots” *New York World* (24 January 1921); and “Troops Guard Lynch Town” *New York Globe* (24 January 1921) in *Lynching File*, *supra* note 17.

killed.²² As well, the NAACP was busy lobbying Congress to pass an anti-lynching law. The *Dyer* bill, debated in the House of Representatives in early 1922,²³ would have made it illegal for groups to assemble with the purpose of doing bodily harm. The NAACP had its hands full in 1920-21 just getting its Republican allies to bring the bill onto the floor.²⁴ Thus, when an informant from near Norlina wrote on 26 January 1921 to report the lynchings, the organization could spare no one to visit Warren County to investigate.²⁵ However, the NAACP still wanted to collect some information for its archives on the curse of lynching. For this task, it turned to a network of southern black professionals.

Norlina is roughly forty miles from both Raleigh and Durham. One institution made the tobacco emporium of Durham “the Black Wall Street of America,” “the Capital of the Black Middle Class”: The North Carolina Mutual and Provident Association. Founded in 1898, it operated as a black life assurance and mortgage lending institution.²⁶ It was that and more. It functioned as an auxiliary of the NAACP; its executives were prominent among the growing Durham branch of the NAACP. In early 1919, North Carolina Mutual’s managers assisted with a successful NAACP membership drive. After a 1919 visit to Durham by NAACP Assistant Secretary Walter White, eighteen members were joined by seventy-three more, nearly half from Fayetteville Street, home to the black bourgeoisie.²⁷

When he learned of the Norlina riot and lynchings, White attempted to find out what had happened. He wrote to J.M. Avery, president of the Durham chapter of the NAACP and an executive with North Carolina Mutual. White appealed indirectly to Avery for financial or legal aid for the fifteen black men jailed for participation in the riot at the yard.

Can you give me any facts regarding the fifteen colored men who are now in jail? Very heavy expenditures in connection with the Arkansas cases and anti-lynching work in

²² W.F. White, *A Man Called White: The Autobiography of Walter White* (New York: Viking, 1948; reprint by Arno Press, 1969) at 47-51.

²³ 62 Cong. Rec. 1697-98 (1922).

²⁴ Zangrando, *supra* note 6 at 43-64.

²⁵ Letter of T.S. Inborden to *The Crisis* (26 January 1921) (copy) in *Lynching File*, *supra* note 17.

²⁶ W. Weare, “Charles Clinton Spaulding: Middle-Class Leadership in the Age of Segregation” in Franklin & Meier, eds., *supra* note 7, 167 at 169; and Crowe, Escott & Hatty, *supra* note 6 at 127.

²⁷ Letter of J.M. Avery to J. Shillady (27 March 1919) and enclosed membership list in *Durham File*, *supra* note 13.

Congress and other similar cases, make it impossible for us to be of any assistance to these people although we would like very much to do something in the case. Will you not write me fully about the case?²⁸

Avery offered his business office as a drop-off for letters from Matthew Bullock to his family, who feared their mail would be watched.²⁹ Distrust of authorities and white neighbours made precautions necessary.³⁰ Informants did not wish to be identified. Some friends of the NAACP, frightened of reprisals if they personally investigated lynchings, asked that private detectives be employed to ask questions.³¹ NAACP sympathizers, who held meetings in smaller communities, requested that their efforts go unpublicized in *The Crisis*. The telegraph was believed to be insecure.³² Lynchings made inquiry, communication, freedom of speech, and assembly hazardous in the South. The violent enforcement of racially defined barriers weakened civil society; people lied out of fear. Others lied to sustain the great racist untruth, the myth of racial inferiority. This culture of deceit must be kept in mind. Its existence influenced how Matthew Bullock was portrayed by the Canadian press, and how he was seen by the residents of Hamilton and the extradition judge.

As difficult as it was to investigate a lynching, the NAACP did secure information about the Norlina affair. Several blacks who were jailed after the riot had attended the Joseph Keasby Brick Agricultural, Industrial and Normal School. Someone at “the Bricks” volunteered the names of two blacks and two whites who might unearth the facts.³³ Walter White wrote to one of the latter, John Palmer. “Your name has been given to us as a citizen of Warrenton who believes in fair play and who would be willing to give the facts regarding the recent deplorable lynchings in Norlina.”³⁴ Palmer replied that “the facts in the lynching are very hard to get at,” but he knew that a Norlina mob had come down

²⁸ Letter of W. White to J.M. Avery (1 February 1921) in *Durham file*, *supra* note 13.

²⁹ Letter of F.D. Mickey to W. White (16 March 1921) in *Lynching File*, *supra* note 17.

³⁰ Letter of F. Mickey to E. Mickey (2 March 1921); letter of W. White to F. Mickey (8 March 1921); and letter of W. White to J.M. Avery (8 March 1921) in *Lynching file*, *supra* note 17.

³¹ Letter of R. McCants Andrews to J. Weldon Johnson (29 June 1922) in *Durham File*, *supra* note 13.

³² Letter of F.D. Wharton to NAACP (20 January 1922) in D-41, Legal Files, Matthew Bullock, file #1, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *Legal file #1*] [unpublished].

³³ *Supra* note 25.

³⁴ Letter of W. White to J. Palmer (29 January 1921) in C-363, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *C-363*] [unpublished].

to Warrenton, took the key from the jailer, and removed two men. He named the individual who, according to rumour, had shot the men, but it was plain that no arrest would ever be made.³⁵ A coroner's jury had held an inquest immediately after the murders and "quickly returned a verdict of 'death at the hands of unknown persons.' All witnesses testified to their inability to identify any members of the mob."³⁶ An epidemic of poor vision afflicted the South. Along with selective investigative zeal, the inability of many southerners to see evil was an embarrassment to many Americans. Congress was now close to dealing with lynchings through the *Dyer* bill, which would have injected federal authorities into criminal justice precisely because coroner's juries and grand juries conducted investigations that "amounted to nothing more than an entry in the court records that a lynching had been investigated."³⁷

How Bullock travelled north is not known. After about two weeks, news of his whereabouts surfaced. On 3 February 1921, he appeared in Batavia, New York, where his father had preached six years earlier. To draw attention to the lynching of his brother, Matthew Bullock gave an interview to a local newspaper. He finished by saying "that he was not far enough away from his southern home and intended to keep on going."³⁸ His denunciation of lynching recommends the view that he could have exercised family and community leadership during the crisis in Norlina; he could have been a threat to the racist ascendancy in Warren County. Word of his whereabouts quickly got back to North Carolina. On the evening of 4 February, the Batavia police received a telegram from authorities in Norlina, asking them to arrest Matthew Bullock.³⁹ He had already fled to Buffalo, where he hid until early March. He entered Canada on 13 March 1921. A melodramatic tale has him boarding a ferry with gospel singers who crossed the Niagara River at Fort Erie.⁴⁰ The story touched African-American myths: a righteous

³⁵ Letter of J. Palmer to W. White (3 February 1921) in C-363, *supra* note 34.

³⁶ "Race Riot Region Quiet Under Militia Guard" *New York Times* (25 January 1921) in *Lynching File*, *supra* note 17.

³⁷ J.H. Chadbourn, *Lynching and the Law* (New York: Johnson Reprint, 1970; originally published by The University of North Carolina Press, 1933) at 20.

³⁸ "Bullock Fleeing From Angry Mob" unidentified Batavia newspaper (early February 1921) in *Lynching File*, *supra* note 17.

³⁹ "Police Seeking Young Bullock" unidentified Batavia newspaper (5 February 1921) in *Lynching file*, *supra* note 17.

⁴⁰ "Calls For Negro's Return By Canada" *New York Times* (17 January 1922) in *Lynching File*, *supra* note 17.

wronged man, crossing with the pious to the promised land. A river crossing summoned remembrance of the flight from Egypt. References to Bullock as a pilgrim, the Fair Land of Freedom, and a Holy City thundered from pulpits at rallies held later to raise defence funds.⁴¹ Rhetorical blendings of secular and sacred characterized some black representations of Bullock's plight.

