§1-1 Brief History of Evolution of International Extradition in United States

United States involvement in international extradition began rather inauspiciously. In 1795, the United States and Great Britain entered into a Treaty of Amity, Commerce, and Navigation (the Jay Treaty). Article XXVII of that treaty provided for the extradition of persons charged with murder or forgery. The treaty assigned no role to the judiciary in the extradition process, and Congress did not enact legislation to implement the extradition commitments undertaken by the United States in the treaty.

In 1799, Great Britain requested the extradition of a British seaman, Thomas Nash (alias Jonathan Robbins), who was accused of committing murder aboard a British frigate. In accordance with the treaty, Secretary of State Pickering, on behalf of President Adams, directed the United States District Judge of the district in which the seaman had been arrested to surrender him to British authorities upon the production of “such evidence of his criminality” as the laws of the United States or the state in which he had been arrested “would justify his apprehension and commitment for trial, if the offense had been committed within the jurisdiction of the United States.” Finding that the evidence submitted by Great Britain met the specified standard, the district judge ordered Nash’s surrender to British authorities. Nash, who apparently falsely claimed to be an impressed American sea-

---

1 8 Stat. 116
2 10 Annals of Cong. 517 (1800).
3 Id. at 518. As then Representative, later Chief Justice, John Marshall stated in his defense of President Adams on the floor of Congress: “The sufficiency of the evidence was submitted entirely to the judge.” Id. at 618.
man who committed the murder in an effort to escape impressment, was ultimately surrendered to the British, tried by court martial, convicted, and hung. The case quickly became a cause célèbre in the Jeffersonian press, led to the introduction of a resolution of censure against President Adams for infringing upon the independence and powers of the judiciary, and materially contributed to his reelection defeat.

In light of this politically ill-starred experience with the only extradition under the Jay Treaty, and the lack of a felt need for such treaties, politically sensitized officials of that era were less than eager to enter into other treaties committing the United States to extradite fugitives to foreign countries. When the extradition provision of the Jay Treaty lapsed in 1807, it was not renewed, nor was a new extradition treaty with Great Britain or any other country negotiated until 1842.

While the federal government permitted the extradition provision of the Jay Treaty to expire and neglected to negotiate extradition treaties with other countries, its Attorneys General consistently rendered opinions that absent specific authority contained in legislation or a treaty, no federal official had “the power to arrest and deliver up fugitive criminals from abroad.” Therefore, in the 35 years between the expiration of the extradition provision of the Jay Treaty and the entry into force of the extradition provision of the Webster-Ashburton Treaty with Great Britain, the federal government lacked authority to extradite a foreign fugitive regardless of the seriousness of the offense with which he was charged and the inability of the United States to try him for that offense.

While the country as a whole apparently felt no great need for the benefits afforded by extradition treaties during this period, a few cases arose along the New York and Vermont borders with Canada which drew into focus the need of those states and the British government in Canada to be able to extradite fugitives to each other. On at least one occasion the British government in Canada extradited a fugitive at the request of the State of New York. This extradition led New York to pass legislation to permit it to surrender fugitives directly to foreign countries. In addition, on a number of occa-

---

4 Id. at 518.
7 See note 1, supra, Art. XXVIII.
9 4 Moore, A Digest of International Law, 240–43 (1906).
10 Id. at 240.