Bullock proceeded to Hamilton, where he found employment with building contractors. A city of about 100,000 in 1921, Hamilton was recovering from a post-war recession. Construction had rebounded and Bullock found employment as a plasterer. The city had a small black community dating from at least the 1830s. Josiah Henson, a "conductor" on the underground railroad to the freedom of Canada and the model for Harriet Beecher Stowe's "Uncle Tom,"⁴² remains revered in Hamilton by members of a black church as its founder. Like fugitive slaves, Matthew Bullock had followed the North Star. Once in Hamilton, "John Jones"—his alias—joined the black congregation, lived in a boarding house in the city's industrial quarter, and was reputed to be a model employee. His parents had moved to Washington. Believing himself safe, he began writing them openly. Later, he suspected an intercepted letter had betrayed his location, which was reported to North Carolina authorities who alerted the Hamilton police that "Jones" was a wanted man. On the night of 11 January 1922, four city detectives came to his lodgings and removed him to the county jail. Here, applying a custom of questionable legality to detain someone until a complainant for a proper charge could be found, the Hamilton police lodged a nominal charge of vagrancy.⁴³ Later, the police charged him with entering Canada illegally. This undisputed fact should have led to his deportation. The chief of the Norlina police was reputed to be on his way north to collect Bullock as soon as Canadian immigration officials escorted him to the border. As we will see later, deportations may occasionally have achieved "extradition" without the formality of a court hearing.

Canadian blacks—and white sympathizers—took up Matthew Bullock's cause. The pastor at his church, the Reverend J.D. Howell, telegraphed James Weldon Johnson, secretary of the NAACP, the day

⁴¹ Newspaper clipping, *The Booster* (26 January 1922) in D-41, Legal Files, Matthew Bullock, file #3, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *Legal file #3*].

⁴² H. Beecher Stowe, *Uncle Tom's Cabin: or, Life Among the Lowly* (Boston: J.P. Jewett, 1852).

⁴³ Telegram of J. de Olivares to the secretary of state (14 February 1922) in *State Department*, *supra* note 10.

after the arrest: “the citizens of Hamilton are fighting the extradition of James Bullock [*sic*] charged with meeting a mob and shooting a white man in North Carolina. His brother was lynched on this occasion. Will you help us? Answer immediately.”⁴⁴ On 13 January 1922, Anna Henderson, the sole female black clerk-stenographer in the Department of Immigration at Ottawa, received instructions to type documents for deportation proceedings against one Matthew Bullock. She used her office typewriter to prepare a note tipping off W.E.B. Du Bois. At home, as an afterthought, she penned: “I secured the evidence in connection with my work, and if the facts were known I should in all probability lose my position.” Her motive in contacting the NAACP was simple. “I know of the treatment meted out to coloured people by Southerners.”⁴⁵ Other individuals—in Hamilton, Washington, and Batavia—wrote the NAACP in the days following Bullock’s arrest, but Anna Henderson was among the first. After receiving Howell’s telegram and her letter, the NAACP reopened its Norlina lynching file. Meanwhile, Howell had whipped up local support. A Hamilton women, identified only as Aunt Abb, wrote to a resident of Buffalo about action in Hamilton:

Well Violet the whole city is stirred up. Not only Hamilton but many other cities, and we have received letters & telegrams from Chicago, New York & Washington we [*sic*] had a mass meeting in the church last night and the church was packed to the doors and a hundred turned away. I was asked to write to you to find out was the Buffalo [*sic*] know about him and his behaviour while in your town as it will help him in his trial Fri Jan 27th, this trial is for crossing the border illegally ... Oh, Violet, I just wish you could hear the white folk speak on his behalf and are willing to do anything to stop his going back South. We have raised over \$100.00 at our two mass meetings, the colored boy(s) are giving a concert and dance ...⁴⁶

Walter White coordinated the NAACP’s legal activities and publicity for the case, as he would do for many subsequent ones. Though his light skin would have enabled him “to pass,” he had chosen otherwise. In his memoirs, White spelled out the southern code of white domination: “Anytime a nigger hits a white man, he’s gotta be handled or else all niggers will get out of hand.”⁴⁷ However, the fact that

⁴⁴ Telegram of J.D. Howell to J. Weldon Johnson (12 January 1921) in *Legal file #1, supra* note 32.

⁴⁵ Letter of A.M. Henderson to W.E.B. Dubois [*sic*] (13 January 1922) in D-41, Legal Files, Matthew Bullock, file #2, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [hereinafter *Legal file #2*] [unpublished].

⁴⁶ Letter of Aunt Abb to Violet (16 January 1922) in *Legal file #1, supra* note 32.

⁴⁷ White, *supra* note 22 at 41.

philanthropic New England whites had established Atlanta University convinced White that decency had a chance. He became a charter member of the NAACP chapter at Atlanta University in 1916, and in early 1918 NAACP Secretary James Weldon Johnson recruited him to work at the New York head office.⁴⁸ Within twelve days, he was in the field investigating a lynching.⁴⁹

In mid-January 1922, the NAACP plotted to keep Matthew Bullock out of the hands of the state of North Carolina. On 19 January, White travelled to Buffalo and Hamilton to execute the protection plan and to capitalize on press attention to assist with the campaign against lynchings. The NAACP had secured the cooperation of Buffalo's police chief, who agreed to arrest Bullock, if necessary, on a minor charge to block the immediate serving of a North Carolina warrant. Appeals would then be made to the governor of New York to reject requests from the tarheel state for Bullock's return. If that failed and Bullock faced extradition from New York to North Carolina, the NAACP planned *habeas corpus* proceedings. That is, they intended to get a friendly northern court to hold a hearing on whether Bullock should be detained on the North Carolina charge.⁵⁰

Bullock had entered Canada without inspection. On 18 January 1922, a Canadian Immigration Board, sitting at Hamilton, ordered his deportation. The travelling immigration inspector, who along with the local immigration officer constituted the board, empathized with Bullock and recommended that his counsel, Freeman F. Treleaven, appeal the board's decision to the minister responsible for immigration. Treleaven took the train to Ottawa amidst newspaper publicity that unanimously sided with Bullock, deplored lynching, and suggested that, even if he could be protected against a mob in the unruly South, he could not get a fair trial. Canadian moral superiority, a mainstay of patriotic sentiment which repeatedly defined the Dominion as embodying many fine things that eluded the Republic, had full play throughout the affair. Anna Henderson, the Ottawa secretary, knew better. In a letter to Walter White, she wrote "we have freedom here, of a sort, but there is still room for improvement in the treatment of coloured people."⁵¹ The Canadian

⁴⁸ E. Levy, "James Weldon Johnson and the Development of the NAACP" in Franklin & Meier eds., *supra* note 7, 85 at 91.

⁴⁹ White, *supra* note 22 at 3-43.

⁵⁰ NAACP, Press release (23 January 1922) in D-41, *NAACP*, Manuscript Division, Library of Congress, Washington, D.C. [unpublished].

⁵¹ Letter of A. Henderson to W. White (27 January 1922) in *Legal file #1*, *supra* note 32.

press was more interested in the ability of a North Carolina county to hold a fair trial than in domestic imperfections. The press coverage of Bullock's plight was wholly favourable, so that when Treleven took the train to Ottawa, he had embarked on a winning mission. A cabinet committee discussed the case. On 29 January, Charles Stewart, the minister of the Interior, announced that Bullock could remain in Canada for three months.⁵²

The legal manoeuvring to protect Matthew Bullock continued after his release. Instead of moving to Toronto to stay with friends, as was reported in the press, he evidently entered the United States, turned around and re-entered Canada legally, hoping to increase the time that he could remain. Overly confident that he had foiled North Carolina, Bullock returned to Hamilton.⁵³ North Carolina, however, had not surrendered. Since 19 January 1922, the state had been formulating an extradition request through the Department of State. The state's executive office may have received word on 19 January that the immigration inspector in Hamilton recommended an appeal. North Carolina officials determined not to trust the deportation process to deliver him into their hands. The governor's private secretary telegraphed Secretary of State Charles E. Hughes, asking that he notify the Hamilton police to hold Bullock for extradition "for taking part in a riot, etc."⁵⁴ The Department of State could merely process the application and make sure that treaty obligations were upheld. North Carolina had to construct the case, which it did hastily. On 19 January, Governor Cameron Morrison signed a petition to the secretary of state asking that Canada return Matthew Bullock so that he could be "charged with riot, secret assault, conspiracy, etc."⁵⁵ The bill of indictment produced by Garland E. Midyette, solicitor of the Third Judicial District of North Carolina, specified "felonious and secret assault with intent to kill ... and murder as well as riot."⁵⁶

⁵² Newspaper clipping, *Philadelphia & Wilmington Advocate* (4 February 1922) (by the Associated Negro Press) in *Legal file #3, supra* note 41.

⁵³ Letter of J. de Olivares to H. Fletcher, acting secretary of state (24 February 1922); and enclosed clipping, *Hamilton Herald* (17 February 1922) in *State Department, supra* note 10.

⁵⁴ Telegram of W.H. Richardson, private secretary to the governor of North Carolina to Hon. C.E. Hughes, secretary of state (19 January 1922) in *State Department, supra* note 10.

⁵⁵ Letter of C. Morrison to Hon. C.E. Hughes (19 January 1922) in *State Department, supra* note 10.

⁵⁶ Letter of G.E. Midyette, solicitor, Third Judicial District, North Carolina to Hon. C.E. Hughes (20 January 1922) in *State Department, supra* note 10.

Elected in 1920, Morrison had for thirty years assiduously worked to disenfranchise blacks in North Carolina. He engaged in politics at their dirtiest. Practising law and working at politics in Richmond County, he joined the attack on a robust fusion of Republicans and Populists that, in 1896, succeeded in appointing numerous black county officials and justices of the peace. Morrison came to prominence by working with racist Senator "Pitchfork Ben" Tillman of South Carolina and white supremacists who paraded in red shirts breaking up Republican rallies and terrorizing black communities.⁵⁷ Morrison's determination to retrieve Bullock sprang from the state's recent political history; his determination led to legal actions that resembled several previous extradition cases involving a British territory and the United States. In the mid-nineteenth century, attempts to extradite African-American fugitive slaves from British territory had erupted into international incidents. Now the case of Matthew Bullock retraced some of the legal and political history of those earlier affairs.

The *Webster-Ashburton Treaty* of 1842 established the basis for the extradition of fugitives between the United States and the British Empire.⁵⁸ The relevant article originated as part of the settlement of the *Creole* affair. In October 1841, the American brig *Creole* was seized by nineteen slaves who sailed to the Bahamas, where British authorities freed the mutineers on the grounds that, in international law, no nation had a duty to surrender fugitives unless by special agreement.⁵⁹ The extradition article in *Jay's Treaty* of 1794 had expired in 1807.⁶⁰ The 1842 treaty tried to curb the potential for the type of political tension experienced during the *Creole* affair, because it inserted courts into the process. During the diplomatic tumult and sectional debate within the United States over the *Creole* affair, Justice Joseph Story of the United States Supreme Court prepared advice for Secretary of State Daniel Webster, advice embodied in article X of the 1842 treaty. Story recommended that the surrender of a fugitive, on the request of the demanding government, should occur only through court action. He also provided a list of crimes to be covered; it omitted political offences because "many Americans opposed closing the United States as a haven

⁵⁷ Anderson, *supra* note 3 at 294-95; and Edmonds, *supra* note 2 at 148.

⁵⁸ *Supra* note 1.

⁵⁹ H. Jones, *To the Webster-Ashburton Treaty: A Study in Anglo-American Relations, 1783-1843* (Chapel Hill, N.C.: The University of North Carolina Press, 1977) at 78-84.

⁶⁰ *Ibid.* at 83.

for refugees.”⁶¹ Of course, many residents of the United States—slaves—regarded Canada as a sanctuary. Following Story’s advice, the list of crimes in the treaty consisted of: “murder, assault with intent to commit murder, or Piracy, or arson, or robbery, or Forgery, or the utterance of forged paper.”⁶²

Twice in Canadian-American relations, efforts to extradite an African-American from Canada by an American state drew public notice in both countries and precipitated international controversy. Introducing courts into the extradition process may have marginally dampened political passions, enabling politicians to elude responsibility for an unpopular ejection, but court participation could not preclude diplomatic quarrels, because what a court chose to admit as evidence could amount to nothing less than an assessment of the demanding state’s judicial system. Besides, publicity surrounding a hearing for extradition—a hearing in open court—could expose injustices in the demanding state. The two incidents involving black fugitives in Canada, for example, aroused civil rights activists and kindled the indignation of many Canadians who contended that racism in southern states would prevent a fair trial. Even with the participation of the courts, extradition remained “political.”

Both extradition cases highlight the importance of a preliminary testing of evidence in extradition cases and, of course, in criminal justice proceedings more generally. The first incident—a well studied one—occurred from 1860 to 1862 and centred on John Anderson, a fugitive slave from Missouri.⁶³ The second was North Carolina’s campaign to secure Bullock. In order to appreciate the legal issues at stake in the Bullock case, it is necessary to review several legal points that arose in Anderson, especially in the 1860 judgment rendered by the Court of Queen’s Bench.⁶⁴ Set back to back, the two cases may show a maturing judicial recognition of the injustices that arose from southern racism, though this claim requires more extensive investigation.

In 1853, John Anderson allegedly stabbed and killed a white man who accosted him during his flight from slavery. Anderson escaped to Ontario, where he lived undetected until 1860, when he was betrayed by a neighbour, arrested, remanded, and released for want of evidence.

⁶¹ *Ibid.* at 145-46.

⁶² *Ibid.* at 149.

⁶³ P. Brode, *The Odyssey of John Anderson* (Toronto: Published for The Osgoode Society by University of Toronto Press, 1989).

⁶⁴ *Re John Anderson* (1860), 20 U.C.Q.B. 124 [hereinafter *Anderson*].

However, the prospect of a reward initiated a more earnest campaign to remove him to Missouri.⁶⁵ A Brantford magistrate who heard the case this time took into account an *ex parte* affidavit from a slave who alleged that he had witnessed the slaying seven years earlier. Witnesses came from Missouri, but none had observed the crime. The case against Anderson hinged on a written statement whose auspices should have been rigorously questioned.⁶⁶ As a slave, the supposed eyewitness could not have been allowed to travel to Canada, thus the recourse to the sworn statement. Apart from any particular deficiency of a statement from a person readily coerced, and apart from the fact that the statement had been taken seven years after the event, the more general weakness with this calibre of evidence is the obvious one that documents cannot be cross-examined. Nevertheless, the magistrate accepted the affidavit and ruled that there was enough evidence against Anderson to permit extradition.

After this decision, the legal tale had merely begun, because Canadian and British abolitionists worked assiduously to block Anderson's removal to Missouri. A prime legal issue arising in subsequent hearings—three *habeas corpus* proceedings—was the fledgling concept of double criminality. This idea maintained that, for a fugitive to be returned to the state where the alleged criminal act had been committed, that act had to be a crime under the laws of the place where the fugitive now resided. Had a slave who killed someone while escaping committed an act that met the double criminality test, or did the illegality of slavery in Canada invalidate the congruity? The Court of Queen's Bench found that it was enough that Missouri believed that Anderson had broken the law there.⁶⁷ A second hearing, before the Court of Common Pleas, determined similarly, but set Anderson free on a technicality.⁶⁸ It may be that the two rulings, which went against a strict interpretation of double criminality, were sensible. Nevertheless, the rulings against an exacting interpretation of double criminality in *Anderson* were subsequently ignored in Canadian courts. Double criminality became the dominant precept despite *Anderson*. But there was another issue in *Anderson*. Perhaps an exact symmetry of offences was not required for double criminality, but good *prima facie* evidence

⁶⁵ Brode, *supra* note 63 at 22-24.

⁶⁶ *Ibid.* at 28-31.

⁶⁷ *Anderson*, *supra* note 64 at 171.

⁶⁸ *Re John Anderson* (1861), 11 U.C.C.P. 1.

that the accused had committed a serious criminal deed was indispensable for depriving a person of freedom.

Extradition hearings share the ostensible purpose of preliminary hearings. Both test the prosecution's evidence to make certain that a trial will not proceed on suspicion alone. That much has been enshrined in Canadian extradition statutes, which have given effect to extradition treaties.⁶⁹ However, courts have found it impossible to frame a precise test for adequate evidence in extradition hearings. The quandry that accounts for this uncertainty bears discussion. At the time of Bullock's hearing, some decisions put the threshold for evidence relatively low, recognizing that an extradition hearing differed from a preliminary hearing due to the former's connection with international agreements. Thus, many rulings stated that affidavits were not only acceptable, but the conditions under which affidavits had been taken was no business of a Canadian court. International relations were deemed intrinsic to the process. In a lengthy opinion, John Beverly Robinson had earlier advanced this international relations position in the *Anderson* case, noting that while one section of the *Act* specified that the evidence should be such as could support the apprehension and conviction of the suspect under Canadian law, another section merely referred to evidence sufficient to support apprehension.⁷⁰ Of the two quite different tests, Robinson recommended the second, since the actual responsibility for trying the suspect rested with a court in the other jurisdiction. For Robinson, the Canadian court was therefore not obliged to see evidence sufficient to support a conviction.⁷¹ For some judges, then, the international feature had primacy. However, by the early twentieth century, several decisions indicated that some judges were uncomfortable with a low threshold, and in particular with *ex parte*

⁶⁹ Act in force during *Anderson*: *An Act for better giving effect, within this Province, to a Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders*, S.C. 1849, c. 19, later incorporated in *An Act respecting the Treaty between Her Majesty and the United States of America, for the apprehension and surrender of certain Offenders*, C.S.C. 1859, c. 89. Act in force during Bullock trial: *An Act respecting the Extradition of Fugitive Criminals*, R.S.C., 1906, c. 155 [hereinafter *Extradition Act*]. Act currently in force: *Extradition Act*, R.S.C. 1985, c. E-23.

⁷⁰ *Anderson*, *supra* note 64 at 168.

⁷¹ *Ibid.* Robinson may have been confused about the apparent inconsistency in the *Act*, because the requirement that the evidence be such as to merit apprehension and committal for trial—the higher standard of evidence which he rejected—was reserved for suspects who had not appeared in a foreign court. The lower standard, which he preferred, applied to real fugitives, that is, to people who had appeared in court and had escaped. *Anderson* had not appeared in a Missouri court. However, Robinson's more general point that the purpose of the hearing was not to try the case, but to give effect to the treaty, was valid.

affidavits. A number of judges, therefore, had ruled that if these statements were taken in as evidence, then the defence had the right to exploit any deficiency in their drafting.⁷²

In setting a higher test for admissible evidence, jurists adopted guiding principles that applied in domestic cases. Even in very recent years, the commentary on Canadian extradition law by Gérard La Forest danced adroitly around the issue of what evidence to consider, stating that extradition should give effect to an international agreement, thereby suggesting too much critical rigour could be inappropriate. However, La Forest also recommended that, if a judge is in real doubt, that judge should demand evidence upon which he or she can safely act.⁷³ The Bullock case illustrated how—when the Canadian court had reason to distrust the judicial processes outside Canada—amicable international relations and common law guidelines for evidence conflicted.

The freeing of John Anderson was recalled by black leaders in 1922 when Bullock faced extradition. They had muddled recollections about *Anderson*, but two features arose from their inaccurate recasting of events. Foremost, there was “the spectacle of an American negro seeking haven in the land across the border.”⁷⁴ Walter White told a Buffalo audience that “the Bullock case, in my opinion, is one of the biggest cases involving the question of lynching and denial of justice to colored men since the fugitive slaves fled to Canada before the Civil War.”⁷⁵ Additionally, Bullock’s champions in the NAACP knew how abolitionists had employed writs of *habeas corpus* in their attempts to free Anderson.⁷⁶ *Habeas Corpus* entered into their early plans to block Bullock’s return to North Carolina. Major differences between the cases abounded. Anderson passed in and out of jails and courts for nearly two years, but Bullock spent little time in jail and was completely free in two months. Explanations for these contrasts relate to Bullock’s superior defence counsel, a greater recognition on both sides of the border of

⁷² *Re Lewis* (1874), 6 P.R. 236 (Ont. C.L. Cham.); *Re Hoke* (1887), 15 R.L.O.S. 92 (Q.B.); *Browne v. United States* (1906), 30 Que. S.C. 363; and *Re Moore* (1910), 13 W.L.R. 503 (Man. Extradition Comm.).

⁷³ G.V. La Forest, *Extradition to and from Canada*, 2d ed. (Toronto: Canada Law Book, 1977) at 104-05.

⁷⁴ “Canada Guards Negro Refugee By ‘Slave Law’” *New York Tribune* (18 January 1922) in *Lynching File*, *supra* note 17.

⁷⁵ Newspaper clipping, *The Booster* (26 January 1922) in *Legal file #3*, *supra* note 41.

⁷⁶ W. White, “Lynching and Our International Relations” (typescript) at 3 in *Legal file #1*, *supra* note 32.

southern judicial corruption, and a learned and tenacious local magistrate.

There is even more of value to be discovered in a comparison of the Anderson and Bullock cases. They epitomize the extreme positions possible when an extradition judge encounters *ex parte* affidavits: in Anderson an *ex parte* affidavit was accepted, but not so with *Bullock* as we shall see. As well, the two cases accent contrasts in judicial processes in two common law jurisdictions.⁷⁷ The two cases also illustrate phases in both black subjugation and a continuous struggle against racial discrimination in the United States. For brief periods, the Anderson and Bullock cases drew a few Canadians into taking positions on human rights. However, such serious discussions were still marginal to Canadian experience, but in the United States, racism was startlingly at odds with Republican idealism. In both cases, protagonists in a major American political struggle had moved north to skirmish in Canadian courts. The judicial and political dimensions of extradition came together subtly and repeatedly in the Bullock case.

There were two flaws in Governor Cameron Morrison's petition of 19 January 1922. In the first place, the *Webster-Ashburton Treaty* stipulated that fugitives from justice should be surrendered only upon the presentation of such evidence of criminality as accorded with the laws of the place where the fugitive was found. The Canadian *Criminal Code* did not recognize several charges initially proposed by North Carolina.⁷⁸ The Court of Queen's Bench in the Anderson case had rejected double criminality, but in later decisions, Canadian courts developed an attachment to double criminality. Double criminality did not appear by 1922 to pose an insuperable problem for American states seeking the return of fugitives, because the United States Department of State understood the concept well and advised states on how to proceed to satisfy Canadian judges.

The second problem was that the state had submitted no evidence. Warren County officials were unaccustomed to granting due process when trying blacks. The error displayed more than a deficiency in local knowledge. In all likelihood, County Court Solicitor Midyette's

⁷⁷ I maintained a somewhat different argument in J.C. Weaver, *Crimes, Constables, and Courts: Order and Transgression in a Canadian City, 1816-1970* (Montreal: McGill-Queen's University Press, 1995). Research for that study supported the fact that many manifest and latent functions of the criminal justice system in Canadian and American jurisdictions were quite similar. The Matthew Bullock case discloses differences between the conduct of criminal justice in North Carolina and Ontario. It does not undermine the thrust of the prior argument, but it does add complexity to it.

⁷⁸ *An Act respecting the Criminal Law*, R.S.C. 1906, c. 146 (now *Criminal Code*, R.S.C. 1985, c. C-46).

characterization of Matthew Bullock as having “the reputation of being a bad man” made suitable grounds for trying a black man for riot in Warren County.⁷⁹ Wasn’t a southern gentleman’s word about a troublesome black adequate? Midyette and Morrison may even have presumed that the federal government would snap its fingers at the Canadians and get results. But the Department of State bounced the petition back to Raleigh. An under-secretary recognized the flaws and advised Morrison to resubmit the application for extradition with evidence attached. He recommended too that the evidence “be submitted in the form of affidavits or depositions” and that the signatures of the officers before whom these had been sworn should be authenticated.⁸⁰ The under-secretary failed to distinguish between the two types of documents. Depositions, of course, presented no problem for Canadian courts. A criminal deposition had superior standing because it consisted of a witness’ statement taken at a committal proceeding held before a magistrate or judge. The accused had to be present throughout and be allowed to cross-examine the witness. The witness’ statement was taken down. At the end of the process, it was read out to the witness in the presence of the accused and signed by the witness. Due to the capacity of the accused to challenge and possibly constrain the witness’ statement, a judge would have more evidence on which to proceed. However, affidavits could be problematic. In the case of an extradition, Canadian judges applying a low test for evidence had admitted affidavits in support of the application to extradite. However, an affidavit was fundamentally thin evidence, because the accused had not had an opportunity to question the witness making the statement.

The Canadian *Extradition Act*⁸¹ authorized county court judges to hear evidence and determine whether it would be adequate to justify the issue of the warrant by the other state, if such a crime had been committed in Canada. John Anderson had been tried first before a magistrate, not a well-educated and experienced judge. By the 1920s, many functions of local magistrates had been superseded by those of county judges.⁸² At the time of the Matthew Bullock affair, the statute on extradition directed county court judges to hear the case, in the same

⁷⁹ Letter of G.E. Midyette to Hon. C.E. Hughes (20 January 1922) in *State Department, supra* note 10.

⁸⁰ Letter of unidentified under-secretary to the governor of North Carolina (24 January 1922) in *State Department, supra* note 10.

⁸¹ *Supra* note 69, s. 9.

⁸² Weaver, *supra* note 77 at 40-41 and 80-81.

manner, as near as may be, as if the fugitive was brought before a justice of the peace, charged with an indictable offence committed in Canada.⁸³ In the case of Matthew Bullock, Wentworth County Court Judge Colin Snider assumed the responsibilities of extradition judge.

The role of the extradition judge was *somewhat* analogous to that of a magistrate at a preliminary hearing: to listen to the prosecution's case in order to determine if a trial should be held. However, there was a major difference springing from distance and politics. At a preliminary hearing, the prosecution essentially presents parol evidence and perhaps depositions, but at an extradition hearing the ability of the foreign state to assemble witnesses may not have been feasible or economical. Therefore, as noted already, extradition proceedings sometimes relied on documentation, affidavits, and depositions. Political issues inevitably arose in courts, because the trust that the judge placed in the documentation and the circumstances of its preparation had their foundation in the reputation of the judiciary in the state seeking the extradition. Credible statements had to have been secured in accordance with the general rules of evidence under English common law. Thus, hearsay was inadmissible, and statements were inadmissible too if obtained under threat or promise. To return to *Anderson*, the affidavit used against this fugitive slave should have been rejected, because it stretched credulity that a slave in 1860 could make a statement about an escaped slave without there having been threat or promise. Were Warren County officials more neutral than those in slave states sixty years earlier? Should a court take in affidavits originating in a racist community when the suspect was a black whose brother had been lynched?

Once North Carolina secured the two affidavits and had revised its charge against Bullock, it resubmitted an application for extradition. The Department of State allowed this new petition and telegraphed instructions to the consular office in Hamilton. On 16 February 1922, Consul José de Olivares requested that Judge Snider issue a warrant for Bullock's arrest on the charge of assault with intent to murder. Snider immediately complied, although de Olivares had not yet received the necessary documentation from Washington. Snider was not going to obstruct a request from a responsible neighbour like the United States over a technicality; he prepared the warrant.⁸⁴ The police arrested Bullock that day and brought him before Snider the following morning.

⁸³ *Supra* note 69, s. 13.

⁸⁴ Letter of H.P. Fletcher to J. de Olivares (21 February 1922) in *State Department, supra* note 10.

The judge ascertained that neither North Carolina nor Matthew Bullock were ready to proceed with a hearing. Bullock's lawyer was out of town and de Olivares had neither affidavits in hand nor the promise of witnesses. Snider remanded Bullock until 24 February and asked de Olivares to advise his government that he would require the oral evidence of at least one witness who could identify Bullock as the man who had committed the assault and who could give evidence of the facts. Snider must have known that, since Bullock was a fugitive who had never appeared in a North Carolina court, the state would have no depositions. Therefore he insisted on parol evidence.

Were the affidavits by Spain and Felts—affidavits that North Carolina secured nearly a year after the Norlina incident—the entire prosecution case? Were there other witnesses? Bullock's defence attorneys, the Treleaven brothers, mulled over these questions. The brothers initially defended him against deportation for illegal entry. Freeman Treleaven continued to act for Bullock during the extradition proceedings. The brothers were typical of the city's striving lawyers, practising mostly estate and corporate law and assuming community leadership roles. Elder brother Freeman had been elected to city council in 1919. William was a dedicated Mason.⁸⁵ The individual who did the most on Bullock's behalf, who pushed all other principals, was the pastor at the American Methodist Episcopal Baptist Church, the Rev. J.D. Howell. He had engaged the Treleavens, contacted the NAACP about the initial arrest for illegal entry, kept the NAACP informed throughout each phase of Bullock's ordeal, spoke at black churches in the area, and organized fund-raising events. When Matthew Bullock was arrested on 17 February 1922, Howell contacted Walter White and asked him to start collecting documentation about the Warren County trials of the men arrested for the Norlina riot of January 1921. Howell's objective was only to secure information about what he assumed would have been their unduly harsh treatment. Bullock's champions were preparing to impugn southern justice. His lawyers soon asked for more information from Warren County.

County Court Judge Colin Snider, in his seventy-second year when he heard this application for extradition, shared a small town background with Governor Morrison. Both had practised law in

⁸⁵ The biographical sketch of the Treleaven brothers is based on information in the newspaper clipping files in Special Collections, Hamilton Public Library. See the clippings on Freeman, *Hamilton Spectator* (8 December 1925; 29 September 1930; and 3 November 1952). See the clippings on William, *Hamilton Spectator* (29 December 1945; 22 October 1964; and 15 January 1970).

agrarian courthouse towns in the late nineteenth century; both practised in a common law tradition; both were men of conviction who achieved a measure of power. Beyond these similarities, their differences broadened to expose how southern racism perverted the principles of law. A personification of old Ontario patriotic values and legal professionalism, Snider's frames of reference contrasted with those of Governor Morrison and the judicial officials of Warren County. While racism and carelessness had fostered a distinctive path for many southern jurisdictions within the common law tradition, Snider looked to rules of evidence. However, he too likely had preconceived notions. A descendant of United Empire Loyalists, indeed an active member of the United Empire Loyalist Association, and its president in 1905, Snider may have found North Carolina's brief a discouraging confirmation of what he would have expected. Could anything better have originated from a people who had violently dismissed the perfection of the British constitution during the Revolution? Whatever Snider may have conjectured was the root of North Carolina's errors, he had a good reputation, a keen mind, and ample experience. He had attended the University of Toronto, graduating with a Bachelor of Arts in 1873, articulated, and was called to the bar in 1875. He practised law in Cayuga, Ontario until appointed to the bench in Halton County in 1893. In 1895, he became the county court judge for Wentworth and upheld a reputation for seldom having his decisions overturned on appeal. From 1906 to 1932, he was a member of a commission overseeing the revision of Ontario's statutes.⁸⁶

After the routine remand of 17 February 1922, the Treleavens decided to find out what case the state had assembled against the men caught in Norlina and convicted at Warrenton a year earlier. They planned to fight the extradition on the grounds that the "charge of murder must be pretty plainly proved. A fight is not attempted murder."⁸⁷ The extradition hearing could not be a trial on the charge of attempted murder because that was not the purpose of a hearing, but it could rigorously test the prosecution's evidence. On 20 February, several days after Howell's request for information about the sentences given to the black men arrested for participating in the shoot-out, the

⁸⁶ This sketch of Colin Snider is based on the newspaper clipping files held by Special Collections, Hamilton Public Library. See the clippings on Snider, *Hamilton Spectator* (23 March 1923; and 8 July 1939).

⁸⁷ Telegram of J. de Olivares to the secretary of state (20 February 1922); and enclosure #4, "Canadian Justice for Norlina Negro" *Hamilton Spectator* (18 February 1922) in *State Department*, *supra* note 10.

Treleavens also wired Walter White, giving instructions to secure at once a certified copy of the evidence and proceedings against Bullock and other accused parties.⁸⁸

What should have been a simple assignment was complicated by the fact that the documents sat in a courthouse where an agent of the NAACP would have been unwelcome. Heeding the Treleavens' appeal, White immediately contacted Durham lawyer and civil rights activist R. McCants Andrews, asking him to "obtain a certified copy of evidence and proceedings of trials in North Carolina courts following riot."⁸⁹ Andrews, a graduate of Howard University, a former president of its NAACP chapter, and an impoverished lawyer, felt vulnerable. White had employed him already to find out, for Howell, what had become of Jerome Hunter, the man who allegedly told Bullock to shoot Rabey Traylor. Hunter had received an eight-year sentence.⁹⁰ Andrews—by no means a coward—prudently recoiled from further digging and appealed to the president of the Raleigh branch of the NAACP to secure the documents. That individual rejected the request, forcing Andrews to telephone the clerk of the court at Warrenton. Andrews approached this task warily, stating that, while he personally regretted the whole affair, he felt that "the Law should have its course and that the minutes should stand for themselves."⁹¹

The brevity of the court records secured by Andrews should have startled and encouraged the Treleavens. Warren County had rapidly disposed of sixteen accused. Seven pleaded guilty to rioting and one to secret assault. The prosecution terminated the proceedings in eight cases; in three of these, the released prisoners agreed to leave the county. All judicial activity filled a mere two pages. The court entries for the terminated prosecutions should have read *nolle prosequi* or *nolle pros*, but the record stated "the State takes a *Noole pross*."⁹² Poor legal Latin was a trivial matter compared to the inability of the clerk of the Superior Court of Warren County to unearth any statement of evidence.

⁸⁸ Telegram of F. & W. Treleaven to W. White (20 February 1922) in *Legal file #2, supra* note 45.

⁸⁹ Letter of W. White to R. McCants Andrews (20 February 1922) in *Legal file #2, supra* note 45.

⁹⁰ Letter of R. McCants Andrews to W. White (18 February 1922) in *Legal file #2, supra* note 45.

⁹¹ Letter of R. McCants Andrews to clerk, Superior Court, Warren County, North Carolina (22 February 1922) in *Legal file #2, supra* note 45.

⁹² *State v. Matthew Bullock et al.* (May Term, 1921), (Warren County Sup. Ct.) [unreported] in *Legal file #2, supra* note 45.

No attorney for the defendants requested that the evidence be made a part of the record. The clerk wrote to Andrews that “the evidence is in the hands of the Stenographer I guess—if any.”⁹³

Further peculiar southern ideas about due process had become public when Governor Morrison issued a statement on 18 February about Bullock’s safety, if he were extradited. The governor described the lynching of Plummer as having been “pulled off so stealthily” that the brave and conscientious officers of the town could not prevent the deed. This would not happen to Matthew Bullock, because Morrison promised “every protection around him.” The governor then volunteered that “the people of some sections of the country do not seem to understand so-called lynchings in the south are no more than the killing of a criminal by the friends and frequently outraged relatives of the victims of the prisoner’s crime.” Plummer Bullock, it should be recalled, had been guilty of legitimately complaining about rotten apples. Damning enough on its own, the fact that the governor’s statement appeared in a discussion about Matthew Bullock, who—like his murdered brother—had been convicted of no crime, showed a disregard for the rights of defendants.⁹⁴

Bullock’s defenders did not directly hoist the United States on its own petard, turning against the Republic its high-minded but imperious policy that political offenders seeking refuge be exempted from extradition.⁹⁵ No one, for example, attempted to have him discharged on the grounds that he may have injured someone while committing a political act, though the NAACP may briefly have considered arguing that the North Carolina charge against him was a cloak to hide prosecution for his being a leader of dissident blacks.⁹⁶ While no one claimed Bullock was a political refugee, press coverage by Canadian and liberal American newspapers used the incident to expose southern lawlessness and racism. That inevitably projected the affair into American politics. From his arrest on 17 February 1922 until his release on 3 March, Bullock’s tale contributed to the publicity campaign for the *Dyer* bill. Though the House had passed the bill, the NAACP was having trouble

⁹³ R. McCants Andrews (25 February 1922) in *Legal file #2, supra* note 45.

⁹⁴ Unidentified newspaper clippings in *Legal file #2, supra* note 45.

⁹⁵ G.H. Hackworth, *Digest of International Law*, vol. IV (Washington, D.C.: U.S. Govt. Print. Off., 1942; reprinted by Garland Publishing, 1973) at 45-52.

⁹⁶ Letter of W. White to M. Brown (28 February 1922) in G-130, Branch Files, Buffalo, NAACP, Manuscript Division, Library of Congress, Washington, D.C. [unpublished].

convincing the Republican leadership to bring it onto the floor of the Senate.⁹⁷

The Bullock case kept telegraph lines humming. When the Treleavens were inquiring about the case the state might present, de Olivares had wired the Department of State with the news that Judge Snider insisted that North Carolina produce witnesses and that Snider claimed to have been consistent in applying this practice in the past. But de Olivares also reported that the judge could have been “influenced in this case by public sentiment in Canada which is favourable to the prisoner.”⁹⁸ After de Olivares’ news, the State Department consulted legal counsel and on his advice telegraphed the Governor, suggesting that, at the very least, the state should retain a lawyer in Hamilton.⁹⁹ As well as these consultations, Snider and de Olivares chatted several times with the Judge explaining why North Carolina positively had to produce parol evidence.¹⁰⁰

On 24 February 1922, Bullock reappeared in Snider’s court. About 200 spectators—many of them blacks from across Ontario—attended the hearing.¹⁰¹ The judge asked if North Carolina was represented. It was not. The American consul insisted that he could only represent the interests of the secretary of state with respect to Canada’s treaty obligations, and that North Carolina had not secured local counsel. Still, in the absence of anyone else, de Olivares presented North Carolina’s case. A picture of solemnity, Judge Snider got straight to business. Looking down from the dais at the American consul through rimless glasses, he asked “What have you got Mr. de Olivares?” Pleading that the secretary of state and the governor were still in communication with a view to bringing witnesses to Hamilton, de Olivares requested a further remand of seven days.¹⁰²

⁹⁷ Zangrando, *supra* note 6 at 65-69.

⁹⁸ Telegram of J. de Olivares to the secretary of state (20 February 1922) in *State Department*, *supra* note 10.

⁹⁹ Telegram of H.P. Fletcher, acting secretary of state to the governor of North Carolina (23 February 1922) in *State Department*, *supra* note 10.

¹⁰⁰ Telegrams of J. de Olivares to the secretary of state (17 February 1922; 20 February 1922; and 25 March 1922) in *State Department*, *supra* note 10.

¹⁰¹ Letter of J. de Olivares to the secretary of state (25 March 1922); and enclosed clippings, *Hamilton Herald* (24 February 1922) in *State Department*, *supra* note 10.

¹⁰² Transcript of the extradition hearing for Matthew Bullock (24 February 1922) in Record Group 13 (Department of Justice), vol. 993, file #303, Matthew Bullock, National Archives of Canada, Ottawa at 1-7 [hereinafter *Department of Justice*] [unpublished].

Snider acted to assure that Bullock's counsel would have every opportunity to provide his client with a fair hearing. Therefore, he instructed de Olivares to provide the defence with copies of any evidence that he planned to submit for North Carolina. Next, he prompted the defence by asking what they had to say about a further remand. Former Crown attorney and King's Counsel, H.F. Washington had joined Freeman Treleven to defend Bullock. Taking his cue from Judge Snider, Washington objected to a further remand and pressed de Olivares to turn over any affidavits or depositions that North Carolina planned to introduce. At this point, Snider intervened and stated a cardinal fact that underpinned his insistence on parol evidence. There would be no deposition, he said correcting Washington, because:

There was no preliminary hearing ... He [Matthew Bullock] is a fugitive from Justice, or alleged to be such, not having been heard by any Court of competent jurisdiction at all. No evidence has been taken, as I understand it, by any Court of competent jurisdiction at all. No evidence has been taken, as I understand it, by any Court of competent jurisdiction with him present.¹⁰³

Just in case some documentation surfaced later, he supported Washington's notice that the defence receive all documentation to be used by North Carolina: "they must give you copies of anything they mean to use or else I won't take it in."¹⁰⁴

Judge Snider may have suspected that North Carolina had no case. Yet he committed an act he regretted. He remanded Bullock a second time:

I am not deaf to the State's application, particularly as it comes from the Consul for the Secretary of State. I am quite ready to grant what he asks, and give the delay that he wants, because I am anxious if it is a case that ought to be returned that it should be done, but if it is not I am equally anxious that he should not be sent away from this Country without a fair hearing ...¹⁰⁵

Just before he formally ordered a peremptory or final remand for 3 March, the judge hammered away at why North Carolina would have to produce a witness. He had opted for the higher test of evidence, insisting that he needed it to determine if the charge against Bullock should be attempted murder or some lesser charge which would have been outside the treaty:

You see he [Bullock] can't produce any evidence and he may be able to show by cross-examination a very different statement from what an affidavit would show. He may

¹⁰³ *Ibid.* at 4.

¹⁰⁴ *Ibid.*

¹⁰⁵ *Ibid.* at 4-5.

be able to show for instance if he were attacked suddenly somewhere and had to defend himself, an act then would be a very different thing from what it would be if he was the initiative of an effort or something of that kind. The trouble in this case, the difficulty of it is—and it is a difficult one—is to determine whether this prisoner had the intention to commit murder. The intention is the basis of the whole thing. A certain act would be of a very different nature and a very different character according to the intention with which it was done.¹⁰⁶

Interviewed later at the exclusive Hamilton Club, Judge Snider said “I am going to stick to my guns ... I refuse to take affidavits.”¹⁰⁷

Before the final hearing, interested parties sought opinions about the legitimacy of Snider’s declarations about admissible evidence. Digging through its files, the *Hamilton Herald* found two instances when American states sent witnesses to Hamilton to support extradition cases.¹⁰⁸ De Olivares engaged Hamilton attorney C.W. Bell to draft a brief on the subject. After reviewing article X, the *Extradition Act*, and case law, Bell reached an unequivocal conclusion. According to article X, the law of Canada applied when determining if there was evidence that a crime had been committed. The Canadian *Extradition Act*, he alleged, made parole evidence obligatory and written evidence merely permissible. That was an extreme interpretation. Furthermore, Bell wrote:

There is no provision under our Laws whereby a person can be committed for trial without oral evidence ... and an opportunity ... for cross-examining the witnesses. So strongly is this rule observed that more than once, when I have endeavoured in a court of first instance, to have no evidence given at all against a person accused and have waived the taking of evidence, the prosecution has insisted on giving some oral evidence for fear the committal would prove irregular, even if consented to by the accused through his Counsel. I have never heard of any person being committed for trial in one of our Courts upon written depositions and I am quite certain that such a committal would be held irregular ... Judge Snider is within his rights.¹⁰⁹

Judge Snider was within his rights and had a plausible, though subtle, reason for his action, but Bell’s analysis yielded too easily on the issue of affidavits. Case law was far more ambiguous than he suggested; indeed, case law probably ran against his assessment. Perhaps, though, the United States Department of State was happy with his interpretation,

¹⁰⁶ *Ibid.* at 5-6.

¹⁰⁷ Letter of J. de Olivares to the secretary of state (25 February 1922); and enclosed clipping, *Hamilton Herald* (24 February 1922) in *State Department, supra* note 10.

¹⁰⁸ *Ibid.*; and enclosed editorial, *Hamilton Herald* (25 February 1922) in *State Department, supra* note 10.

¹⁰⁹ Telegram of J. de Olivares to the secretary of state (28 February 1922); and enclosed opinion of C.W. Bell (28 February 1922) in *State Department, supra* note 10 at 3-4.

because officials there may have prayed for a quick end to the affair, wincing at the adverse publicity North Carolina was earning for itself and the nation by insisting on Bullock's return. The case kept a lynching in the news and gave the Republic a black eye. A cynic might even think that a Republican administration in Washington would not mind seeing a Democratic pugilist like Morrison losing a round, though the Republicans themselves had largely abandoned the civil rights cause. After ordering the release of Matthew Bullock, Judge Snider "as a mark of courtesy," invited de Olivares "to occupy a seat on the dais with him, where we conversed at some length on the phases of the proceedings."¹¹⁰ Now the diplomat, Snider was anything but obtuse about American sensitivities.

Newspaper reporting was favourable to Snider and sympathetic to Bullock, but the decision to insist on parol evidence left Canadian law-and-order advocates fuming. Among the outraged was Toronto's chief constable. Divulging the outlook of those police officers who felt that a judge's fussing over technicalities merely freed guilty parties, S.J. Dickson protested to the Royal Canadian Mounted Police that something had to be done: "I submit that it is high time that some official action be taken to check the activities of those who are apparently trying to put stumbling blocks in the way of the Police." He admitted he knew nothing about the case other than what appeared in the press, but it seemed to him that "the effect of all the nonsense concerning this negro will be that the Police authorities acting in the interests of the people of Canada will have a very hard time to have criminals returned to Canada in the future if the procedure advocated at Hamilton is followed."¹¹¹

Dickson intimated something important. Canadian police officers in cities near the border sought cooperation from American counterparts, and gladly reciprocated. In essence, Dickson argued that extradition should be managed by the executive branch of government. Fortunately, the Department of Justice stayed out of the picture until the case was decided, maintaining the independence of the judiciary. However, the police probably had acted from time to time on "extradition" matters without involving the courts. The comfortable dealings among police forces along the border to which Dickson alluded

¹¹⁰ Letter of J. de Olivares to the secretary of state (5 March 1922) in *State Department, supra* note 10.

¹¹¹ Letter of S.J. Dickson to A.J. Cawdron, superintendent, Criminal Investigation Department, Royal Canadian Mounted Police (24 February 1922) in *Department of Justice, supra* note 102.

presumably meant that officers by-passed the courts. The police winced or winked at due process. In a practice cautiously condoned by the Department of State, American suspects had been picked up by Canadian police, declared undesirable by immigration authorities, and escorted to the border, where American police took charge.¹¹² No court was required. The early championing of Bullock's cause by Canadian blacks and the related public notice at the time of the illegal entry charge probably saved him from a non-judicial expedient "deportation in lieu of extradition" that had economically whisked other suspects across the border.

Between the first and third court appearances, Governor Morrison refused to do anything except propose that if the extradition papers were deficient in any way, he would correct errors of form. He may have hoped that, by ignoring the Department of State's recommendation that North Carolina hire a Canadian lawyer and present its case, the United States would have to act on his state's behalf. Southern honour certainly advised that he not submit to a foreign request that insulted the integrity of the local judiciary. Honour maligned—southern coinage much used to condone outrageous behaviour—emerged in the letter he wrote to Henry Fletcher, the acting secretary of state. "I hope you will not hereafter request North Carolina or any self-respecting State of the Union in any way to accept a request from Canada."¹¹³ Several days later, he contacted Fletcher and Senator Lee Overman of North Carolina, a member of the United States Senate Judiciary Committee. Morrison had no intention of subjecting the states of the union "to the humiliation of having to appear before some judge in a petty judicial proceeding in Canada. ... I am not going to try North Carolina's honor and integrity before any judge in any foreign country."¹¹⁴ Ironically, he had done so, and lost.

When Bullock appeared in court for the last time on 3 March, North Carolina produced no witnesses and Judge Snider refused to accept the two affidavits. They had not issued from any court of inquiry; as well, they had been sworn out after the warrant for Bullock's arrest had issued. De Olivares attempted to have the affidavits entered into

¹¹² Letter of A. Halstead, American consul general, Montreal to the secretary of state (28 January 1922); and letter of W. Carr to A. Halstead (2 February 1922) in *State Department, supra* note 10.

¹¹³ Letter of C. Morrison to H.P. Fletcher (20 February 1922) in *State Department, supra* note 10.

¹¹⁴ Letter of L.S. Overman to F.K. Nielson, solicitor, Department of State (25 February 1922); and letter of C. Morrison to L.S. Overman (24 February 1922) in *State Department, supra* note 10.

the record, but the judge would have none of it. It was his court and he knew exactly what evidence he had to hear to support the order for extradition. So, he discharged the prisoner.¹¹⁵ Outside the court, amidst a crowd of 200, Bullock, wrapped in a Union Jack, posed for photographs.¹¹⁶ Governor Morrison depicted the discharge as an affront to North Carolina and fulminated that “he did not propose to send reputable white men to a foreign country to bandy words with ‘nigger societies.’”¹¹⁷ He also precipitated diplomatic commotion. North Carolina complained to the Department of State that parol evidence was not necessary and the governor hoped that “no self-respecting state would honour a Canadian request for extradition.” The state’s senators conferred with the Department of State.¹¹⁸ And the secretary of state complained to the British ambassador, asserting that, if parol evidence were required generally, it would defeat the purposes of the extradition treaties between Great Britain and the United States. Next, the British ambassador imparted the objection to the Canadian Minister of Justice.¹¹⁹ Note passing—for the sake of honour—seems to have been *pro forma*, at least until the correspondence reached E.J. Newcombe, deputy minister of Justice, who forwarded the complaint to Judge Snider.

Snider prepared a strong, lucid justification for his actions and, when he drafted it, inserted a barb. Newcombe’s letter alleged that Snider had followed an improper course of action.¹²⁰ Snider requested that Newcombe explain himself: “if any authority shows I am wrong I do not wish to repeat the mistake.”¹²¹ His report reiterated the reasons for insisting on parol evidence. If the judge had bent the rules, it had occurred when the United States consul had first asked for a warrant for the arrest of Bullock without proper documentation:

¹¹⁵ Transcript of the extradition hearing of Matthew Bullock (3 March 1922) in *Department of Justice, supra* note 102.

¹¹⁶ Letter of J. de Olivares to the secretary of state (5 March 1922); and enclosed clipping, *Hamilton Herald* (3 March 1922) in *State Department, supra* note 10.

¹¹⁷ Newspaper clipping, *Greenboro Daily News* (4 March 1922) in *Legal file #3, supra* note 41.

¹¹⁸ *Ibid.*

¹¹⁹ Letter of W. Carr to J. de Olivares (13 March 1922); and letter of Hon. C.E. Hughes to Sir Auckland Geddes (15 March 1922) in *State Department, supra* note 10.

¹²⁰ Letter of E.J. Newcombe to C. Snider J. (20 April 1922) in *Department of Justice, supra* note 102.

¹²¹ Letter of C. Snider J. to E.L. Newcombe (25 April 1922) in *Department of Justice, supra* note 102.

I asked the Consul to get at least an authenticated copy of a warrant, if such had been issued, but in the meantime I did not refuse a warrant of arrest. I did issue it ... on the Consul's written request alone. That is the only unusual thing ... but I would not again take the risk of causing an arrest, unless I am protected by compliance with the provisions of our Statute.¹²²

Snider regretted two things about his conduct: he had made out an arrest warrant without proper supporting documentation, and he had qualms about the second remand. At the risk of mistreating Bullock, he had extended abundant courtesy to the United States. In defence of his actions, he also discussed a chronic misuse of terms. From time to time, the affidavits from North Carolina had been called depositions. They were not, because they contained no cross-examination of the witnesses' statements. Sloppy reporting, Snider insinuated, had clouded understanding of the good reasons for his judgment. Newcombe placed a note at the end of the file, asserting that "the judge was wrong in rejecting the affidavits."¹²³ But Newcombe was wrong. The judge had reason to believe that affidavits could not alone make Bullock a suspect for an alleged attempted murdered. In a non-judicial process, would a Canadian civil servant like Newcombe have capitulated to cursory pressure and turned over Matthew Bullock to an officer of Warren County?

The Bullock case offered an opportunity for the NAACP to obtain headlines and press on with its faltering campaign for the *Dyer* bill. Walter White had arrived in Hamilton on 19 January 1922 with two objectives: to assist the defence, if necessary, by providing information about the judicial conditions in the South; and to prepare press releases for the NAACP that would both help Bullock and the campaign against lynching. Nineteen twenty-two was a banner year for White. He married a month after his trip to Hamilton and H.L. Mencken persuaded him to write a novel about racism. In 1924, White published *The Fire in the Flint*,¹²⁴ a story about a black doctor from Georgia who was lynched. Henceforth, he combined his NAACP work with a career as an author of books on racism in America. In 1930, White became the secretary of the NAACP. He participated in the Harlem Renaissance and advised national political figures on race questions. One of the immediate goals of his visit to Hamilton had not been achieved. The

¹²² *Ibid.*

¹²³ Memorandum of E.L. Newcombe to Mr. Narraway (29 August 1922) in *Department of Justice*, *supra* note 102.

¹²⁴ W.F. White, *The Fire in the Flint* (New York: Negro Universities Press, 1969).

Dyer anti-lynching bill died in the Senate.¹²⁵ Hamiltonians elected Freeman Treleven mayor in 1930. Pastor J.D. Howell moved on to a Detroit pulpit. Matthew Bullock vanished.

The Bullock affair should not be read as a triumph of "colour blindness" in the Canadian justice system, or of progressive ideals in urban southern Ontario. Public support for Bullock's cause included an ample measure of superficial nationalism, a chance to chalk up a cheaply won victory of moral superiority over a boisterous neighbour. Reporters accented the lawlessness of America. The episode certainly exposed the worst in North Carolinian primitivism, but press coverage related none of the history of white tarheel opposition to racism. Moreover, Judge Colin Snider's refusal was not uniquely Canadian; several northern states had also refused to return a few black fugitives to southern states. Snider made a wise and controversial decision; several fine points of law were researched and debated, but actions by blacks defeated North Carolina: blacks in Hamilton, Ottawa, and in the NAACP. They forced proceedings that kept him from being dealt with quickly and quietly. The point to celebrate was not that the system worked admirably, but that people had pressed the system to make it work.

¹²⁵ 63 Cong. Rec. 450 (1922).